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STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of General Sessions

The Honorable Deadra L. Jefferson, Circuit Court Judge

Appellate Case No. 2016-001994

THE STATE,

Respondent,

v.

CURTIS TYRONE WILLIAMS,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's arguments are not preserved for appellate review where Defense Counsel conceded at trial there was no bargain between Appellant and law enforcement. Error preservation concerns notwithstanding, the trial judge properly admitted Appellant's videotaped confession where the statements were voluntarily made and the assurances by law enforcement that they would let Appellant see his family did not cause his will to be overborne. Finally, any alleged error is harmless where the statements at issue were cumulative to Mother's testimony.

STATEMENT OF THE CASE

Appellant was indicted during the May 2015 term of the Grand Jury for Charleston County for homicide by child abuse (2015-GS-10-02641). Appellant proceeded to a jury trial from September 12-16, 2016, in Charleston, South Carolina before the Honorable Deadra L. Jefferson. At the conclusion of trial, Appellant was found guilty as indicted. He was sentenced by Judge Jefferson to imprisonment for a term of thirty years. Appellant timely filed a notice of appeal and subsequently submitted a brief. This Brief of Respondent follows.

STATEMENT OF FACTS

Background Facts

On October 26, 2014, Jean Smith was performing her duties as a pediatric respiratory specialist at the Medical University of South Carolina (MUSC). R. p. 93. Smith was in the lobby of the hospital when she heard a loud commotion and saw a man plastered against the door holding a limp child (Victim). R. p. 95. Smith and a nurse grabbed Victim, placed him on a nearby counter, and after confirming there was no heartbeat or respirations, began performing CPR. R. pp. 95-96. Smith noted Victim's lips and gums were blue, indicating a lack of oxygen to the tissue. R. p. 96.

Officer Lucas Cummins, a master patrol officer with the North Charleston Police Department, was working on October 26, 2014, and responded to a call in this case. R. p. 102. Officer Cummins stated the dispatch call instructed him to go to the children's emergency room at MUSC because there was an unresponsive child who may have been abused. R. p. 102. When he arrived at the emergency room, Officer Cummins questioned Appellant. R. p. 103. Officer Cummins recounted:

> He said on the day - - he said the child's mother went to work in the morning around 9:00. After that, him and [Victim] laid down and took a nap. They woke up and watched some football until around 10 or 11. Around 12:20 or 1:00, they went to the park on Success, which is behind the community center. They played for about 30 minutes, and while on the playground [Appellant] lost sight of [Victim] for about five minutes and then saw him sitting on a bench with his head down. They went home, he gave him a Tootsie Roll and Capri Sun. He said he didn't want the Tootsie Roll, so they watched more football. Around 3:30, [Victim] defecated in his pants, he wiped him up in the bathroom, the bathtub, and dressed him. After that he put him on the couch and he started - - [Victim] stated acting weird. He asked him what was wrong and the child went limp and he had some shallow breathing. He told his friend, Shaquille Prioleau, they needed to go to the hospital. Mr. Prioleau drove, his brother rode in the front passenger seat, and [Appellant] and [Victim] rode in the back. While they were headed to the hospital, the child stopped breathing around Huger Street.

R. pp. 110-11.

Victim's mother (Mother) testified at trial. R. pp. 358-409. Mother gave birth to Victim in October of 2011. R. p. 358. In March of 2014, Mother met Appellant. R. p. 363. Mother and Appellant began dating and subsequently moved in together. R. p. 363. Mother worked two jobs, working at Goodwill during the morning hours and Sav-A-Lot during the afternoon or evening hours. R. p. 363, 366-67. While Mother worked, Appellant was tasked with caring for Victim. R. p. 364. Mother stated that Victim was "up under her" all the time and would follow her everywhere she went. R. p. 371. Mother testified that Appellant would sometimes yell at Victim and call him names. R. p. 370. Specifically, Mother recalled Appellant would call Victim a "mama's boy" and tell him to "sit your punk ass down." R. p. 370. Mother stated that Appellant's ex-girlfriend had a child that would sometimes stay with Appellant, and that Appellant treated her as his favorite. R. pp. 372-73.

