STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2018-001336

THE STATE,

Respondent,

vs.

ANTWAN JAMAL JETT,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

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

EDGAR LEWIS CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

Box Q, City-County Complex
Florence, South Carolina 29501
(843) 665-3091

ATTORNEYS FOR RESPONDENT

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The Court of Appeals correctly determined the trial judge did not abuse his broad discretion by admitting evidence of the statements Jett made to an investigator during custodial interrogation because Jett did not unambiguously and unequivocally invoke his right to counsel before making those statements. However, even if the trial judge's ruling somehow constituted an abuse of discretion, any error was harmless because Jett's statements to the investigator could not have contributed to the verdict in light of their somewhat cumulative nature to Jett's other unchallenged incriminating statements coupled with the overwhelming nature of the other evidence of guilt presented during trial.

STATEMENT OF THE CASE

Procedural History

In December of 2013, Petitioner Antwan Jamal Jett was arrested following an investigation into a violent home invasion committed in Florence, South Carolina. In April of 2014, the Florence County Grand Jury issued a six-count indictment charging Jett with one count of first-degree burglary, two counts of armed robbery, one count of criminal conspiracy, one count of possession of a weapon during the commission of a violent crime, and one count of assault with intent to commit first-degree criminal sexual conduct. On April 20, 2015, a jury trial was commenced on the first-degree burglary charge, one of the armed robbery charges, the criminal conspiracy charge, and the possession of a weapon during the commission of a violent crime charge in the Florence County Court of General Sessions with the Honorable D. Craig Brown, circuit court judge, presiding. At the conclusion of trial, the jury convicted Jett of all four charges for which he was tried. Following the verdict, the trial judge sentenced Jett to concurrent terms of imprisonment of thirty years for first-degree burglary, twenty-five years for armed robbery, five years for criminal conspiracy, and 478 days for possession of a weapon during the commission of a violent crime. Jett then timely filed and perfected an appeal.

Subsequently, following oral argument, the Court of Appeals issued a published opinion in which it affirmed Jett's convictions. State v. Jett, 423 S.C. 415, 814 S.E.2d 635 (Ct. App. 2018). Thereafter, Jett petitioned the Court of Appeals for rehearing, and the petition was denied. Jett then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the evening of December 30, 2013, Michael Barr fell asleep while watching television inside his Florence, South Carolina, home, and he continued sleeping in his recliner until he was

abruptly awakened around 3:30 a.m. early the next morning by a knock at the door. (R. pp. 47-49). In response, Barr asked who was knocking, and someone on the other side of the door responded, "B.J." (R. pp. 47-48). Believing it to be a friend with that name, Barr opened the door to his home, and, at that moment, three masked men wearing hoodies rushed inside. (R. p. 49). In the terrifying encounter that ensued, the men threatened Barr with a small derringer-style pistol, repeatedly assaulted him, demanded his money, rifled through his pockets, ransacked his home, terrorized his female roommate, and stole various items from the home, including a hunting knife, a cell phone, pill bottles, medication, and money. (R. pp. 49-52; pp. 58-59; p. 62). The men then fled out the home's back door. (R. p. 52; pp. 60-61).

Meanwhile, officers from the Florence Police Department had been alerted of the brazen home invasion while it was still in progress and began to arrive on the scene just as the robbers fled from Barr's home. (R. p. 61; p. 63; p. 65; pp. 73-74; pp. 101-103). Upon arriving, the officers spotted two of the robbers running from the area, and one was wearing a green or gray hoodie while the other was wearing a dark-colored hooded sweatshirt. (R. pp. 63-65; pp. 74-75). In response, Officer William Blackmon pursued the robbers on foot while Officer Thomas Herman, Jr. attempted to track them from inside his patrol vehicle. (R. p. 66; p. 75). During the pursuit, the officers lost sight of the robbers when they ran between some apartment buildings. (R. p. 65; p. 75). However, a few moments later, the robber in the dark-colored hooded sweatshirt emerged from the apartment buildings and continued to flee, and the officers chased behind. (R. pp. 67-68; p. 76). Ultimately though, that robber was able to escape by climbing over several fences to evade his pursuers. (R. pp. 68-69; p. 77).

