STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

TAVARIOUS SETTLES,

Appellant

Appellate Case No. 2015-000980.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF THE ISSUES ON APPEAL

I. Based on the totality of the circumstances, did the trial court err by admitting the statement made by Settles, a youth under the age of 18, where the statement was obtained during police interrogation outside the presence of a guardian or attorney, there was testimony at the *Jackson v. Denno* hearing that the police misrepresented that Settles was restricted from making a phone call prior to his interrogation, and Settles was not, in fact, offered the opportunity to make a phone call under after his interrogation.

II. The South Carolina Supreme Court recently held that individualized and meaningful sentencing hearings are required for youths under the age of 18 at the time of the crime that are subject to a sentence of life imprisonment without the possibility of parole. Settles was under the age of 18 and was subject to a potential sentence of life imprisonment without the possibility of parole. Did the trial court err by refusing to conduct an individualized and meaningful sentencing hearing and by refusing to allow the testimony of mitigations experts?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I. Did the trial court abuse its discretion in ruling Appellant's statement admissible where, considering Detective Collins and Appellant's testimony both at the *Denno* hearing and before the jury during trial, the totality of the circumstances demonstrate that Appellant made a knowing, voluntary waiver of his *Miranda* rights and was not deprived of his independent decision-making ability by any coercive tactic, even in light of his age.

II. Did the trial court err in denying Appellant's attempt to present his mitigation case via individualized, sworn testimony where no precedent establishes a particular procedure that the court must follow before sentencing an individual under the age of eighteen to a term-of-years sentence and where the sentencing court heard evidence related to and gave due consideration to Appellant's age, individual history and characteristics, and family circumstance prior to issuing a forty-five year sentence.

STATEMENT OF THE CASE

In September 2013, The Greenwood County Grand Jury indicted Appellant Tavarious Settles for the May 30, 2013, murder of Prudencio Sis. Settles was also indicted for possession of a weapon during the commission of a violent crime. (R. pp. 469 - 472).

Represented by Robert Tinsley, Esquire, Appellant proceeded to trial in Greenwood County beginning March 30, 2015. The Honorable Frank R. Addy, Jr. Presided. Assistant Eighth Circuit Solicitors Elizabeth White and C. Yates Brown prosecuted the case, which lasted four days. (R. p. 5).

Settles was convicted of both charges, and Judge Addy sentenced him to 45 years for murder and a concurrent five years on the weapons charge. Settles received credit for time served. (R. p. 411, lines 10-17).

Following sentencing, Settles, by and through counsel, moved for the court to reconsider the sentence imposed. (R. pp. 414 – 415). Judge Addy denied that motion on April 21, 2015. (R. pp. 416 – 417). Notice of this appeal followed. (R. p. 475).

On September 18, 2015, Eighth Circuit Solicitor David Stumbo moved for Settles' sentence to be reduced as a result of Settles' offering substantial assistance to the State by testifying in another matter. (R. pp. 476 - 477). Judge Addy granted the State's motion, reducing Settles' sentence on the murder charges from 45 to 40 years, and running it concurrent to other charges. (R. pp. 478 - 479).

STATEMENT OF FACTS

"Take your pants off," Appellant Tavarious Settles told the victim of the armed robbery he set out to hit the night of May 30, 2013. (R. p. 37, lines 1-6). "Then Prudencio tried to grab the gun, but he had hands up because he didn't know English, but he tried to grab the gun and that's when Settles snapped away." (R. p. 37, lines 8-10). Armed with a forty caliber Glock, Appellant fired multiple shots in the middle of Greenwood's Franklin Street, striking Prudencio Sis, a stranger. (R. p. 73, line 11 – p. 74, line 24). Prudencio had been walking home from a visit with his fiancée. (R. p. 240, lines 1-25). She recalled hearing the shots shortly after Prudencio left her home at nine that night, but she did not think anything of it at the time. (R. p. 242, lines 4-17).

From the altercation's inception, an eyewitness gazed into the street smoking a cigarette, concealed as he stood in the yard behind his home. (R. p. 98, line 25 – p. 99, line 2). He kept his eyes trained on two young men approaching the victim in the middle of Franklin Street—one tall with his shirt looped over his head, the other short with little "Shirley Temple" twisted dreadlocks. (R. p. 99, lines 2-14). Their presence made the eyewitness uneasy. They made "no friendly gesture." (R. p. 99, lines 16-24). He hoped they did not see him as he began backing into his home. (R. p. 100, lines 1-8). It was at this point that the eyewitness heard one of the dangerous looking men exclaim, "We got you now, Mother------." (R. p. 100, line 13). The victim put his hands up, saying "no, no, no, no" and appearing to reach for a pocketbook. (R. p. 100, lines 14-19). As the eyewitness backed into the safety of his home, he heard one of the guys say "I got you." (R. p. 100, lines 19-22). Then he heard two pops of gunfire. (R. p. 100, line 22). According to this eyewitness, the shorter individual with the twisted hair had something shiny in

his hand, which the eyewitness believed to be the gun. (R. p. 101, line 2 – p. 102, line 15; R. p. 116, lines 10-13). He called 911 to report a shooting. (R. p. 100, lines 9-24; State's Exhibit 1).

Prudencio was dead on arrival. (R. p. 143, lines 15-25; R. p. 148, lines 1-11; R. pp. 464 – 465 State's Exhibit 4). He had been struck by Appellant's gunfire five times: once in the lower right back, once near the upper right shoulder, once to his abdomen; once in a graze would to his right finger sustained from a bullet buzzing by his hand; and once in the chest by a nearly instantaneously fatal shot. (R. p. 251, line 16 – p. 257, line 18). The forensic pathologist recovered two projectiles from his body during autopsy. (R. p. 250, lines 10-13). Each projectile was consistent with a forty caliber firearm, potentially a Glock. (R. p. 234, lines 3-9). In addition to the projectiles recovered from the victim's autopsy, four forty caliber shell casings were recovered from the crime scene. (R. p. 210, lines 2-9; R. p. 236, lines 4-6). The State's firearm and toolmark examiner concluded that those four casings were fired from the same gun. (R. p. 236, line 18 – p. 237, line 10). Gunshot residue was also detected on the victim's right palm and the back of his left hand. (R. p. 223, line 22 – p. 224, line 3).

It was around nine o'clock that night when Michael Patten drove Appellant, Markece Moore, and Bryson Jefferson a couple blocks from a house on Taggart street to Franklin Street, looking to hit a lick. (R. p. 68, line 1 – p. 69, line 16). Jefferson, fifteen years old at the time, recalled seeing Appellant with a black gun prior to his getting out of the car. (R. p. 88, lines 20-25; R. p. 91, lines 14-19). The foursome saw "somebody on the side of the road right there by the [Carolina Pride] Packing Plant entrance, and somebody was helping him get their car fixed." (R. p. 70, lines 14-20). They considered robbing that person, but did not go through with it because there was another man assisting him on the side of the road. (R. p. 70, line 24 – p. 71, line 5).

The foursome continued to the next street and saw the victim emerging onto Franklin Street from a wooded path. (R. p. 71, lines 6-21). Patten stopped the car so that Appellant, known at Purp, and Markece Moore, known as Lank, could get out of the car. (R. p. 72, lines 3-8). Purp had a black forty caliber Glock. (R. p. 72, lines 11-25). "There you go, Purp," Patten told Appellant. (R. p. 33, line 7 – p. 34, line 1).

Jefferson and Patten stayed in the car, driving another couple blocks away to "the dirt" to get some cigarettes. (R. p. 73, lines 6-10; R. p. 89, lines 1-13). Patten did not see the robbery take place, but knew that Appellant and Lank were planning on robbing the pedestrian and heard some gunshots. (R. p. 73, lines 11-25).

Lank testified that he got out of the car with Appellant and walked away towards his own home. (R. p. 34, lines 2-7). At that point, Lank heard Appellant tell the victim: "take your pants off." (R. p. 36, line 25 – p. 37, line 4). Lank testified that the victim tried to grab the gun and Appellant fired away with his Glock. (R. p. 37, lines 7-22). Lank looked on as Prudencio sustained a gunshot to the arm. (R. p. 38, line 14 – p. 39, line 11). Then Lank turned and ran to his apartment, hearing more gunshots. (R. p. 38, lines 19-23). Lank left his apartment and ran back to the car. (R. p. 39, line 23 – p. 40, line 10).

According to Patten, Lank jumped back in the car when Jefferson and Patten were still at "the dirt" and said "Purp had shot the Mexican and he took off running and heard more gunshots."[1] (R. p. 73, line 21 – p. 74, line 11). According to each co-defendant, when Jefferson

[1] At trial, Jefferson initially testified that Appellant did not say anything specifically about the shooting when he got back in the car. (R. p. 90, line 24 – p. 91, line 4). When prompted to recall his recorded statement to law enforcement, Jefferson testified that he remembered Appellant saying he shot a Mexican three to four times. (R. p. 92, lines 9-13).

and Patten left "the dirt" to head to their next destination, Appellant rejoined the group in the car. (R. p. 40, line 20 – p. 41, line 3; R. p. 74, lines 2-24; R. p. 89, line 14 – p. 90, line 19).