Mother testified that on the morning of October 26, 2015, she washed Victim's face and did not notice any bruising about his person. R. pp. 381-82. While she was at work, Appellant sent her a text message stating that Victim was "acting weird." R. pp. 382-83. Appellant later called, but he did not really go into detail regarding what was happening. R. p. 386. Mother subsequently got another phone call from MUSC and was told to come to the hospital. R. p. 386. Mother was met by a chaplain who told her what happened. R. p. 387. Mother then walked into Victim's hospital room and saw his body covered in a sheet. R. p. 388. Mother asked Appellant what happened and he told her he lost sight of Victim at the park and Victim was later sitting on a bench with his head down. R. pp. 389-90. After leaving MUSC, Mother returned to her home and waited outside while law enforcement photographed the scene and collected evidence. R. p. 390. Mother and Appellant then went to speak with law enforcement at city hall and were

interviewed separately. R. p. 392. Mother testified that she later asked Appellant what happened. R. p. 393. Appellant initially did not want to discuss the incident, however Appellant later admitted to hitting Victim because he did not get out of the bathroom quickly enough. R. p. 394. Appellant told Mother that he struck Victim in his side with a "chop." R. p. 394. Mother testified that by the time of trial she had seen the pictures of Victim's body and observed the bruises and that Victim did not look like that when she left for work on the morning of October 26th. R. p. 395.

Susan Presnell, a forensic pathologist at MUSC, performed the autopsy on Victim. R. pp. 412, 414. Dr. Presnell observed multiple bruises on his body. R. p. 417. Dr. Presnell testified that the bruises were inflicted mere hours prior to the autopsy. R. p. 418. Dr. Presnell noted there were multiple contusions around Victim's head and neck. R. pp. 422-24. Victim also had ten bruises along his left flank and back and seven bruises along his right flank and back. R. p. 424. There was also a large area of bruising on Victim's buttocks. R. pp. 424-25. Dr. Presnell also found evidence of internal injury, concluding that a ruptured spleen was the cause of Victim's death. R. p. 424. Specifically, the fatal injury was a laceration to the spleen. R. p. 426. Dr. Presnell concluded Victim's death was a homicide. R. p. 433. Dr. Presnell testified the basis of that finding was, "his autopsy findings with multiple blunt force injuries across his body, the multiple contusions and then then the lacerated spleen with the 450 milliliters of blood into the abdomen." R. p. 433.

Carey Busch is employed by MUSC as an assistant pediatrics professor and also works in the hospital's pediatric emergency room and the child abuse pediatrics department. R. p. 442. Dr. Busch was present for Dr. Presnell's autopsy of Victim. R. p. 466. Dr. Busch testified that in order to rupture a spleen, significant force is required and the injury is commonly associated with

car crashes or sports injuries. R. p. 468. Dr. Busch testified that in her review of Appellant's medical records, there was no pre-existing medical condition that could have caused Victim's death. R. p. 473.

Appellant's Interview with Law Enforcement

Sergeant Sidney Lewis is the sergeant over the Special Victims Unit at the North Charleston Police Department. R. p. 253. On the evening of October 26, 2014, Sergeant Lewis got a call that a child died upon arrival at MUSC. R. p. 254. Sergeant Lewis went to the hospital where he spoke with various members of his team. R. p. 255. After being initially briefed on the situation, Sergeant Lewis spoke with Appellant. R. p. 254. Sergeant Lewis testified Appellant claimed he took Victim to the park and while playing with his phone, lost sight of Victim R. p. 257 . Appellant told Lewis he subsequently found Victim sitting on a bench and that Victim was acting strangely. R. pp. 258-59. Later in the day, Appellant claimed he noticed Victim, "started behaving a lot different and noticed his breathing became very shallow, like, trouble breathing." R. p. 260. Appellant told Sergeant Lewis that Victim's body then went limp and he asked his friend, Shaquille Prioleau, to drive him to the hospital. R. p. 260.