A short time later, Officer Lacey Allen began searching around the apartment buildings the robbers had fled towards along with Officer Legrande Gowdy, and they located a green

pullover, a gray pullover, and various hats on the front porch of one of the nearby apartments. (R. pp. 14-16; pp. 80-83; pp. 101-105). Additionally, just ten to fifteen away from those clothing items and only two to three hundred yards from Barr's home, Officer Allen spotted Jett hiding underneath a parked vehicle, and she quickly ordered him to surrender. (R. pp. 15-17; pp. 83-84; p. 86; p. 117). In response, Jett initially began to comply but retreated back underneath the vehicle when Officer Gowdy rushed over to assist. (R. p. 17; p. 86; pp. 106-107). Jett then refused to emerge or comply with any other commands, and Officer Gowdy ultimately had to deploy his taser and "scuffle" with Jett to subdue him. (R. p. 18; p. 87; pp. 107-108; p. 118).

Once Jett was apprehended, Officer Gowdy handcuffed him and began to inform him of his rights, and, as he was doing so, Jett spontaneously remarked he did not know anything about a gun despite the fact the officers had not yet mentioned a gun during their interactions with him. (R. p. 19; pp. 21-22; pp. 108-110). Officer Gowdy then finished informing Jett, who was wearing a t-shirt and gloves despite the fact the temperature outside was "very cold," of his rights before asking him why he was wearing gloves and no coat, and Jett responded the gloves were his "walking gloves" while claiming it was not, in fact, cold.[1] (R. p. 20; p. 22; p. 66; pp. 87-88; pp. 115-116; p. 122). As their conversation continued, Officer Gowdy asked Jett about the clothing that had been found, and Jett denied it belonged to him. (R. p. 20). Jett further reported he had been out drinking, was tired, and crawled underneath the vehicle where they found him to sleep. (R. pp. 21-22). Officer Gowdy then searched Jett's pockets and found various items, including approximately sixty-five dollars in cash. (R. pp. 111-113). At that point, the officer detained Jett inside a patrol vehicle while the investigation continued. (R. p. 20; p. 110).

[1] At that time, the temperature outside was around thirty degrees. (R. p. 66; p. 116).

Meanwhile, officers continued to search the area for any evidence linked to the home invasion. (R. pp. 69-70; p. 78; p. 113). During the search, officers located a small derringer-style pistol, a hunting knife, and pill bottles at various locations along the path of the robbers' flight. (R. p. 70; pp. 78-79; p. 89).

Roughly thirty minutes later, Investigator Felicia Jones responded to the scene and, as part of her investigation, met with Jett to speak with him about what had occurred. (R. pp. 23-24; pp. 119-120). At the outset of their brief conversation, Investigator Jones identified herself to Jett and asked him about his name and age, and Jett provided that information. (State's Ex. # 54 (Recording of Statement)). Jett then stated, "Where my lawyer at?"[2] (State's Ex. # 54). At that point, Investigator Jones informed Jett she was going to advise him of his rights, and Jett responded he had already been informed of his rights three times. (State's Ex. # 54). Investigator Jones then advised Jett of his rights, including his right to counsel, before asking if he wanted to speak with her. (R. p. 24; p. 121; State's Ex. # 54). In response, Jett asked what she wanted to talk about, angrily inquired if she wanted to talk about the fact he was found underneath a car and "tased," and repeatedly asked what he had done. (State's Ex. # 54). Following those remarks, Investigator Jones asked Jett why he had made a statement about a gun, and Jett again denied knowing anything about a gun. (State's Ex. # 54). Investigator Jones then asked Jett why he was underneath the car, and Jett claimed he had gone to sleep underneath it after drinking at a friend's nearby house, was awakened by an officer, and believed he was