The would-be victim who was assisting his friend with car trouble on the side of the road just a block or so away testified that he heard hollering and gunshots. (R. p. 137, lines 1-13). "[R]oughly five minutes later a guy came out of the woods and approached [the men] and said, 'What's up, man,' and kept passing [by]." (R. p. 137, lines 13-16). A second guy followed. (R. p. 137, lines 16-18). Five minutes later, law enforcement arrived to take this witness' statement. (R. p. 137, lines 18-22). He identified the men as a "short and stocky [guy] with the shorts on" that came out of the woods, and a second one as "a tall skinny guy with dreadlocks." (R. p. 139, lines 1-17). The witness did not get a good enough look to be able to select either perpetrator from a lineup. (R. p. 138, line 25 – p. 139, line 1).

Back in the co-defendant's car, Patten saw the gun in Appellant's waistband. (R. p. 75, lines 10-16). When the foursome got back to the house on Taggart Street, Appellant "put the gun on the floor of [Patten's] car and then went and burned a shirt" in a barrel. (R. p. 41, lines 4-14; R. p. 75, lines 17-23). Appellant took his gun with him when he parted ways with the foursome later that night. According to Patten, Appellant sold the gun thereafter.[2] (R. p. 76, lines 1-17).

On June 13, 2013, Greenwood Detective Joe Collins arrested, Mirandized, and interrogated Appellant about Prudencio's murder. (R. p. 189, line 2 – p. 193, line 13; R. p. 466 State's Exhibit 33). At the time of arrest, Appellant had short "Shirley Temple" twisted dreadlocks. (R. p. 467 – 468 State's Exhibit 35). He also established that he is shorter than Lank.

[2] A defense witness testified that on the day after the shooting, he witnessed Lank trading a gun to his friend in exchange for three grams of crack. (R. p. 294, lines 2-15).

(R. p. 194, lines 2-12). In his statement to law enforcement and in his testimony at trial, Appellant maintained that Lank shot the victim. (State's Exhibit 34; R. p. 309, lines 1-4).

Appellant maintained that the foursome planned to "hit a lick, as in rob somebody" that night, and he and Lank got out of the car when Patten "pointed out the Mexican and [said] there you go." (R. p. 303, line 22 – p. 306, line 8). According to Appellant, he was the one backing up as the victim reached for Lank's gun and Lank started shooting. (R. p. 307, lines 1-13). He stated he saw the first shot and ran up the hill to the apartments, hearing the gun fire three more times. (R. p. 307, lines 7-17). Appellant testified that he was unarmed. (R. p. 306, lines 21-24).

ARGUMENT

I. The trial court did not abuse its discretion in ruling Appellant's statement admissible because considering Detective Collins and Appellant's testimony both at the *Denno* hearing and before the jury during trial, the totality of the circumstances demonstrate that Appellant made a knowing, voluntary waiver of his *Miranda* rights and was not deprived of his independent decision-making ability by any coercive tactic, even in light of his age.

Prior to the trial testimony of Greenwood Detective Joe Collins, counsel requested and engaged in a *Jackon v. Denno*, 378 U.S. 368, 84 S.Ct. 1774 (1964), hearing regarding the admissibility of Appellant's three-and-a-half minute recorded statement. (R. p. 151, lines 6-18). At this point in the trial, no testimony related to either law enforcement's development of Appellant as a suspect or Appellant's apprehension had been elicited. *In limine,* Detective Collins testified that he was called to the crime scene on May 30, that he thereafter developed Appellant as a suspect, and that he interviewed Appellant prior to booking him into the county detention center.[3] (R. p. 152, lines 4-22).

Detective Collins advised Appellant of his *Miranda*[4] rights and Appellant signed the adult waiver of rights form, completing the form and initialing next to each individual right. (R. p. 153, line 22 – p. 154, line 21; R. p. 466). At the time that Appellant provided his formal waiver of rights, he had been in custody for 30 to 60 minutes. (R. p. 153, lines 12-14). According to Detective Collins, Appellant appeared to understand his conversation with the detective regarding waiver. (R. p. 153, lines 21-21). Appellant asked no questions before signing the form. (R. p. 154, lines 22-24). Appellant did not ask for an attorney at any time during his interrogation. (R. p. 157, lines 16-19). Detective Collins also testified that he offered Appellant a phone call but he did not make one. (R. p. 159, lines 12-21).

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[3] Earlier, another officer arrested Appellant as he stood on a street corner. (R. p. 164, lines 5-15).
[4] *Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966).

Detective Collins then questioned Appellant in an interview room for approximately 40 minutes. (R. p. 153, lines 15-16; R. p. 157, lines 13-15). Appellant appeared calm and relaxed throughout the duration of the interrogation. (R. p. 155, lines 17-19). Appellant agreed to provide a recorded version of his statement, and did so at approximately 9:00 PM on June 13, 2013. (State's Exhibit 34; R. p. 155, lines 3-4). At the outset of the recording, Detective Collins established that Appellant waived his *Miranda* rights by having Appellant identify his initials and signature on the waiver of rights form. (R. p. 156, lines 15-21; State's Exhibit 34 at 00:21-00:38). According to Detective Collins, Appellant's recorded statement varied only slightly from his initial statement, but not materially. (R. p. 155, lines 10-16). The trial judge reviewed the recording. (R. p. 157, lines 4-7; State's Exhibit 34).

Appellant testified next. (R. p. 160, line 13). According to Appellant, Detective Collins interviewed him and recorded his statement before charging him with murder. (R. p. 161, lines 14-25). Appellant testified that he was uncomfortable in the interview room with Detective Collins. (R. p. 161, lines 8-13; R. p. 162, lines 21-23). Appellant also testified that he asked to make a phone call and that "they told [him he] was on phone restriction." (R. p. 162, lines 8-14). Appellant then testified that had he been able to make a phone call, he would have called his grandmother, who he lived with at the time, to ask her to come down to the station, provide him with advice, and "talk to a lawyer" on his behalf. (R. p. 162, line 25 – p. 163, line 14). Appellant acknowledged that he did not ask for an attorney during the recording, and that he initialed and signed a waiver of his *Miranda* rights. (R. p. 165, lines 6-10). Appellant was seventeen at the time of both the crime and interview. (R. p. 162, lines 15-20).

Following this testimony, Appellant's counsel argued for suppression, citing *State v. Parker,* 381 S.C. 68, 871 S.E.2d 619 (Ct. App. 2008) (finding sixteen-year-old's confession

admissible after consideration of totality of the circumstances surrounding his three-and-a-half hour interrogation). (R. p. 160, lines 16-22; R. p. 165, lines 16-18). Counsel argued "the youth of the accused" as his "primary consideration," in addition to "the status of his education" as a rising high school junior. (R. p. 165, lines 22-25). Additionally, counsel cited "[t]he lack of phone call" as a means of undue coercion. (R. p. 165, line 25; R. p. 166, lines 5-6; R. p. 166, line 23 – p. 167, line 2). Counsel conceded that there existed "no allegation of any force or anything like that" lending to the confession in this case, (R. p. 165, line 25 – p. 166, line 3), but remained focused on the premise that Appellant's "denial of contact with at least one outside party much older and wiser than he was a clear violation of his constitutional right." (R. p. 168, lines 3-6).

In rebuttal, the State noted that the defendant's statement in *Parker* was found admissible after a *Denno* hearing even when the Appellant had, *inter alia*, spent the night outside in the cold and had been shot at by law enforcement prior to apprehension. (R. p. 167, lines 5-18 (citing *State v. Parker, supra*)).

The trial court considered the *Denno* testimony under totality of the circumstances, looking to determine whether, by a preponderance of the evidence, Appellant's statement appeared voluntary. (R. p. 165, lines 18-21; R. p. 168, lines 7-12). And it ruled that the statement was indeed admissible under this standard:

> Did he make a statement at the first inquiry. I don't think there seems to be any dispute he did.
>
> Were *Miranda* rights given. State's 33 indicates that they were. The officer has testified that they were. And I don't know that Mr. Settles necessarily took issue with his rights being provided to him by the officer when Mr. Settles testified just a moment ago.
>
> Did he knowingly and intelligently waive those rights. You know, the Court has to view a number of factors. Age is certainly one of the factors that the court takes into account. But just reading the law here, background, experience, conduct of

> accused, length of custody, police misrepresentations, isolation of minor from parents, any threats of violence or promises of leniency, mental capacity. There's been no evidence here indicating diminished mental capacity. The questioning here, as Mr. Brown correctly points out, or alludes to, is quite different from the questioning in *Parker* where Mr. Parker had been outside in the cold all night. Clearly this tape recording only took a few minutes. He was not isolated for an extended period of time.
>
> I do not know and I'm unfamiliar with it, because – I mean, the Defendant in this case was [seventeen]. So he's an adult. And I can take into account the fact that he is [seventeen] under the age prong. But as far as whether the State had a legal obligation to provide a guardian ad litem for him or get his parents up there or his grandma up there, I don't know that that's necessarily something that the State is compelled to do under these circumstances. Long story short, I've taken everything into account and I do find that he knowingly and intelligently waived those rights. It clearly appears to be voluntary.
>
> Obviously this is just a threshold determination. The State has the obligation to prove voluntariness beyond a reasonable doubt, and Mr. Tinsley, you'll be entitled to argue that to the jury. If they don't feel that this confession or this statement was voluntarily given, obviously the jury will have to disregard it. That will be my ruling on this issue.