Sergeant Lewis later called Appellant and Mother and asked them to come speak with him at the North Charleston Police Department. R. p. 333. Sergeant Lewis escorted Appellant into an interview room. R. p. 333. Before questioning him, Sergeant Lewis fully advised Appellant of his Miranda rights. R. pp. 333-35. Appellant signed the waiver of rights form, indicating he wished to waive his rights and answer questions and that no threats, force, or promises were made by law enforcement to induce him to waive his rights. R. p. 336. Sergeant Lewis testified he did not make any threats or promises to Appellant. R. p. 337. During Sergeant Lewis's direct examination, the State introduced the videotape of his interview with Appellant.

R. p. 337. During the interview, Appellant stated, "I just want to speak with the people I came here with. That's it." (State's Ex. 72, 47:00). Appellant explained that Mother and his mother were with him at the police station. (State's Ex. 72, 47:00). Investigators later implored Appellant to tell the truth, stating "So all we want to know is the truth. Just put an end to all this speculation and everything else. Just the truth. That's it. Nothing more, nothing less. The whole truth. Why is that so hard?" (State's Ex. 72, 49:00). In reply, Appellant mentioned wanting to see his family. (State's Ex. 72, 50:00). The investigators responded, "Why, why won't you just be able to leave with them?" (State's Ex. 72, 50:00). After Appellant didn't respond, one of the investigators stated:

> How about this? If, for some crazy reason, you end up telling us what happened and it turns into a situation where you don't leave, we will guarantee that you see your family before they leave here. That's what you're worried about, you're worried that you won't get to see them because you don't think you're going to be able to leave.

(State's Ex. 72, 50:00). Appellant responded, "I didn't kill that little kid." (State's Ex. 72, 50:00. Appellant began crying and the investigators told him, "All you've got to do is open your mouth, man. Just let it come out." (State's Ex. 72, 51:00). Appellant sat in the corner and continued to cry, prompting the interviewer to assure him that he was not a "monster." (State's Ex. 72, 51:00). After further prompting by the investigators, Appellant finally admitted to striking Victim, conceding, "Now, I did spank him." (State's Ex. 72, 57:00). Appellant elaborated that he "chopped" Victim in the side with a closed fist. (State's Ex. 72, 1:02:00). Appellant asked investigators, "But were you guys really gonna let me see my family?" (State's Ex. 72, 1:08:00). The investigator replied that he had given Appellant his word that he would and would not go back on that. (State's Ex. 72, 1:08:00). After being asked why he punched Victim, Appellant

admitted he struck him because he would not get out of the restroom. (State's Ex. 72, 1:08:00-1:10:00).

Prior to trial, a Jackson v. Denno[1] hearing was held on the admissibility of Appellant's videotaped statements. R. pp. 16-29. During the Jackson v. Denno hearing, Sergeant Lewis noted the only thing Appellant asked for during the interview was to visit with his mother. R. p. 20. Sergeant Lewis testified that after the interview concluded, he allowed Appellant's mother and girlfriend to come into the interview room and visit with him. R. pp. 21-22. Sergeant Lewis also recalled that Appellant became emotional during the interview and cried on multiple occasions. R. p. 23. Following Sergeant Lewis's testimony, Defense Counsel argued:

> Sergeant Lewis testified that my client was emotional, that he'd had a really long night, that he stated he was in shock, Your Honor. So we would just argue he was clearly not in a good state of mind, which I think will be more evident in watching the video. And that's what we would argue, Your Honor, for why the statement should be suppressed.