[2] Notably, Jett appears to have immediately followed his inquiry about his lawyer's whereabouts with some remarks, but those remarks are too muffled on the recording of his statements to be readily deciphered and understood. (State's Ex. # 54).

about to be robbed.[3] (State's Ex. # 54). As they continued speaking, Jett acknowledged he was wearing gloves but no jacket at the time of his arrest but claimed that was simply what he was wearing when he left his home. (State's Ex. # 54). Investigator Jones then asked Jett where he lived, and Jett responded by providing an address before advising the officer to "ask [his] lawyer" if she wanted to know anything else. (State's Ex. # 54). In response, Investigator Jones asked if he did not want to talk to her about anything else in order to clarify if he was invoking his right to counsel, and Jett began repeatedly asking questions about why he was "tased" and treated in the manner he was being treated. (State's Ex. # 54). Investigator Jones then terminated the interview, and Jett was placed under arrest. (R. p. 127; State's Ex. # 54).

Following Jett's arrest, Jett's DNA was discovered on the gray pullover recovered along the path of the robbers' flight. (R. p. 94; p. 100). Jett was then indicted for numerous offenses, including first-degree burglary, armed robbery, criminal conspiracy, and possession of a weapon during the commission of a violent crime, and he proceeded forward to trial. (R. p. 7; pp. 195-197).

At the outset of trial, the trial judge conducted an in camera hearing on the admissibility of Jett's statements to law enforcement, and, during that hearing, the testimony of the officers who spoke with Jett after he was found hiding underneath the vehicle was introduced along with a recording of Jett's statement to Investigator Jones. (R. pp. 14-25). After that evidence and testimony was presented, the solicitor argued Jett's statements to Officer Gowdy were voluntary and admissible. (R. pp. 25-26). Furthermore, the solicitor contended Jett's statements to Investigator Jones were also admissible because Jett's statement—"Where my lawyer at?"—was

[3] Although Jett claimed to have been drinking before he was apprehended, none of the officers who interacted with him on the date of the incident smelled the odor of alcohol emanating from his person. (R. pp. 19-20; p. 89; p. 122).

not an unambiguous invocation of the right to counsel. (R. p. 26). In rebuttal, defense counsel alleged Jett's inquiry was not ambiguous at all and constituted a clear request for an attorney. (R. p. 27). As a result, defense counsel maintained questioning should have ceased at that point and anything Jett said after that had to be excluded from trial. (R. pp. 27-28). After considering the matter, the trial judge initially ruled Jett's statements to Officer Gowdy were knowingly, intelligently, freely, and voluntarily made and were admissible during trial. (R. p. 30). Likewise, the trial judge found Jett's statements to Investigator Jones were also admissible because Jett's inquiry about his lawyers whereabouts did not constitute an unambiguous invocation of the right to counsel. (R. pp. 30-32).

Thereafter, as the trial continued forward, Barr recounted the terrifying events that transpired on the date of the incident, provided descriptions of his robbers and their attire, and identified the various items taken during the home invasion. (R. pp. 47-62). Additionally, the officers involved in the pursuit of the robbers and the ensuing investigation testified about the chase, the apprehension of Jett after he was discovered hiding underneath a vehicle in close proximity to the victim's home, and the discovery of various items along the path of the robbers' flight. (R. pp. 63-70; pp. 73-89; pp. 101-118). Similarly, Officer Gowdy testified about his apprehension of Jett and Jett's subsequent statements, including Jett's spontaneous and unprompted statement indicating he did not know anything about a gun. (R. pp. 101-118). Likewise, Investigator Jones testified about her subsequent conversation with Jett after he was apprehended, and a recording of Jett's statements to Investigator Jones was admitted into evidence over objection and played for the jury. (R. pp. 119-122). Furthermore, an expert in DNA analysis discussed the results of her examination of the items recovered after the home invasion, and she noted Jett's DNA was conclusively matched to DNA found on the gray

sweatshirt discovered along the path of the robbers' flight from Barr's home. (R. pp. 90-94; p. 100).