(R. p. 168, line 12 – p. 169, line 23 (spacing modified from original)).

Appellant's counsel thereafter argued that Detective Collins misrepresented Appellant's right to make a phone call, stating that the "misrepresentation" constitutes a "weighing factor that the Court fail[ed] to grasp." (R. p. 169, line 24 – R. p. 170, line 11).

In response, the trial court noted that the evidence presented at the *Denno* hearing included

> . . . conflicting evidence on that question. Mr. Settles claim[ed] that he was placed on phone restriction by Mr. Collins. . . . Mr. Collins said he was free to make a phone call if he wanted to. So it becomes a credibility question, and I do find [Detective] Collins' testimony in that regard is simply more credible than that of Mr. Settles. To the extent that the Defense is hanging their hat on that element or on that consideration the Court would rule on a credibility basis that Mr. Settles was offered the opportunity to make a phone call and declined to do so.

(R. p. 170, lines 12-24). In so ruling, the trial court harkened back to Detective Collins' testifying

that he offered Appellant a phone call and Appellant did not make one. (R. p. 159, lines 12-21).

Next, Detective Collins published State's Exhibit 34, Appellant's recorded statement, to the jury in conjunction with his testimony. (R. p. 173, lines 8-15; R. p.189, line 2 – p. 193, line 13).

A. Law enforcement did not coerce Appellant into providing the statement at issue because the *Denno* record is clear that he voluntarily waived his rights of silence and the assistance of counsel, even when considering his age and the circumstances of his apprehension.

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his or her rights under *Miranda. Miranda v. Arizona,* 384 U.S. 436, 86 S.Ct. 1602 (1966). "If a suspect is advised of his *Miranda* rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Arrowood,* 375 S.C. 359, 366-67, 652 S.E.2d 438, 442 (Ct. App. 2007); *State v. Saltz,* 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). A voluntary waiver need not be express. Rather, "(1) the waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception' and (2) the waiver must be 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" *State v. Moses,* 390 S.C. 502, 513, 702 S.E.2d 395, 401 (2010) (quoting *Berghuis v. Thompkins,* 560 U.S. 370, 382, 130 S.Ct. 2250, 2260 (2010)). "In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession." *Id.*; *Schneckloth v. Bustamonte,* 412 U.S. 218, 226, 93 S.Ct. 2041, 2047 (1973).

"[E]ach case requires careful scrutiny of all the surrounding circumstances." *State v.*

Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007). The factors to be considered when making a voluntariness determination have ben oft-examined and broadly defined by our courts. They include, but are not limited to the: "youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep." *Id.* (citing *Schneckloth v. Bustamonte, supra*)). Looking further, our courts have considered the accused's background, experience, conduct, age, maturity, physical condition, mental health, misrepresentations by law enforcement, isolation of a minor from a parent, direct or indirect promises (however slight), repeated and prolonged questioning, and exertion of improper influence. *State v. Moses,* 390 S.C. at 513-14, 702 S.E.2d at 401 (citing *Withrow v. Williams,* 507 U.S. 680, 113 S.Ct. 1745 (1993)) (also citing *Schneckloth v. Bustamonte, supra*)); *State v. Salisbury,* 330 S.C. 250, 272, 498 S.E.2d 655, 666 (Ct. App. 1998) (the existence or nonexistence of police coercion "is a necessary predicate" to determining a statement's voluntariness).

A trial court ruling regarding the voluntariness of a confession will not be disturbed on appeal unless so "manifestly erroneous as to constitute an abuse of discretion." *State v. Arrowood,* 375 S.C. at 365, 652 S.E.2d at 441; *see State v. Myers,* 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). This standard binds the appellate court to the lower court's "fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." *State v. Asbury,* 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997). "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 the evidence, but simply determines whether the trial court's ruling is

supported by any evidence." *State v. Saltz,* 346 S.C. at 136, 551 S.E.2d at 252. Similarly, when a determination regarding the voluntariness of a defendant's confession comes down to a question of credibility, the trial court's credibility finding should not be disturbed absent an abuse of discretion. *State v. McClure,* 312 S.C. 369, 371-72, 440 S.E.2d 404, 405-06 (1994).

Our courts have routinely upheld juvenile and young adult confessions. *In re Tracy B.,* 391 S.C. 51, 66, 704 S.E.2d 71, 79 (Ct. App. 2010) ("A confession of a juvenile is not per se involuntary simply because it is obtained without the presence of counsel, a parent, or other interested adult.") (fourteen-year-old); *State v. Pittman, supra* (twelve-year-old); *State v. Register*, 323 S.C. 471, 476 S.E.2d 153 (1996) (eighteen-year-old); *State v. Boys,* 302 S.C. 545, 397 S.E.2d 529 (1990) (seventeen-year-old); *State v. Parker, supra* (sixteen-year-old); *State v. Avery,* 374 S.C. 524, 649 S.E.2d 102 (Ct. App. 2007) (age unlisted in opinion); *In Interest of Christopher W.,* 285 S.C. 329, 329 S.E.2d 769 (Ct. App. 1985) (eleven-year-old); *but see State v. Smith,* 259 S.C. 496, 192 S.E.2d 870 (1972) (thirteen-year-old confession inadmissible because law enforcement did not repeat *Miranda* warnings immediately prior to oral confession). Youth by itself does not render a statement inadmissible. *Id.* The same examination of surrounding circumstances applies even where the confessor is a juvenile. *State v. Parker,* 38 S.C. 68, 72, 671 S.E.2d 619, 622 (2008). However, a seventeen-year-old is not a juvenile for purposes of determining the voluntariness of an inculpatory statement. S.C. Code Ann. § 63-19-20 (2010) (a "juvenile" is a person less than seventeen years of age); *but see Aiken v. Byars,* 410 S.C. 534, 537 n.1, 765 S.E.2d 572, 573 n.1 (2014) *cert. denied* 135 S. Ct. 2379, 192 L. Ed. 2d 179 (U.S.S.C. 2015) (considering individuals under the age of eighteen as juveniles for the limited purpose of resentencing in light of *Miller v. Alabama,* — U.S. —, 132 S.Ct. 2455 (2012)).

Juvenile and young adult confessions have also been upheld when the defendant has

confessed after enduring arguably more extreme apprehension and interrogation circumstances than are present in this case. In *State v. Moses, supra,* a learning disabled seventeen-year-old's custodial statement was upheld as being freely, knowingly, and voluntarily made "regardless of his age, learning disability, and separation from his mother." 390 S.C. at 515, 702 S.E.2d at 402. In this case, only one officer questioned the special education student, the record did not demonstrate administration of any threats or a lengthy interrogation, and Moses twice testified that he understood his *Miranda* rights and that he was not coached regarding what to say when executing his waiver. *Id.* Of note, "the trial court failed to specifically mention his mother's alleged request to be present during questioning," but our Supreme Court did not find that factor dispositive on the issue of voluntariness. *Id.*

As argued below, the voluntariness of a sixteen-year-old's confession in *State v. Parker, supra,* was upheld on appeal when the inculpatory statement was taken after the defendant spent a tumultuous night in the woods evading law enforcement and a lengthy interrogation wherein he rejected his right to invoke counsel. 381 S.C. at 81, 671 S.E.2d at 625. All told, the interrogation and taking of Parker's statement took approximately three and a half hours and involved multiple officers. *Id.* at 80-82, 671 S.E.2d at 624-26. At his *Denno* hearing, the defendant testified that no one presented him with a written or verbal waiver of his *Miranda* rights. *Id.* He also testified that he did not learn the charge against him until the serving of his warrants days later on January 9. *Id.* at 83, 671 S.E.2d at 625-26. Parker did not ask for a parent to be present, but when an interrogator inquired whether he would like to see his father, the juvenile answered yes, and law enforcement complied. *Id.* at 77, 671 S.E.2d at 623. These factors aside, the trial court ruled Parker's statement voluntarily made, finding no invocation of Parker's right to counsel, despite asking for his father when prompted, and further finding Parker's testimony regarding the lack of

Miranda rights not credible. *Id.* at 83-84, 671 S.E.2d at 626-27. In so ruling, the trial court focused its analysis of the totality of the circumstances surrounding Parker's confession in a manner similar to the trial judge in the case at bar. *Compare id. and* R. p. 168, line 12 – p. 169, line 23.[5] This Court upheld the voluntariness determination, focusing in part on the trial court's "opportunity in the *Denno* hearing to listen to the testimony, assess the demeanor and credibility of the witnesses, view the taped portion of the confession, and weigh the evidence accordingly." *Id.* at 93, 671 S.E.2d at 632.

