

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Allendale County
R. Lawton McIntosh, Circuit Court Judge

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SC Court of Appeals

THE STATE,

Respondent,

v.

ROBERT LEE MILLER, III,

Appellant.

Appellate Case No. 2017-001347

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I.

Did the court err in sentencing appellant to fifty-five years imprisonment, a *de facto* life sentence, for an offense committed as a juvenile where the court failed to place the burden of proving appellant irreparably corrupt beyond a reasonable doubt on the state, and where the court did not find appellant was irreparably corrupt, which is a finding that is necessary to sentence a juvenile to a *de facto* life sentence pursuant to the Eighth Amendment to the United States Constitution?

II.

Did the trial judge violate appellant's rights pursuant to the Fifth and Fourteenth Amendments to the Constitution by permitting the introduction of statements he gave during custodial interrogation where the totality of the circumstances, including, but not limited to appellant's age, appellant's low intellectual functioning, and the promises and threats issued by law enforcement, indicated the statements were not given pursuant to a voluntary, knowing, and intelligent waiver of his rights?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES ON APPEAL

I.

Did the circuit court err in failing to make a finding of irreparable corruption where such a finding is not required by case law prior to sentencing a juvenile to a term-of-years sentence for murder because such a sentence allows for the possibility of release, where Eighth Amendment jurisprudence does not put the burden on the State to prove appellant is irreparably corrupt beyond a reasonable doubt before sentencing in any circumstance, and where the relief granted by juvenile resentencing in our state does not extend to any sentence other than life without parole, such as a *de facto* life sentence?

II.

Did the circuit court err in ruling appellant's statements were admissible where the testimony at the pre-trial *Denno* hearing demonstrated appellant made a knowing, voluntary waiver of his *Miranda* rights and was not coerced or intimidated, even in light of his age under the totality of the circumstances, and where any error was harmless beyond a reasonable doubt and cumulative to other confessions made to friends and properly admitted at trial?

STATEMENT OF THE CASE

Police arrested appellant and two other young men for the murder of eighty-six-year-old Willie Johnson. (2015 Tr.p.4, line 4-p.5, line 2; 2016 Tr.p.193, lines 6-11). Because appellant was fifteen at the time of the crime, he was charged as a juvenile and the State moved to transfer jurisdiction from Family Court to the Court of General Sessions. (2015 Tr.p.4, lines 4-15; p.5, line 3-p.9, line 6). The Honorable Gerald C. Smoak, Jr., heard arguments from the parties on March 24, 2015. (2015 Tr.p.1). At the end of the hearing, Judge Smoak transferred jurisdiction. (2015 Tr.p.24, line 12-p.25, line 22; R* (order)).

Subsequently, an Allendale County grand jury indicted appellant for murder. (R.* (indictment)). Appellant proceeded to a jury trial on July 11, 2016, before the Honorable R. Lawton McIntosh, and was represented by Stephanie Smart-Gittings. (2016 Tr.pp.1-2). Sean Thornton and Ann Fitz of the Fourteenth Circuit Solicitor's Office represented the State. (2016 Tr.p.2).

On July 14, 2016, the jury found appellant guilty of murder. (2016 Tr.p.455, line 24-p.456, line 4). Judge McIntosh deferred sentencing. After an individualized sentencing hearing held June 5, 2017, pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014), the judge sentenced appellant to fifty-five years for murder. (2017 Tr.p.42, line 25-p.43, line 2).

This appeal follows.

STATEMENT OF FACTS

A man checking on an eighty-six-year-old deacon from his church found the deacon lying on the floor of his home and with his hands tied behind his back. (2016 Tr.p.146, lines 16-25; p.147, line 13-p.148, line 25; p.149, line 21-p.150, line 12; p.193, lines 6-11). The man called 911 and told officers he thought Willie Johnson was dead. (2016 Tr.p.151, lines 1-6; p.151, line 20-p.152, line 15).

The first officer to arrive found the victim face down, his hands tied behind his back, and a black, plastic bag tied over his head. (2016 Tr.p.128, lines 4-19; p.133, lines 15-21; p.134, lines 5-11). Detective Quantique Manor (Manor) testified she saw Mr. Johnson's wallet next to his body and pieces of his dentures scattered around the room. (2016 Tr.p.134, line 22-p.135, line 9). Manor also stated she previously responded to false alarm calls at the victim's house and noticed the temperature of the home was much cooler than usual. (2016 Tr.p.136, line 18-p.138, line 17).