Subsequently, at the conclusion of trial, the jury convicted Jett of first-degree burglary, armed robbery, criminal conspiracy, and possession of a weapon during the commission of a violent crime. (R. p. 188). Following the verdict, the trial judge sentenced Jett to an aggregate term of imprisonment of thirty years. (R. pp. 193-194). Jett then timely appealed his convictions, and, on appeal, he argued the trial judge erred by admitting the statements he made to Investigator Jones after he inquired about his lawyer's whereabouts, which he maintained constituted an unequivocal and unambiguous invocation his right to counsel. (App'x p. 1; p. 4).

After considering the matter, the Court of Appeals affirmed Jett's convictions in a divided opinion. (App'x p. 1; p. 5). In affirming, a majority of the Court of Appeals determined Jett's vague statement about his lawyer's whereabouts, which was made without any further explanation or clarification before Jett continued speaking to Investigator Jones, "was ambiguous and equivocal enough so that a reasonable officer could have decided it was not an invocation of counsel." (App'x p. 5). Based on that determination, the majority concluded Jett's statements to Investigator Jones were properly admitted into evidence during trial. (App'x p. 5). Meanwhile, the lone dissenting judge concluded Jett's remark about his lawyer's whereabouts constituted an unequivocal and unambiguous invocation of the right to counsel and, therefore, warranted the reversal of the trial judge's denial of the motion to suppress Jett's statements. (App'x pp. 5-6).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing an evidentiary ruling, the appellate court gives great deference to the trial judge because the reception or exclusion of evidence is a matter left largely to the sound discretion of a trial judge. State v. Groome, 274 S.C. 189, 190-191, 262 S.E.2d 31, 32 (1980); see State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."). Significantly, an appellate court will not reverse a trial judge's decision to admit or exclude evidence absent a clear prejudicial abuse of the trial judge's broad discretion in evidentiary matters. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002); see State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's evidentiary ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The Court of Appeals correctly determined the trial judge did not abuse his broad discretion by admitting evidence of the statements Jett made to an investigator during custodial interrogation because Jett did not unambiguously and unequivocally invoke his right to counsel before making those statements. However, even if the trial judge's ruling somehow constituted an abuse of discretion, any error was harmless because Jett's statements to the investigator could not have contributed to the verdict in light of their somewhat cumulative nature to Jett's other unchallenged incriminating statements coupled with the overwhelming nature of the other evidence of guilt presented during trial.

Jett contends the Court of Appeals erred by affirming the trial judge's decision to admit the evidence of the statements he made to Investigator Jones after he was apprehended. In support of that contention, Jett maintains his statements should not have been admitted because he unequivocally and unambiguously invoked his right to counsel by stating, "Where my lawyer at?" To the contrary, Jett's inquiry about his lawyer's whereabouts did not unequivocally and unambiguously constitute an invocation of the right to counsel, and, therefore, Investigator Jones could properly continue questioning Jett unless and until he made an actual unambiguous and unequivocal invocation of his rights. Accordingly, the trial judge did not abuse his broad discretion by admitting the evidence of Jett's statements to Investigator Jones, and the Court of Appeals properly affirmed the trial judge's ruling on appeal. However, even if the trial judge and the Court of Appeals somehow erred by concluding Jett's inquiry was equivocal and ambiguous, any error was entirely harmless because Jett's statements to Investigator Jones could not have contributed to the verdict when they are considered in relation to Jett's other unchallenged incriminating statements and the other overwhelming evidence of guilt presented during trial. Jett's petition for a writ of certiorari should be denied.

A. Propriety of the Decision to Admit Jett's Statements to Investigator Jones

When a crime is committed, law enforcement questioning of a suspect is a critical component of the investigatory process while admissions from a guilty party are "essential to

society's compelling interest in finding, convicting, and punishing those who violate the law." Moran v. Burbine, 475 U.S. 412, 426 (1986); see McNeil v. Wisconsin, 501 U.S. 171, 181 (1991) ("[T]he ready ability to obtain uncoerced confessions is not an evil but an unmitigated good."). Importantly though, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of [a suspect] unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Therefore, prior to custodial interrogation, the suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479.