Moreover, nothing during the arrest and interrogation process entitles a seventeen-year-old defendant to the comfort and advice of a parent or relative in the interview room. "Although a juvenile's request for a parent may be considered when determining the voluntariness of the confession, an adult's request for someone other than an attorney does not invoke a Fifth Amendment right to speak with counsel." *State v. Register*, 323 S.C. at 477, 476 S.E.2d at 157 (citing *Fare v. Michael C.,* 442 U.S. 707, 99 S.Ct. 2560 (1979) (a request for a non-attorney third party does not invoke a Fifth Amendment invocation of counsel during custodial police interrogation); *see* S.C. Code Ann. § 63-19-20 (2010) (a juvenile is an individual less than seventeen years of age). During his interrogation, Register "stated that he was not talking 'about [the crimes]' until he saw his mother.'" *State v. Register,* 323 S.C. at 478, 476 S.E.2d at 157. Law enforcement ceased questioning at that point, spoke with Register's mother directly, and then re-initiated the interview, at which point Register confessed. *Id.* Register, an eighteen-year-old and thus an adult, had no recognized right to invoke the counsel of a parent or relative. *Id.*

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[5] That trial judge broke his ruling into four questions, with the State bearing the burden of proving each by a preponderance of the evidence: (1) did the defendant make the statement, (2) did law enforcement advise the defendant of his *Miranda* rights, (3) did the defendant make a knowing and intelligent waiver of those rights, and (4) did the defendant voluntarily make his statement. *Id.* at 83-84, 671 S.E.2d at 626-27.

While *Moses, Parker,* and *Register* make compelling comparisons for voluntariness in the present case, the "[d]etermination of whether a statement is involuntary 'requires more than a mere color-matching of cases.' It requires careful evaluation of all the circumstances of the interrogation." *Mincey v. Arizona*, 437 U.S. 385, 401, 98 S. Ct. 2408, 2418 (1978) (quoting *Reck v. Pate*, 367 U.S. 433, 442, 81 S.Ct. 1541, 1547 (1961)). The totality of the circumstances surrounding Appellant's confession supports the trial court ruling. Consider the environment of Appellant's confession as told by Detective Collins. Only one law enforcement officer interacted with Appellant through the duration of his questioning in the interview room. (R. p. 152, lines 18-19; R. p. 153, lines 9-11). There were not multiple officers involved, a factor which may increase a defendant's perception of undue coercion. Also, the timing of Appellant's waiver and confession are not accompanied by any indicators of a drawn-out detention. Detective Collins questioned Appellant for less than three-quarters of an hour. (R. p. 153, lines 15-16). Appellant's entire statement lasts just over three minutes, wherein Appellant simply states his version of the facts lending to the murder. The recording includes little-to-no follow-up questioning or probe for detail. (State's Exhibit 34). And Appellant had been taken into custody and detained for only 30 to 60 minutes prior to questioning. (R. p. 153, lines 12-14). It thus appears from the time frame between arrest and booking that both Detective Collins and Appellant were forthright in their objectives, and that law enforcement did not employ lengthy interrogation tactics which may be perceived as unduly coercive. As to any evidence in the record of coercion, Appellant merely testified that he felt "uncomfortable" in the interview room. (R. p. 162, lines 21-23).

The record's dearth of duress is bolstered by testimony that Appellant at no time asked any questions regarding the waiver. (R. p. 154, lines 22-24). Appellant did not appear to suffer from the influence of drugs or alcohol. (R. p. 153, lines 17-19). According to Detective Collins,

Appellant "seemed very calm, relaxed." (R. p. 155, lines 17-19). He exhibited a comprehension of the rights he was waiving and the significance of his conversation with Detective Collins. (R. p. 153, line 20 – p. 154, line 24). Appellant never asked for an attorney, nor asked to make a phone call to summon the advice of a loved one. (R. p. 157, lines 16-18; R. p. 159, lines 8-11). Instead, Appellant completed the waiver form in its entirety, not only initialing by the common-language waiver of each right, but transcribing Detective Collins' name as his sole interrogator and signing in acceptance of the waiver's unequivocal language:

> I now state that I DO wish to answer questions at this time and that I do NOT wish to have a lawyer here during questioning.
>
> My decision to answer questions now, without a lawyer, is made freely and is my own choice. No one has threatened me in any way or promised me special treatment. To show my decision, I am signing my name in the space below.

(R. p. 466 (emphasis in original)).

The record further lacks indicia sufficient to rebut the State's burden of proving voluntariness by a preponderance of the evidence. Appellant has at no time contested his willing execution of the waiver of rights form. (R. p. 165, lines 4-10). Appellant merely takes to task conflicting testimony regarding his ability to make a phone call. Appellant testified that "they" put him "on phone restriction," denying his request to make a phone call. (R. p. 162, lines 8-12). Appellant does not specify who "they" are, but insinuates that Detective Collins expressly rejected Appellant's request to contact a family member. Conversely, Detective Collins testified that he offered Appellant a phone call but Appellant refused. (R. p. 159, lines 12-21). The trial judge found Detective Collins' testimony on this point more credible. (R. p. 170, lines 12-24).

Not only does Appellant's testimony fail to establish that Appellant was prohibited from independently invoking his right to counsel, it also fails to establish that Appellant faced undue

coercion where he entertained no entitlement to the advice of a relative. In regards to Appellant's testimony that he would have called his grandmother to ask her to "talk to a lawyer" and meet him at the police station, (R. p. 163, lines 1-7), no testimony supports any contention that Appellant summoned a relative at any point during the interview. Appellant testified that Detective Collins "didn't give [him] a chance" to call his grandmother and only asked Appellant if he wanted a lawyer. (R. p. 164, lines 22-25). At the time of his arrest, Appellant presented as an able-minded seventeen-year-old with an eleventh grade education. Nothing required law enforcement to inquire as to whether Appellant, an adult, wanted to meet with a relative. *State v. Register, supra.* The trial court correctly considered this point in conjunction with Appellant's age:

> [T]he Defendant in this case was [seventeen]. So he's an adult. And I can take into account the fact that he is [seventeen] under the age prong. But as far as whether the State had a legal obligation to provide a guardian ad litem for him or get his parents up there or his grandma up there, I don't know that that's necessarily something that the State is compelled to do under these circumstances.

(R. p. 169, lines 7-14).

Here, "the question of the voluntariness of such a confession can come down to a question of credibility, which may be resolved by the trial court in favor of the officers." *State v. Thompson,* 413 S.C. 590, 608, 776 S.E.2d 413, 423 (2015); *State v. McClure,* 312 S.C. at 371-72, 440 S.E.2d at 405-06. Did Appellant lack any knowledge of the charge he was suspected of, and was he refused a phone call after specifically asking for one in the interview room? The totality of the evidence tends to answer both questions in the negative. Nothing in the record dispels the trial court's credibility determination in favor of Detective Collins. Another point of controversy between the Detective and Appellant's testimonies in fact lends support to this credibility determination. Appellant maintained that he was not charged until after he was

arrested, after he was interviewed, and after he gave his statement. (R. p. 161, lines 16-25; R. p. 164, line 5-21). However, Appellant was advised that his questioning pertained to victim's murder prior to making his statement—"Appellant was arrested on warrants just prior to [the Detective] interviewing him." (R. p. 159, lines 4-5). Detective Collins further testified, and it is apparent from the recorded statement, Appellant was advised of the charge in conjunction with his interrogation. (R. p. 154, lines 3-7; State's Exhibit 34).

Appellant argues that later trial testimony contradicts testimony upon which the *Denno* hearing outcome was based and, thus, that the trial court's ruling finds no evidentiary support in the record. (Br. of Appellant, p. 8 (citing to R. p. 197, lines 5-8)). That argument is erroneously premised upon evidence not presented at the *Denno* hearing. Nothing in the record lending to the threshold voluntariness ruling indicates that Appellant's recorded confession did not appear voluntary by a preponderance of the evidence. The record instead demonstrates that the State met its burden during the *Denno* hearing: there exists no evidence of police coercion, misrepresentation, concealment of the right to invoke the advice of legal counsel, or immaturity on the part of Appellant which may disable a defendant's decision-making. Appellant's waiver can only be construed as a deliberate choice and Appellant's testimony fails to persuasively contradict Detective Collins on this point.

The trial judge properly submitted Appellant's inculpatory statement to the jury to "determine whether the statement was given freely and voluntarily beyond a reasonable doubt." *State v. Parker,* 381 S.C. at 75, 671 S.E.2d at 622. And the jury was duly charged on that point. (R. p. 363, line 24 – p. 365, line 9).

B. Any error in the trial court's preliminary ruling proves harmless because, in addition to evidence of overwhelming guilt, trial testimony regarding the voluntariness of Appellant's statement fails to undermine the trial court's threshold determination on that issue, corroborates that determination, and in fact adds confidence to the trial court's earlier credibility finding.

Even where a defendant's due process rights are concerned, harmless error may apply where a consideration of the entire record lends the reviewing court to determine beyond a reasonable doubt that the error complained of did not contribute to the verdict. *Chapman v. California,* 386 U.S. 18, 87 S.Ct. 824 (1967). "[T]he test is whether there is a reasonable probability that the statements contributed to the defendant's conviction of the crime, or if the defendant's statements were merely cumulative." *State v. Clute*, 324 S.C. 584, 591-92, 480 S.E.2d 85, 89 (Ct. App. 1996) *overruled on other grounds by State v. Aleksey*, 343 S.C. 20, 538 S.E.2d 248 (2000). Harmless error also applies when voluntariness is only reasonable inference to be drawn from evidence regarding a defendant's confession. *See State v. Victor,* 300 S.C. 220, 224, 387 S.E.2d 248, 50 (1989).

i. Appellant's recorded statement remains cumulative to and corroborative of his own trial testimony.

Trial testimony offered by both Detective Collins and Appellant fails to undermine the trial court's threshold ruling on the issue of voluntariness. In fact, the trial testimony on this issue bolsters the trial court's ruling because it so nearly corroborates and further explains any question of coercive behavior on behalf of law enforcement.