R. pp. 25-26. Following argument by the solicitor, Defense Counsel noted, "In addition, Your Honor, just - - he had asked multiple times to see his family. And the officer didn't say, no, you can't see them. He had basically said, well, you can see them later, suggesting some sort of bargaining, Your Honor." R. p. 27. The trial judge replied, "Did he actually say that?" R. p. 27. Defense Counsel admitted, "He said he could see the family later. He never said, no, I'll make a deal with you." R. p. 27. The trial judge asked, "- - some kind of a bargain?" to which Defense Counsel conceded, "No, your Honor." R. p. 27.

The trial judge found the interview to be admissible, finding:

> There was no indication he was under any duress, other than the normal duress of the event, that he was made any promises, that he was under the influence of any drugs or alcohol, or that he was threatened in any way or denied any substantial rights, such as bathroom, et cetera, during the course of the interview. The defense has argued that he was not allowed to see his family. I would note for the

[1] 378 U.S. 368 (1964).

record that the State has no constitutional obligation to allow him to see his family and they had more than protected interests in not letting him see his family, that being the possibility of - - due to the loss of interest the defense - - the State would have in not allowing someone to potentially collude with their family or see someone regarding an incident when they're in the middle of an interrogation. And so they had no obligation to allow him access to his family. Nor do I find any merit to the argument that somehow that was collusive or threatening or caused him to be under any particular duress. In fact, the statements made by the police seemed to reassure him that once they are done, he would be allowed to see his family and that, that right will not - - that right or that desire, that request will not be denied to him.

R. pp. 281-82.

ARGUMENT

Appellant's arguments are not preserved for appellate review where Defense Counsel conceded at trial there was no bargain between Appellant and law enforcement. Error preservation concerns notwithstanding, the trial judge properly admitted Appellant's videotaped confession where the statements were voluntarily made and the assurances by law enforcement that they would let Appellant see his family did not cause his will to be overborne. Finally, any alleged error is harmless where the statements at issue were cumulative to Mother's testimony.

Appellant asserts his confession that he struck Victim was rendered involuntary by the assurance by law enforcement that Appellant could see his family before they left the police station. Appellant avers his will was overborne because, "It was only after the interrogator made a bargain with appellant that he could see his family if he gave a statement that appellant gave the highly incriminating statement that he hit the child." (Br. of App. p. 8). Appellant further contends, "The police successfully bargained with appellant to obtain his confession, therefore rendering it involuntary." (Br. of App. p. 8). This argument lacks merit. Initially, Appellant's argument is not preserved for appellate review. Further, Appellant's statements were freely and voluntarily given and law enforcement's assurances to Appellant that he could see his family were not of such a persuasive nature as to overwhelm Appellant's will. Finally, any alleged error in this case is harmless, as Appellant's statements were cumulative to the incontrovertibly admissible testimony of Mother where she testified Appellant admitted to her that he struck Victim in the side.

As a threshold matter, Appellant's argument is not preserved for appellate review. At the Jackson v. Denno hearing, Defense Counsel expressly conceded "He (Sergeant Lewis), never said, no, I'll make a deal with you." R. p. 27. When the trial judge asked, "- - some kind of a bargain?," Defense Counsel replied, "No, Your Honor." R. p. 27. Now, on appeal Appellant's entire argument is predicated on the proposition that law enforcement made a bargain with

Appellant that resulted in his will being overborne and led to an involuntary confession. An issue conceded in trial court is not preserved for review. State v. Benton, 338 S.C. 151, 526 S.E.2d 228 (2000); see Lindsay v. Lindsay, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997) (holding an appellate court will affirm a ruling by a trial judge if offended party does not challenge that ruling; failure to challenge ruling is abandonment of the issue and precludes consideration on appeal; unchallenged ruling is law of the case and requires affirmance). Since Appellant conceded at trial that there was no bargain between Appellant and law enforcement, this issue is not preserved for review by this Court.