Once a suspect has been warned of his constitutional rights and given an opportunity to exercise them, the suspect may knowingly and intelligently waive his rights in either an express or implicit manner and make a statement. Id.; North Carolina v. Butler, 441 U.S. 369, 375-376 (1979) (instructing a suspect may waive his constitutional rights expressly or implicitly before making a knowing and voluntary statement to the authorities). Conversely, the suspect may choose to invoke any of his rights, including his right to counsel, and not make a statement. See Miranda, 384 U.S. at 473-474 (recognizing a suspect can invoke his rights and not make a statement).

If a suspect chooses to invoke his right to counsel during custodial interrogation and does so in an unambiguous and unequivocal manner, interrogation must cease until counsel is made available to the suspect or the suspect personally initiates further conversations with law enforcement. See Edwards v. Arizona, 451 U.S. 477, 484-485 (1981) ("[A]n accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further

interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."). Meanwhile, if the suspect does *not* make an unambiguous and unequivocal invocation, custodial interrogation may continue unless and until the suspect actually invokes his rights in an unambiguous and unequivocal manner. See Davis v. United States, 512 U.S. 452, 461 (1994) ("[A]fter a knowing and voluntary waiver of the Miranda rights, law enforcement officers may continue questioning until and unless the suspect *clearly* requests an attorney." (emphasis added)); see also State v. Wannamaker, 346 S.C. 495, 499, 552 S.E.2d 284, 286 (2001) ("[P]olice officers are not required to cease questioning a suspect unless her request for counsel is unambiguous.").

In order to actually invoke the right to counsel, a suspect is not required to " 'speak with the discrimination of an Oxford don[.]' " Davis, 512 U.S. at 459 (citation omitted). However, the suspect is required to articulate his desire for counsel in a sufficiently clear, unequivocal, and unambiguous manner such that a reasonable police officer would understand his statement to be an actual request for the assistance of an attorney. Id.; see State v. Kennedy, 333 S.C. 426, 430, 510 S.E.2d 714, 715 (1998) ("If the desire for counsel is presented 'sufficiently clearly that a reasonable police officer in the circumstances would understand the statement to be a request for an attorney,' no ambiguity or equivocation exists[.]" (citation omitted)); see also Berghuis v. Thompkins, 560 U.S. 370, 381 (2010) (explaining "good reason" exists to require a suspect to invoke his rights in an unambiguous manner). Significantly, if the best that can be said is the suspect *might* be requesting an attorney through his statement, that possibility is not sufficient to constitute a valid invocation of the right to counsel. See Davis, 512 U.S. at 462 ("[W]e are unwilling to create a third layer of prophylaxis to prevent police questioning when the suspect

might want a lawyer. Unless the suspect actually requests an attorney, questioning may continue.").

In the case sub judice, if Jett wanted a lawyer present before speaking with the officers, all he had to do was say so. See McNeil v. Wisconsin, 501 U.S. 171, 180 (1991) ("If a suspect does not wish to communicate with the police except through an attorney, he can simply tell them that when they give him the Miranda warnings."); see also Berghuis, 560 U.S. at 381 ("A requirement of an unambiguous invocation of Miranda rights results in an objective inquiry that avoids difficulties of proof and . . . provides guidance to officers on how to proceed in the face of ambiguity." (brackets and internal quotations omitted)). However, Jett—who personally confirmed he had been informed of his rights multiple times—did *not* simply ask for a lawyer while speaking with Investigator Jones. Instead, he posed a question—"Where my lawyer at?"—to the officer. Cf. State v. Ash, 611 S.E.2d 855, 860-861 (N.C. Ct. App. 2005) (holding the trial judge committed no error in finding Ash's act of asking where his lawyer was at after being informed of his rights during custodial interrogation was *not* an unambiguous and unequivocal request for counsel); State v. Raber, 938 N.E.2d 1060, 1067-1068 (Ohio Ct. App. 2010) (analyzing whether Raber unequivocally invoked her right to counsel during interrogation and identifying various statements—including "Where's my lawyer?"—that have been determined *not* to constitute unequivocal invocations of that right).