Detective Collins testified as to the same series of events surrounding the nature of Appellant's confession as he testified to during the *Denno* hearing. (*Compare* R. p. 189, line 2 – p. 193, line 13 *with* R. p. 152, line 18 – p. 160, line 6). Even when Appellant's counsel cross-examined Detective Collins on the issue of voluntariness, counsel failed to elicit any testimony

from the Detective that undermined the court's threshold determination on that issue. (R. p. 195, line 9 – p. 197, line 18). Detective Collins's cross-examination instead revealed that during the interview he was aware that Appellant turned seventeen shortly before the crime; that he did offer Appellant a phone call at the end of the interview but Appellant refused; that Appellant did not otherwise ask to make a phone call during the interview process; that Appellant was placed on phone restriction after the interview and after bring booked into the jail; and again that Appellant was advised of his rights, including that of counsel. (R. p. 196, line 5 – p. 197, line 10). The Detective ultimately testified that he "was not" satisfied that Appellant offered a truthful version of events. (R. p. 206, lines 6-8).

Detective Collins also testified that he had no knowledge that Appellant's mother had arrived at the interview location. (R. p. 196, lines 12-14; R. p. 197, lines 11-18). Appellant's mother later testified in her son's defense. Her testimony too failed to dispel the voluntariness of Petitioner's confession. Although she testified that law enforcement rebuffed her efforts to see her son until the day following his arrest, (R. p. 284, line 10 – p. 288, line 9), no other testimony in the record demonstrates that Appellant *asked* to see her. And, her testimony demonstrates that she arrived at the police station between 9:00 and 10:00 PM on the evening of Appellant's arrest. (R. p. 285, lines 4-8). Appellant executed his recorded statement at approximately 9:00 PM. (State's Exhibit 35). Thus, Appellant's mother's testimony fails to establish that she made it to the police station in time to intercept Appellant's interrogation had she been requested to do so.

Finally, to the extent that it was elicited at trial, Appellant's own testimony agreed with that of Detective Collins. Appellant agree that questioning lasted somewhere around half an hour. (R. p. 309, lines 8-10). Appellant testified that he "asked the people in the detention center" if he could use the phone and was told he was on phone restriction at that time, indicating that

Appellant did not seek to reach out to his family until after the interview. (R. p. 311, lines 12-22). Thus, voluntariness remains the only reasonable inference to be drawn from the evidence lending towards Appellant's engagement in recording an inculpatory statement.

ii. The remainder of the record provides overwhelming evidence probative of Appellant's guilt.

Each co-defendant testified against Appellant in a corroborative manner. It remained clear throughout trial that Michael Patten, Markece Moore ("Lank") and Bryson Jefferson accompanied Appellant to and from the scene. (R. p. 68, line 1 – p. 69, line 16; R. p. 87, line 23 – p. 88, line 17; R. p. 90, lines 1-16). Testimony established that the plan that night was for Appellant "to rob somebody"—that was the sole reason that Appellant got out of the car on Franklin Street. (R. p. 69, lines 12-16; R. p. 73, lines 11-17). They targeted the victim simply because he happened to be walking down the street upon which the young men drove seeking to hit a lick upon any victim who may happen upon them. (R. p. 33, line 7 – p. 34, line 1; R. p. 73, lines 18-20).

Lank accompanied Appellant out of the car but ran after witnessing the first shot. (R. p. 60, lines 1-13). According to Lank, Appellant was the aggressor. (R. p. 37, lines 1-10). Lank ran back to the car first and told Patten and Jefferson that "Purp [Appellant] had shot the Mexican." (R. p. 74, lines 7-11). Appellant confessed the same to Patten when he rejoined the young men in the car. (R. p. 74, lines 13-24). Patten and Lank also witnessed Appellant burn his shirt in a barrel following the incident. (R. p. 41, lines 7-14; R. 74, lines 18-21).

Each of the young men knew Appellant to carry a gun which they believed to be a Glock. (R. p. 37, line 13 – p. 38, line 5; R. p. 72, line 11 – p. 73, line 3; R. p. 75, lines 10-16; R. p. 88, lines 20-25; R. p. 91, lines 14-19; R. p. 91, lines 17-19). Patten testified that he learned that

Appellant sold his gun following the incident. (R. p. 76, lines 6-20). The State's firearm and toolmark examiner testified that a Glock could have fired the two projectiles recovered from the victim's body. (R. p. 234, lines 3-9).

An eyewitness who was unaffiliated with the young men testified that the shorter perpetrator with small twisted dreadlocks held something shiny in his hand which the witness believed to be the gun that fired two shots. (R. p. 100, line 22 – p. 102, line 15; R. p. 116, lines 10-13). At the time of arrest, Appellant had short twisted dreadlocks. (R. pp. 467 – 468). Testimony also established that he is shorter than Moore. (R. p. 194, lines 2-12).

Appellant's own trial testimony did not isolate him from culpability. Appellant testified that he got in the car knowing that he was accompanying the others in hitting a lick. (R. p. 303, line 14 – p. 304, line 10; R. p. 316, lines 4-22). When it came to the shooting, he denied having a gun and pointed the finger at Lank. (R. p. 306, line 21 – p. 307, line 3; R. p. 309, lines 1-4; State's Exhibit 35). Appellant's testimony then created a mirror-image of that offered by Lank during the State's case-in-chief. Appellant testified that when he witnessed the first shot, he backed up and ran away. (R. p. 307, lines 8-23).

The jury, however, had a choice between whose version of the shooting merited more weight in their deliberations. Appellant's cross-examination of Detective Collins highlighted the existence of discrepancies in Appellant's and his co-defendants' statements. (R. p. 198, line 20 – p. 201, line 20). Detective Collins stated that he did not "think any of them were completely honest throughout the interview in the beginning." (R. p. 199, lines 19-20). But given the choice among whom to believe, the totality of the evidence against Appellant demonstrates his culpability beyond a reasonable doubt. The greater weight of the testimony, all but Appellant's, exhibits that he acted as the shooter. At the very least, the State established Appellant's guilt

under the theory of the hand of one, for even if the jury determined that Appellant did not act as the triggerman, the evidence shows that Appellant acted as an accomplice in the lick that the young men set out to hit that night. No rational conclusion can be reached from the evidence presented at trial which would exculpate Appellant from the acts that resulted in the victim's death.

II. The trial court did not err in denying Appellant's attempt to present his mitigation case via individualized, sworn testimony because no precedent establishes a particular procedure that the court must follow before sentencing an individual under the age of eighteen to a term-of-years sentence and because the sentencing court heard evidence related to and gave due consideration to Appellant's age, individual history and characteristics, and family circumstance prior to issuing a forty-five-year sentence.

South Carolina employs a constitutionally permissible sentencing scheme in which juvenile homicide offenders are subject to a discretionary sentence ranging from a minimum of 30 years to a maximum of life without the possibility of parole. S.C. Code. Ann. § 16-3-20(A); *Aiken v. Byars,* 410 S.C. 534, 545, 765 S.E.2d 572, 578 (2014) *cert. denied,* 135 S. Ct. 2379, 192 L. Ed. 2d 179 (U.S.S.C. 2015); *see Miller v. Alabama,* — U.S. —, 132 S.Ct. 2455 (2012) (the Eighth Amendment forbids a juvenile offender's receipt of a life sentence without the possibility of parole when the charge mandates the life sentence); *Graham v. Florida,* 560 U.S. 48, 82, 130 S.Ct. 2011, 2034 (2010) (the Constitution prohibits juvenile non-homicide offenders from receiving a sentence of life without parole); *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183 (2005) (unconstitutional to subject a juvenile to a capital sentence). Upon conviction, the trial judge sentenced Appellant to a term of 45 years. (R. pp. 473 – 474). The trial judge denied Appellant's motion to reconsider that sentence, but later reduced Appellant's sentence to 40 years upon motion by the State. (R. pp. 416 – 417; R. pp. 478 – 479).

This Court will not overturn a sentence unless it determines the sentencing court abused its discretion in issuing a ruling; that is, the trial court's ruling must amount to an error of law. *State v. Dawson,* 402 S.C. 160, 163, 740 S.E.2d 501, 502 (2013). Generally, appellate courts will only interfere with the discretion of a judge in the imposition of a sentence in rare and unusual circumstances. *State v. Ferguson*, 221 S.C. 300, 307, 70 S.E.2d 355, 358 (1952). "Absent partiality, prejudice, oppression, or corrupt motive, [the appellate court] lacks jurisdiction to

disturb a sentence that is within the limit prescribed by statute." *State v. Barton*, 325 S.C. 522, 531, 481 S.E.2d 439, 444 (Ct. App. 1997). Appellant now asks this Court to find that the trial judge erroneously applied new jurisprudence, dicta, concerning juvenile sentencing proceedings in light of the seventeen-year-old's homicide conviction. No such abuse can be found to result from the trial court's handling of Appellant's sentencing proceeding.