Error preservation concerns notwithstanding, Appellant's argument lacks merit. In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The circuit court must examine the totality of circumstances surrounding the statement and determine whether the State has carried its burden of proving the statement was given voluntarily. State v. Miller, 375 S.C. 370, 382, 652 S.E.2d 444, 450 (Ct. App. 2007). The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). When reviewing a trial court's ruling concerning voluntariness, the appellate 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. 114, 136, 551 S.E.2d 240, 252 (2001).

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436

(1966). In order to introduce into evidence a confession, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and, if the result of custodial interrogation, was taken in compliance with Miranda. See State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). To determine the voluntariness of a statement, the circuit court must first conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). "The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth, 412 U.S. at 226. The critical question is whether the defendant's "will has been overborne [or] his capacity for self-determination critically impaired. . . ." Id. at 225.

In Petty v. State, 346 S.W.3d 200 (Tex. App, 2011), the Texas Court of Appeals addressed a situation exceptionally similar to Appellant's. In Petty, the defendant asserted law enforcement improperly induced his confession by promising him that he would be permitted to see his family if he confessed. Id. at 204. In opposition, the State argued that the promise to the defendant that he could see his family was couched as a simple assurance that he could see his family after the interview concluded and was not conditioned on the defendant confessing to the

crime. Id. The Texas Court of Appeals deferred to the trial judge's factual findings on the matter, which stated:

> Prior to and after the defendant's admission of capital murder, Detective Ahearn told the defendant that after they had finished talking and when they got through the entire story once, Detective Ahearn would let the defendant talk to his family and say goodbye, and that defendant's family could visit with the defendant before he was taken to the jailhouse. . . . The defendant was not told that he could not talk or visit with his family if he refused to give a confession.

Id. The Court found, "Our review of the record reveals that the findings of the trial court regarding any promise made to appellant by Detective Ahearn are supported in the testimony and on the videotape of the confession." Id. at 204-05.

In Appellant's case, as in Petty, the trial judge did not abuse her discretion by finding the assurances of law enforcement did not overwhelm Appellant's will and render his confession involuntary. Law enforcement did not bargain with Appellant and exchange family visitation for a confession. There was no *quid pro quo* nor was there a coercive motive. Instead, law enforcement assured Appellant that regardless of what he admitted, they would allow him to see his family at the conclusion of the interview. This simple assurance was not of the nature or degree of coercive conduct necessary to cause Appellant's will to be overborne. Critically, law enforcement did not threaten to withhold visitation with his family if Appellant refused to confess. Appellant's confession, thus, was voluntarily given and was not tied to any particular promises or bargains offered by law enforcement.

Finally, any alleged error in this case is harmless, as the incriminating aspects of Appellant's interview with law enforcement were also admitted in Mother's direct testimony. In Appellant's interview with law enforcement, he admitted "chopping" Victim in his side with a closed fist. During Mother's testimony, she testified Appellant admitted to her that he "chopped" Appellant in his side. This testimony is identical, thus the evidence Appellant avers was

inadmissible was cumulative to the unquestionably admissible testimony of Mother. When other properly admitted testimony reveals essentially the same information, the jury's exposure to improper evidence is harmless. State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 554-55 (2001). Because Appellant's statements were cumulative to Mother's testimony, any error in this case is harmless. Appellant's conviction and sentence should be affirmed.

CONCLUSION

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

Respectfully submitted,

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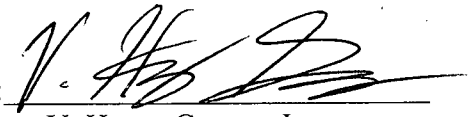
BY: 
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CERTIFICATE OF COUNSEL

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

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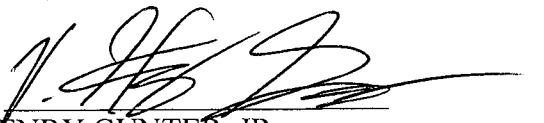
BY: 
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