On its face, Jett's inquiry was a request for information about his attorney's location, which did not necessarily imply a clear, unambiguous, and unequivocal desire to have counsel present.[4] See Paulino v. Castro, 371 F.3d 1083, 1088 (9th Cir. 2004) ("Paulino's queries,

[4] Supporting a conclusion Jett's question was not an unequivocal request for counsel, Jett himself appears to acknowledge its inherently ambiguous nature by maintaining on appeal "[a]t the least"

'Where's the attorney?' and 'You mean it's gonna take him long to come?', could be construed as inquiries into the location and availability of an attorney, rather than the assertion of Paulino's subjective desire for a lawyer at that time."); see also State v. Mattox, 390 P.3d 514, 533 (Kan. 2017) ("A reasonable officer would not have construed this question as an *unequivocal* request to have a lawyer present."). While it was *possible* Jett intended his inquiry to communicate a desire for the assistance of counsel, it did *not*, in fact, clearly communicate such a desire as it reasonably could have been interpreted as a genuine request for information or as a defiant expression of Jett's displeasure with his circumstances at the time.[5] See Cooper v. State, 961 S.W.2d 222, 226 (Tex. App. 1997) (concluding Cooper's act of repeatedly asking where his lawyer was did not constitute an unequivocal invocation of his right to counsel that required interrogation to cease and, instead, "was a facetious expression of defiance"); see also McNeil, 501 U.S. at 178 ("[T]he *likelihood* that a suspect would wish counsel to be present is not the test for applicability of Edwards."); cf. State v. Aleksey, 343 S.C. 20, 31, 538 S.E.2d 248, 253-254 (2000) ("We conclude [Aleksey]'s statement, 'That's all I've got to say,' was not an unequivocal invocation of his right to discontinue questioning. In context, the statement was ambiguous, indicating either a desire to discontinue questioning or simply the end of his story." (footnote omitted)). Under those circumstances, Jett's inquiry was not an unambiguous and unequivocal invocation of his right to counsel, and the fact it *might* have been an attempt at an invocation did

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it was "sufficient enough" to warrant a request for clarification on the part of the officer. (Cert. P. p. 9).

[5] Importantly, Jett bore the responsibility to unequivocally invoke his right to counsel if he wished to have counsel present during custodial interrogation, and the officer had no duty to seek clarification of what Jett actually intended by posing his question. See Davis, 512 U.S. at 461-462 ("[W]e decline to adopt a rule requiring officers to ask clarifying questions. If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him.").

not make it one. See Davis, 512 U.S. at 461 ("[I]f we were to require questioning to cease if a suspect makes a statement that *might* be a request for an attorney, this clarity and ease of application would be lost. Police officers would be forced to make difficult judgment calls about whether the suspect in fact wants a lawyer even though he has not said so, with the threat of suppression if they guess wrong.").

Because Jett did not clearly, unambiguously, and unequivocally invoke his right to counsel through his inquiry, Investigator Jones was not required to immediately terminate her questioning of Jett since no unambiguous and unequivocal invocation of the right to counsel had yet been made, and Jett's ensuing statements could properly be admitted into evidence during trial.[6] See id. at 461-462 ("If the suspect's statement is not an unambiguous or unequivocal request for counsel, the officers have no obligation to stop questioning him."); see also Berghuis, 560 U.S. at 382 ("If an ambiguous act, omission, or statement could require police to end the interrogation, police would be required to make difficult decisions about an accused's unclear intent and face the consequences of suppression 'if they guess wrong.' "); cf. Matthews v. State, 666 A.2d 912, 917-918 (Md. Ct. Spec. App. 1995) ("Appellant complains that he did, in fact, request an attorney by asking two or three times, 'Where's my lawyer?' The trial court ruled that this interrogative was not tantamount to a request for counsel. We agree. . . . Even if we were to concede that Matthews's questions, 'Where's my lawyer?,' might have indicated that he wanted the assistance of counsel, as we read the language of Davis, that is not enough to require the immediate cessation of interrogation. While we can speculate that it *might* have been such a request *in appellant's mind*, the statement *to the officers* was not unambiguous and unequivocal.