Indeed, in light of recent United States Supreme Court jurisprudence, courts have been called to reexamine sentencing proceedings involving individuals under the age of eighteen. These holdings stem from our courts' collective adoption of the principle that juveniles have lessened culpability and are therefore less deserving of the most severe punishments without due consideration of discrete attendant circumstances. *See Graham v. Florida,* 560 U.S. at 68, 130 S.Ct. at 2026 (". . . developments in psychology and brain science continue to show fundamental differences between juvenile and adult minds. For example, parts of the brain involved in behavior control continue to mature through late adolescence."). The judiciary has recognized that the maturity level of a juvenile is subject to special consideration of a youth's "transient rashness, proclivity for risk, and inability to assess consequences." *Miller v. Alabama, supra* at —, 130 S.Ct. at 2027. The Court denoted that the appraisal of juvenile sentencing proceedings stems not from history, but rather from "'the evolving standards of decency that mark the progress of a maturing society.'" *Id.* at —, 130 S.Ct. at 2455 (quoting *Estelle v. Gamble*, 429 U.S. 97, 102, 97 S.Ct. 285, 290 (1976)). A juvenile defendant "is not absolved on responsibility for his actions" based upon age alone, but recent jurisprudence has starkly decided that a juvenile's "transgression 'is not as morally reprehensible as that of an adult.'" *Id.* at 68, 130 S.Ct. at 2026 (quoting *Thompson v. Oklahoma,* 487 U.S. 815, 835, 108 S.Ct. 2687, 2699 (1988)). Most fundamentally, *Graham* broadly insists that youth matters in determining the appropriateness of

a lifetime of incarceration without the possibility of parole." *Miller v. Alabama, supra* at —, 130 S.Ct. at 2455.

As a result, "[t]he judicial exercise of independent judgment requires consideration of the culpability of the offenders at issue in light of their crimes and characteristics, along with the severity of the punishment in question. In this inquiry the Court also considers whether the challenged sentencing practice serves legitimate penological goals" of deterrence, retribution, and rehabilitation. *Graham* at 67-68, 130 S.Ct. at 2026 (internal citations omitted). Thus, *Miller* instituted a procedural component for all juvenile sentencings: the sentencer must "consider a juvenile offender's youth and attendant characteristics before determining that life without parole is a proportionate sentence." *Montgomery v. Louisiana,* — U.S. —, —, 136 S.Ct. 718, 734 (2016). "*Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility." *Id.* at —, 136 S.Ct. at 734.

The framework to apply to Appellant's sentencing hearing, however, lies in dicta, for even our own state Supreme Court declined to delineate any specific procedure and instead held that "*Miller* requires that before a life without parole sentence is imposed upon a juvenile offender, he must receive an individualized hearing where the mitigating hallmark features of youth are fully explored." *Aiken v. Byars,* 410 S.C. at 545, 765 S.E.2d at 578. Our state Supreme Court instructed that the "sentencing authority must 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.'" *Id.* at 544, 765 S.E.2d at 577 (quoting *Miller, supra* at —, 132 S.Ct. at 2469). For purposes of *Aiken's* prospective application, the fact that Appellant reached seventeen years of age and was statutorily an adult in South Carolina at the time of the crime and sentencing holds no bearing on whether an individualized sentencing hearing should apply because our Supreme

Court's adoption of *Miller* explicitly extended to all defendants under the age of eighteen. *Id.* at 537, n.1, 765 S.E.2d at 573, n.1.

In practice:

> *Miller* establishes a specific framework, articulating that the factors a sentencing court consider at a hearing must include: (1) the chronological age of the offender and the hallmark features of youth, including "immaturity, impetuosity, and failure to appreciate the risks and consequence"; (2) the "family and home environment" that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the "incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys"; and (5) the "possibility of rehabilitation."

Aiken v. Byars, 410 S.C. at 544, 765 S.E.2d at 577 (quoting *Miller v. Alabama, supra* at —, 132 S.Ct. at 2468)).[6]

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[6] "[S]tate courts that have addressed the question of how to apply *Miller* in the context of discretionary natural-life sentences have reached differing conclusions." *People v. Holman*,— N.E.3d —, —, 2016 IL App (5th) 100587-B, ¶ 33 (Ill.App. Mar. 3, 2016); s*ee State v. Riley,* 315 Conn. 637, 654 n.5, 110 A.3d 1205, 1214 n.5 (Conn. 2015) (noting that "there is no clear consensus"). Some courts, like our own, have found that *Miller* requires consideration of set factors associated with youth. *E.g., Riley,* 315 Con.. at 358, 110 A.3d at 1216; *People v. Gutierrez,* 58 Cal.4th 1354, 1388, 324 P.3d 245, 268–69 (Cal. 2014) (describing five factors courts must consider before sentencing juvenile defendants to life in prison without parole); *Bear Cloud v. State,* 294 P.3d 36, 47 (Wyo. 2013) (setting forth seven factors courts must consider in sentencing juveniles to life in prison without parole (quoting *Miller v. Alabama, supra* at —, 132 S.Ct. at 2467–68)).

Yet other courts have concluded that where the life sentence remains discretionary, *Miller* is not violated. *E.g., Foster v. State,* 294 Ga. 383, 754 S.E.2d 33, 37 (Ga. 2014); *Arredondo v. State,* 406 S.W.3d 300, 307 (Tex.App. 2013).

And some courts have found that while *Miller* requires the sentence to consider mitigating circumstances related to youth, *Miller* does not bind the sentencing court to consider a predetermined list of particular factors. *People v. Holman, supra* at —, 2016 IL App at ¶ 34; *e.g., State v. Ali,* 855 N.W.2d 235, 256–57 (Minn. 2014) (explaining that sentencing courts must consider "any mitigating circumstances," including those discussed by the *Miller* Court); *State v. Long,* 138 Ohio St.3d 478, 483, 8 N.E.3d 890, 895 (Oh. 2014) (finding that the factors adopted by the Wyoming Supreme Court in *Bear Cloud, supra,* "may prove helpful" to courts sentencing juvenile defendants, but refusing to require sentencing courts to make explicit findings with

Withholding all subtlety, *Aiken's* majority explicitly declined any "invitation to set out a specific process for trial court judges to follow when considering whether to sentence a juvenile to life without parole." *Aiken,* 410 S.C. at 545, n.10, 765 S.E.2d at 578, n.10. The majority furthered:

> The United States Supreme Court did not establish a definite resentencing procedure and we likewise see no reason to do so. We have the utmost confidence in our trial judges to weigh the factors discussed herein and to sentence juveniles in light of this new constitutional jurisprudence.

Id.

Also of significance in the assessment of Appellant's sentencing proceeding, our Supreme Court expressly stated that their adoption of the *Miller* framework does not suggest "that the sentencing of a juvenile offender subject to a life without parole sentence should mirror the penalty phase of a capital case." *Miller* has only been interpreted by our court to contemplate that "the *type* of mitigating evidence permitted in death penalty sentencing hearing unquestionably has relevance to juvenile life without parole sentencing hearings, in addition to the factors illustrated above." *Aiken,* 410 S.C. at 544-45, 765 S.E.2d at 577 (emphasis added).

However, even given this framework, the trial judge retains broad discretion in imposing a sentence within the statutory limits. *State v. Barton, supra.* "A judge or other sentencing authority is to be accorded very wide discretion in determining an appropriate sentence, and must be permitted to consider any and all information that reasonably might bear on the proper sentence for the particular defendant, given the crime committed." *State v. Hicks,* 377 S.C. 322,

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respect to any enumerated factors); *Conley v. State,* 972 N.E.2d 864, 876 (Ind. 2012) (holding that the sentencing court in that case complied with the requirements of *Miller* by taking into account how juveniles are different from adults "'and how those differences counsel against irrevocably sentencing them to a lifetime in prison'" (quoting *Miller, supra* at —, 132 S.Ct. at 2469)).

325, 659 S.E.2d 499, 500 (Ct. App. 2008). Such discretion also indubitably applies to the sentencing hearing. Each trial judge will no doubt reach a sentencing decision after assigning distinct weight to the Appellant's age, background, and circumstance which motivate the imposition of a particular sentence upon a juvenile offender convicted of homicide.

Practically speaking, *Aiken* mandates no more than the procedure taken up by Appellant's sentencer, who took due care to comport his sentencing considerations with those prescribed by *Aiken* and *Miller.*

A. The trial court did not abuse its discretion in denying Appellant's funding motion because *Aiken's* effect on juvenile sentencing proceedings did not inject any requirement that the offender be granted expert funding for mitigation

As Appellant's trial reached the sentencing phase, Appellant again argued a pre-trial motion to cap Appellant's sentence at 30 years.[7] (R. p. 387, line 13 – p. 389, line 9). Appellant additionally requested to defer sentencing upon resolution of the separate Abbeville County charge, which would allow time to conduct a mitigation investigation if the court deferred the sentencing hearing and granted Appellant the requested funding for a mitigation investigator. (R. p. 389, lines 3-9). The State opposed deferring sentencing insofar at the deferral may relate to the

[7] Appellant sought prospective application of *Aiken v. Byars, supra,* and *Miller v. Alabama, supra*, by written motion pre-trial. Appellant moved to cap Appellant's sentence on the murder charge, should he be convicted, at 30 years. (R. pp. 419 – 421). Appellant also moved to obtain "funding for a mitigation specialist/investigator and psychologist or psychiatrist" in response to his age. (R. p. 418). Appellant addressed these motions pre-trial, additionally representing to the court that Appellant's funding motion was perhaps joined by separate counsel representing Appellant on a similar but unrelated Abbeville County charge. (R. p. 15, line 17 – p. 17, line 25). Appellant's Greenwood County trial counsel stated that counsel on the Abbeville County charge was "a more likely subject to make such a motion" because Appellant's future on that charge "probably would benefit more from it than" the present Greenwood County charge. (*Id.*). The court took both motions under advisement to be readdressed at the time of sentencing. (R. p. 17, lines 1-3; R. p. 18, lines 19-24).

Abbeville County charge, as that charge stemmed from an entirely separate, unresolved, incident.[8] (R. p. 393, line 23 – p. 394, line 1). But the State did not oppose the request for an extension of time to complete a mitigation investigation should the trial court find it appropriate. (R. p. 394, lines 3-11). The court ruled that the sentencing procedure would go forward on the Greenwood County charge at that time, and without any mitigation investigation. (R. p. 394, line 15 – p. 395, line 9).

"Authorization for expenditure of funds for expert witnesses is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of that discretion." *State v. Matthews*, 291 S.C. 339, 345, 353 S.E.2d 444, 448 (1986). Funds for expert services may be authorized based upon a finding "that investigative, expert, or other services are reasonably necessary for the representation of the defendant." S.C. Code Ann. § 17-3-50(B); *see* S.C. Code Ann. § 16-3-26 (same application to capital cases).

Our state Supreme Court's invocation of *Miller* does not go so far as to require funding for a mitigation investigation such as a capital defendant would not doubt incur. *Aiken* only encourages the court to consider relevant mitigating factors related to a youthful defendant's crime and circumstance. *Aiken,* 410 S.C. at 544-45, 765 S.E.2d at 577. The trial court here found no necessity to fund a mitigation investigation and was instead prepared to consider circumstances attendant to Appellant's age during the sentencing proceeding. As the remainder of the record demonstrates, and as is discussed below, Appellant put forth ample evidence from which the trial court could reach a sentencing determination sympathetic to Appellant's age, family circumstance, and personal experience.

[8] Appellant was sixteen at the time he incurred the Abbeville charge. (R. p. 392, lines 12-13).

B. The trial court employed a thorough sentencing hearing which allowed Appellant to put forward testimony in direct support of the factors required for consideration by *Aiken.*

As far as the sentencing procedure itself, the State agreed that *Aiken* and *Miller* contemplate a sentencing hearing which may include testimony put forward by Appellant's counsel. (R. p. 390, lines 4-18). However, the trial court asked, and the State opined, that *Aiken* and *Miller* may not define the extent of any juvenile sentencing hearing, but rather call for the trial court to "hear whatever [Appellant's counsel] wants to offer in mitigation," make a finding on the record as to a number of enumerated factors and then proceed with issuing a sentence in the court's discretion. (R. p. 391, lines 2-16). After a brief recess to consider the totality of the arguments related to whether the sentencing hearing should proceed, the trial court ruled that it would, and that it would proceed in "the way [he was] accustomed to doing it." (R. p. 394, line 15 – p. 395, line 25). That is, by taking testimonials from the victim's family as offered by the State, and then, in turn, by taking testimonials from any person the defense put forward to further Appellant's mitigation case. (R. p. 396, line 1 – p. 397, line 18). *Aiken* does not condemn this procedure—the trial court thusly exercised its discretion in sentencing procedure absent any error of law.

And, despite only citing *Miller* as precedent governing the factors to review during the sentencing case, Appellant's proceeding demonstrates that the trial judge did comport with *Aiken* and *Miller* in his sentencing considerations. (*See* R. p. 395, lines 12-25). Consider the evidence before the trial court in relation to Appellant's youth. The entirety of Appellant's mitigation case flows from trial through sentencing—the trial judge presided over the whole presentation. In his case-in-chief, Appellant put forward his grandmother, adult cousin, and his mother as fact witnesses who also testified in relation to Appellant's age and maturity. Notably, these

witnesses' testimonies breathed life into Appellant's family circumstance.

Through Appellant's grandmother Brenda Settles, the trial court learned that Appellant grew up in Greenwood County with his mother. (R. p. 268, lines 3-13). Appellant's mother, Jacqueline Calhoun, explained that Appellant moved once before he reached the age of one. (R. p. 280, lines 2-16). After that, the family home remained in Hodges through Appellant's childhood and until the time that he moved in with his grandmother. (R. p. 280, lines 15-25). As a teenager, Appellant moved in with his grandmother in lieu of staying with his mother, whose living situation perhaps lacked same permanency at this stage. (R. p. 268, lines 14-22). His mother had gone "out of [her] own" and left Hodges at this point. (R. p. 282, lines 4-8). He lived with his grandmother for over a year prior to his arrest. (R. p. 266, lines 1-5; R. p. 268, line 23 – p. 269, line 1).

During this time, Appellant attended school regularly and was cared for financially, maintaining an allowance from his grandmother as well as a working cell phone. (R. p. 266, line 8 – p. 267, line 10). He did not appear to change schools irregularly through his childhood. (R. p. 282, lines 9-14). Sometimes his grandmother carried him to or from Greenwood High, where he was a "decent student." (R. p. 267, line 20 – p. 268, line 2; R. p. 282, lines 15-22). His mother considered him "smart, intelligent." (R. p. 282, lines 21-22). Appellant did not complete his tenth grade year with enough credits to elevate to the eleventh grade the following fall, but he completed online and after school courses in order to make up those missed credits. (R. p. 282, line 23 – p. 283, line 6). As a result, Appellant was only one semester behind the remainder of his classmates. (R. p. 283, lines 7-14).

From Appellant's cousin, Maquitta Shay Higgins, the court learned of the close relationship Appellant cultivated with Ms. Higgins. She invited Appellant into her home "on a

daily basis" to spend time together eating, talking, watching TV, and fostering a relationship akin to that of an adult aunt and her adolescent nephew. (R. p. 276, line 13 – p. 277, line 14). Appellant testified that he looked after Ms. Higgins' young children. (R. p. 300, lines 3-12). Together, Ms. Higgins and her brother "helped [Appellant's mother] look out for him when [she] couldn't be the eyes." (R. p. 284, lines 5-7).

The court also learned that Appellant's grandmother expected to hear from him regularly or when he needed assistance, a sign of dependability from a teenager. (R. p. 269, line 5 – p. 271, line 21). The court heard that "Tavarious was a pretty responsible person. He was good hearted, caring and giving and he helped [his grandmother] out a good bit. He had a good heart for helping . . . [a]nd he loved his family." (R. p. 271, line 24 – p. 272, line 3). Ms. Settles furthered that he was "no bad person," the police did not come around looking for him, and he attended church to some extent. (R. p. 271, lines 10-16; R. p. 272, lines 3-8).

During sentencing, the trial court invited Appellant, through counsel, to present anything: "Mr. Tinsley, I'm happy to entertain anything that you may want to say or anything that certainly Mr. Settles' family or he himself may want to relate to me, sir." (R. p. 397, lines 15-18). But the court did not want sworn, question-and-answer testimony: "I'm just going to hear from her [Appellant's grandmother]." (R. p. 397, lines 20-25). And so, Ms. Settles related her mitigation case to the trial court, pleading's Appellant's lack of record, making a wrong choice, and her belief that his being caught up in the present offense did not match the remainder of his character. (R. p. 398, lines 1-7). Appellant's counsel elicited answers to specific questions despite the trial court's ruling. In doing so, Appellant's counsel established the following in relation to the factors enunciated for consideration by *Miller* and *Aiken*: Appellant's April 18, 1993, birthday made him seventeen at the time of the murder; Appellant showed no tendencies of

violence while under his grandmother's roof; Appellant was not "a troubled child"—he appeared obedient and did not cause his grandmother problems; "he was mature," "good-hearted," "willing to learn," and "getting himself together in school." (R. p. 398, line 9 – p. 399, line 25).

As defense counsel sought to elicit more testimony on this point, the trial judge reiterated that he appreciated Appellant's age and the influence associated with the co-defendants in the car with Appellant before and after the crime, including the dispute regarding who acted as the triggerman, but the trial court wanted to "hear whatever it is that's been related to [counsel] as opposed to [counsel] questioning [Ms. Settles]." (R. p. 400, lines 2-15). The trial court directed Appellant's counsel to present his mitigation case in the manner the trial court requested. (R. p. 400, lines 12-15). Counsel offered a summary. (R. p. 400, line 16). The court approved. (R. p. 400, line 17). *This would be the manner in which the trial court would be most persuaded by the mitigation*: "I think that would probably be the best way for the Court to get a true picture of your client if you could summarize where he was emotionally and where he saw himself as far as this entire – I mean, you've already touched on a lot of this. But if you would do it in that manner that might be more beneficial[.]" (R. p. 400, lines 17-23).

Appellant's counsel continued with the question-and-answer to elicit information that Appellant's parents never married and did not live together, but that his father remained part of his life "ever since he was born" because the family lived near each other. (R. p. 401, lines 1-21). In fact, Ms. Settles stated that "his mother got along with his father. We all love one another. We [are] helping Tavarious." (R. p. 401, lines 10-11).

Appellant also spoke during sentencing. (R. p. 404, lines 6-8). Appellant said that he "still remain[s] innocent to [him]self because [he] know[s] what happened." (R. p. 404, lines 12-14). He apologized, but did not accept sole responsibility. (R. p. 404, line 17 – p. 405, line 3; R.

p. 408, lines 2-24). Appellant also answered more questions posed by counsel, stating that he did not own a gun, was not a fighter, did get out of the car, and that he felt "like [he] needed to get away from the situation" as it unfolded. (R. p. 405, line 4 – p. 406, line 2).