[6] Significantly, Investigator Jones *did* ultimately terminate her questioning of Jett when he told her to ask his lawyer if she wanted to know anything else, which demonstrated she understood questioning had to cease when a suspect unequivocally invoked his rights. (State's Ex. # 54).

As the Davis Court held, 'might,' in terms of Miranda, is not enough." (footnote omitted)). Accordingly, the trial judge did not abuse his broad discretion by denying Jett's motion to suppress his statements, which is strongly demonstrated by the fact reasonable minds—including the judges of the Court of Appeals—can at least disagree on whether Jett's inquiry was an unequivocal invocation of his right to counsel. See Wannamaker, 346 S.C. at 500, 552 S.E.2d at 287 (finding the trial judge did not abuse his discretion by admitting Wannamaker's statement after concluding she did not unequivocally invoke her right to counsel before making it); see also Bradley v. Com., 327 S.W.3d 512, 516 (Ky. 2010) ("Stated another way, '[i]f reasonable minds could differ on whether a request for an attorney had been made, the language is perforce ambiguous or equivocal.' " (brackets in original and footnote omitted)); cf. United States v. Delgado-Marrero, 744 F.3d 167, 195 (1st Cir. 2014) ("Under [the abuse of discretion] standard, we will not disturb such a decision if reasonable minds could disagree about the proper ruling."); United States v. Calabrese, 572 F.3d 362, 369 (7th Cir. 2009) (recognizing there is no abuse of discretion when reasonable minds can disagree with a trial judge's evidentiary ruling); United States v. Martin, 833 F.2d 752, 756 (8th Cir. 1987) ("When judges can look at the same affidavit and come to differing conclusions, a police officer's reliance on that affidavit must, therefore, be reasonable."). Jett's petition for a writ of certiorari should be denied.

B. Harmlessness of Any Error in the Admission of Jett's Statements to Investigator Jones Assuming the Conclusions of Both the Trial Judge and the Court of Appeals Were Wrong

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. State v. Baccus, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006); see State v. Northcutt, 372 S.C. 207, 217, 641 S.E.2d 873, 878 (2007) ("Determining the

trial judge committed error is the first step of our analysis. Next we must determine whether the error was harmless."). When reviewing an error in the admission of evidence, the harmlessness of such an error generally depends on the materiality of the evidence in relation to the case as a whole. State v. Haselden, 353 S.C. 190, 196, 577 S.E.2d 445, 448 (2003); see State v. Wiley, 387 S.C. 490, 497, 692 S.E.2d 560, 564 (Ct. App. 2010) ("No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case."). Importantly, an error is harmless beyond a reasonable doubt if it did not contribute to the verdict obtained. State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008); see United States v. Hastings, 461 U.S. 499, 509 (1983) ("[T]he [United States Supreme] Court has consistently made clear it is the duty of a reviewing court to consider the trial record as a whole and to ignore errors that are harmless, including most constitutional violations[.]").

In the case at bar, even assuming the trial judge and the Court of Appeals somehow erred by finding Jett did not unambiguously and unequivocally invoke his right to counsel during his conversation with Investigator Jones, any error resulting from the admission of the evidence of his statements to the investigator was entirely harmless for several different reasons. Initially, any error was harmless because the challenged evidence was somewhat cumulative to evidence of Jett's incriminating statements to Officer Gowdy, who testified Jett spontaneously denied knowing anything about a gun despite not being asked about a gun, claimed his gloves were "walking gloves," and attempted to explain the fact he was not wearing a coat or jacket in thirty-degree weather by asserting it was not actually cold at the time. See State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); see also State v. Orozco,