Between Ms. Settles and Appellant's testimony at sentencing, Appellant's counsel made two additional pleas for mitigation by summarizing facts already placed before the trial judge and again arguing the application of *Aiken* and *Miller* due to Appellant's age. (R. p. 402, line 7 – p. 404, line 5; R. p. 406, line 3 – p. 407, line 1). Even prior to this portion of the hearing, during the motions lending to the issue on appeal, Appellant's counsel made an additional plea before the sentencing court:

> Mr. Settles, of course, has no record. He's currently about to turn to the age of [nineteen]. He was [seventeen] and six weeks when this happened . . . . He felt from the way things occurred that he really didn't have much choice in this matter based upon the fact that he was unable to wrap it all up, and he – I think he's been forthright, honest. He got himself in a situation with an older guy who, I think, had nefarious plans pr[e]ying on youth and he was one of those victims. Case in question, he went to school that day. He was at Ms. Shay's. They burned his phone up until they got him involved. They witnessed against him. Certainly they were together. They put together a plan that would, you know, put Mr. Settles in an awkward not knowing situation that they had put together. . . . There's no question it was [the older co-defendant] Lank's lick. Markece Moore's. This man got out with him, used poor judgment, and finds himself here convicted of murder. But under the prongs of *Miller v. Alabama* and the Eighth Amendment to the Constitution, as well as due process of the Fourteenth Amendment, we submit that a 30 year sentence would be appropriate . . . .

(R. p. 387, line 17 – p. 389, line 9).

C. <u>The forty-five-year sentence issued is not violative of *Aiken* or the Eighth Amendment because it considers Appellant's age, attendant circumstances related to youth, and is not disproportionate to the crime.</u>

Notwithstanding a trial judge's authority to impose a sentence falling within the statutory limits, the Eighth Amendment of the United States Constitution prohibits the imposition of cruel

and unusual punishment. *See* U.S. Const. amend. VIII ("Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."). Considering South Carolina's constitutionally permissible sentencing scheme where juveniles are subject only to discretionary imposition of life imprisonment upon conviction for homicide, those sentences which are graduated and proportioned to the offense do not constitute cruel and unusual punishment. *Graham v. Florida*, 560 U.S. at 59, 130 S.Ct. at 2021; *see also Aiken v. Byars, supra.* The United States Supreme Court emphasizes that the requirement of proportionate sentencing lies central to the protection afforded by the Eighth Amendment. *Miller v. Alabama, supra* at —, 132 S.Ct. at 2463; *Graham v. Florida, supra*. Yet, "[t]he Eighth Amendment does not require strict proportionality between crime and sentence," forbidding only extreme sentences which are 'grossly disproportionate to the crime.'" *Harmelin v. Michigan*, 501 U.S. 957, 1001, 111 S.Ct. 2680, 2705 (1991) (internal citation omitted)). That is, Appellant's term-of-years sentence must not be grossly disproportionate to the circumstances particular to his case. *Graham v. Florida, supra* at 59, 130 S.Ct. at 2021.

Given all of the facts gleaned prior to and during sentencing, including that put forward by the State, the trial court assigned credence to Appellant's age and lack of prior criminal record. (R. p. 407, lines 2-9). He proceeded with the issuance of a 45-year sentence reasoned as follows:

> Mr. Settles, out of fairness to you I feel obliged to tell you what has gone into this sentence. Ms. Castro's comments are something that are – they're succinct and they're dead-on. You've got your life. Your family has you. Mr. Sis does not have his anymore. And that is because of actions that you and three others took that evening, and it's as simple as that. Does the Court believe, based upon the jury's verdict, that you are the person who shot Mr. Sis? Yes. Mr. Settles, the jury has spoken in this case and I understand perhaps some hesitation that you have to accept full responsibility for this, but understand, sir, that you had numerous options that evening for avoiding where you have found yourself

today. You could have gotten out of the car. You could have told them to stop and pull over and just stepped out. You could have tried to discourage the other guys from doing this. And it's not lost on this Court, Mr. Settles, that very often members of our Hispanic community here in Greenwood are sometimes targeted because the belief is some of them are not here legally and, therefore, if a crime is committed against those individuals who are not here legally the likelihood of them reporting that crime is less. Now, there's no evidence in the record in this case that you or any of the other fellows in that car specifically targeted a Hispanic individual, and clearly I'm not going to take into account any ethnic background or any nation of origin in calculating a sentence because in all, at least in my mind, Mr. Settles, a man is a man whether he's black, white, Hispanic, American Indian, whatever. It does not matter. And it does not matter, as Ms. White correctly pointed out the other day, it doesn't matter whether Mr. Sis was here legally or not. He has a right to exist. He has a right that every individual has and that's the right to breathe clean air and not have that right taken from him. You took that from him. I've taken into account the fact that you have no prior history. **I agree with Mr. Tinsley that although the law might consider a [seventeen]-year-old to be a man there are certain developmental delays. Maybe you were not fully mature. Maybe emotionally you're not fully there. And that certainly mitigates somewhat the horrible crime that you did commit.**

Now, there are several other individuals charged with this offense. There will be a day of reckoning for them. Mr. Settles, your protestations of, shall we say, less active participation in this, the Court's just not buying it. I heard you testify, and I understand that it's the policy of this Court, and it's well known, that **I try to encourage people and reward people who are willing to take responsibilities for their actions with as much leniency as possible. And that's what Mr. Tinsley was talking about with regard to the 30 year sentences, Mr. Settles. But sometimes it's best to try a case so that the Court can get a full and complete picture of the horror that was inflicted on an innocent person who wanted nothing more than to do what the rest of us want to do** and that is earn a living, get married, provide for a family and grow old. Well, you've robbed Mr. Sis for every day that he's going to have for the rest of his life. You should be happy that at some point in time you will, in fact, sir, be getting out of prison.

(R. p. 408, line 25 – p. 411, line 22 (emphasis added)).

The trial court found no persuasion in Appellant's hesitancy to take full responsibility for the victim's fate. And the facts of the crime, as previously recited, indicate cold-bloodedness. However, the trial court did consider the mandates of *Aiken* and *Miller*. The court found age to constitute a mitigating circumstance in applying a term-of-years sentence in lieu of the potential

maximum. Before the court's consideration were facts related to Appellant's age, education level, his family and home environment leading up to and at the time of the offense, the circumstances of the offense including the involvement of co-defendants and the potential that Appellant acted in response to peer pressure, his inexperience with the criminal justice system, and other hallmarks of youth and maturity developed throughout the duration of Appellant's trial. These are the very considerations delegated by *Aiken.* 410 S.C. at 544, 765 S.E.2d at 577.

But the court also had before it aggravating circumstances, including the senseless targeting of an unknown pedestrian by a group of young men on a spring night. The victim sustained several gunshots in an unprovoked attack.

Only after considering all of the above did the trial court invoke a term-of-years sentence. *Miller* and *Aiken* were intended to protect against the imposition of life without parole upon a juvenile.[9] Since Appellant did not receive a sentence of life without parole, the trial court accordingly did not abuse its discretion in proceeding with the sentencing hearing in the manner employed in this case, especially considering that the trial court implored Appellant's counsel to stick to a familiar format in his mitigation presentation.[10] In the eyes of the trial court, Appellant did receive "a full blown sentencing hearing," a concept *Aiken* purposely left undefined.

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[9] Respondent further posits that the totality of the record clearly demonstrates that the trial court never once indicated that life without parole constituted a proper sentence for Appellant based upon his age alone.

[10] To any extent that this Court finds error in the trial court's handling of Appellant's sentencing hearing, Appellant was entitled to the benefit of a second sentencing decision when he later waived jurisdiction over an Abbeville County charge and pled guilty in Greenwood County. That plea was heard in tandem with the State's motion to reduce Appellant's sentence for the present Greenwood County murder. Appellant in fact pled guilty for a negotiated forty-year sentence on the Abbeville County charge, to run concurrent with the reduced sentence on the Greenwood conviction. (R. pp. 480 – 502 (September 18, 2015, guilty plea hearing transcript); R. p. 482, line 14 – p. 483, line 23). Thus, Appellant's sentence has been entitled to a second review by the trial judge and has been reduced upon a showing of substantial assistance to the State.

Our courts have otherwise found the trial court's cogitation of relevant circumstances attendant to the youth of a defendant under the age of eighteen necessary in sentencing. Appellant's sentencer did just that. Based upon the entirety of the factual record in this case, proportionality reigns.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should affirm Appellant's convictions and sentence for murder and possession of a weapon during the commission of a violent crime.

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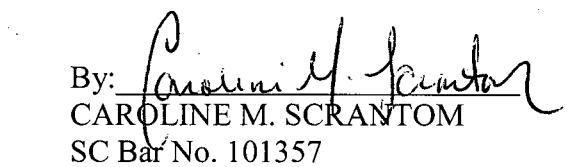
By: 
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September 30, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenwood County
Honorable Frank R. Addy, Jr., Circuit Court Judge

THE STATE,

Respondent,

v.

TAVARIOUS SETTLES,

Appellant

Appellate Case No. 2015-000980.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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