392 S.C. 212, 218, 708 S.E.2d 227, 230 (Ct. App. 2011) ("[A]s a general rule, any guilty act or conduct on the part of the accused is admissible as some evidence of consciousness of guilt."). Furthermore, any error was entirely harmless in light of the other evidence presented during trial that overwhelmingly established Jett's guilt for the charged crimes, which included the evidence and testimony establishing Jett was discovered hiding underneath a vehicle in close proximity to the scene of a violent home invasion that had just occurred at approximately 3:30 a.m. after two of the robbers had just fled in the direction in which he was found, Jett resisted the officers' efforts to take him into custody, Jett was wearing gloves just like one of the robbers had been wearing and was only wearing a t-shirt despite the fact the temperature outside was "very cold" at that time, clothing like the robbers had been wearing was found just a few feet away from where he was hiding and had his DNA on it, many items linked to the crimes were found between where Jett was located and the victim's home, and Jett made incriminating statements to Officer Gowdy after he was physically subdued. See State v. Gathers, 295 S.C. 476, 480-481, 369 S.E.2d 140, 143 (1988) (finding an error to be harmless beyond a reasonable doubt in light of the overwhelming evidence of the appellant's guilt); see also State v. Freely, 105 S.C. 243, 250, 89 S.E. 643, 645 (1916) ("The flight of one charged with crime has always been held to be some evidence tending to prove guilt. Solomon wrote as a proverb the 'wicked flee when no man pursueth;' and Shakespeare made guilty Hamlet to soliloquize that 'conscience does make cowards of us all.' "); State v. Al-Amin, 353 S.C. 405, 413, 578 S.E.2d 32, 36 (Ct. App. 2003) (recognizing attempts to run away have always been regarded as some evidence of guilty knowledge and intent); cf. State v. Jenkins, 412 S.C. 643, 652, 773 S.E.2d 906, 910 (2015) (finding any error resulting from the improper admission of DNA evidence linking Jenkins to a violent sexual assault was harmless beyond a reasonable doubt because, "[n]otwithstanding the

DNA evidence, there was abundant, independent evidence in the record from which the jury could have found [Jenkins] guilty"); State v. Allen, 269 S.C. 233, 242, 237 S.E.2d 64, 68 (1977) ("In any event, however, the overwhelming proof of guilt rendered harmless the admission of the evidence in question. The positive identification of Allen by the victims, the possession of the stolen gun by appellants, the wig obtained pursuant to the search warrant and admitted without objection, and the walkie-talkie admitted without objection rendered any verdict other than guilty most unlikely.").

In light of the cumulative nature of the challenged evidence to other properly-admitted incriminating statements made by Jett coupled with the existence of the other overwhelming evidence of guilt presented during trial, any error that possibly could have been committed in connection to the admission of the evidence of Jett's statements to Investigator Jones was entirely harmless and could have had no impact on the outcome of Jett's case. See State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); see also State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."). Accordingly, Jett's convictions were properly affirmed on appeal even assuming an error had somehow occurred during trial. See State v. Bryant, 369 S.C. 511, 518, 633 S.E.2d 152, 156 (2006) ("[A]ppellate courts will not set aside convictions due to insubstantial errors not affecting the result."). Jett's petition for a writ of certiorari should be denied.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

MARK R. FARTHING
Assistant Attorney General

EDGAR LEWIS CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY: _____
Mark R. Farthing

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

ATTORNEYS FOR RESPONDENT

August 27, 2018

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2018-001336

THE STATE,

Respondent,

vs.

ANTWAN JAMAL JETT,

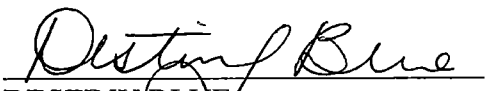
Petitioner.

PROOF OF SERVICE

I, Destiny Blue, certify I have served the within Return to Petition for Writ of Certiorari on Petitioner by sending two copies of the same to:

LaNelle Cantey DuRant, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 27th day of August, 2018.



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