A SLED crime scene analyst took pictures of the pieces of Mr. Johnson's shattered dentures, which were found near his body and on a television stand. (2016 Tr.p.206, line 19- p.209, line 1; p.211, line 25-p.213, line 4). A box that previously held silver was found broken and empty inside the home. (2016 Tr.p.219, line 20-p.220, line 3). Further, Manor searched outside the home and found an abandoned safe in a ditch which had been pried open with a tool that was also left at the scene. (2016 Tr.p.138, line 18-p.140, line 16). There were no defensive wounds on the victim's body. (2016 Tr.p.202).

To connect appellant to the crime, the State presented evidence of a print found in the victim's blood on the wall which an expert later determined matched appellant's print. (2016 Tr.p.260, line 22-p.262, line 22; p.263, lines 4-21; p.267, lines 4-8). The State also presented

multiple admissions of involvement. Johnathan Capers (Capers) testified he had known appellant all his life. (2016 Tr.p.277, lines 6-22). Capers stated appellant told him about his involvement in the murder. (2016 Tr.p.278, lines 5-9). Capers testified appellant admitted he broke into a home with his brother and another young man to "hit a lick." (2016 Tr.p.278, line 10-p.279, line 25). Appellant told Capers they knocked on the victim's door, appellant asked him if he had any sugar, the victim told them he did not trust them because he had been robbed before, so they hit him, he fought back, and they robbed him. (2016 Tr.p.280, line 1-p.281, line 1). Capers testified appellant admitted beating the eighty-six-year-old victim. (2016 Tr.p.281, lines 2-10). Capers stated appellant told him they tied the victim up, put a bag over his head, and beat him, and further admitted they took some money and a gun. (2016 Tr.p.281, lines 11-22; p.282, lines 2-4). Tiffany Sabb (Sabb), Capers's mother, also testified appellant admitted his involvement in the murder. (2016 Tr.p.287, lines 19-25; p.288, lines 1-11; p.288, line 23-p.289, line 1). Sabb stated appellant told her it was not his idea, his two co-defendants planned the crime, and "pulled [him] into it." (2016 Tr.p.289, line 2-p.290, line 20). Sabb testified appellant explained they kicked in the victim's door and "tortured the old man" because "it was too late" and he "had done seen all three of them." (2016 Tr.p.291, line 7-p.292, line 4). Appellant also said, at one point, he knew the victim was still alive and breathing because the bag over his head was moving. (2016 Tr.p.303, lines 8-13).

After appellant's arrest, police interviewed him and he again admitted his involvement. Chief Marvin Williams (Williams) of the Fairfax Police Department read appellant his rights, appellant indicated he was willing to make a statement, and answer questions without an attorney

present.¹ (2016 Tr.p.313, line 20-p.316, line 25). Appellant told Williams he pushed Mr. Johnson down, beat him and robbed him, and put the bag over his head because he kept looking at them. (2016 Tr.p.320, line 15-p.321, line 8). Appellant spoke next to SLED agents Natasha Merrell (Merrell) and Richard Johnson (Johnson). Merrell was the case agent and testified appellant wanted to speak with only her at first, but he kept giving her inconsistent answers. (2016 Tr.p.362, lines 18-25; p.363, line 13-p.364, line 7; p.369, line 22-p.370, line 14). However, appellant later began to admit his involvement. (2016 Tr.p.371, line 7-p.372, line 7). Johnson testified appellant told them he did not plan the crime, but he admitted he hit the victim and put the bag over his head. (2016 Tr.p.334, line 19-p.337, line 24). Moreover, appellant acknowledged he heard SLED was looking for him because he was accused of murder. (2016 Tr.p.344, lines 14-22).

Following closing arguments, the trial court charged the jury extensively, including an instruction on accomplice liability. (2016 Tr.p.398, line 13-p.419, line 3). The jury found appellant guilty of murder. (2016 Tr.p.455, line 24-p.456, line 4). As will be discussed in more detail below, the court deferred sentencing so the parties could hold an individualized sentencing hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014).

¹ Appellant was being interviewed by Fairfax police regarding an unrelated incident. (2016 Tr.p.42, line 14-p.43, line 22). The portion of the statement made to Williams was not recorded or written down, and once appellant referred to the murder in Allendale, Williams stopped asking him questions and turned the interview over to SLED agents. (2016 Tr.p.46, lines 15-25). The SLED portion of the interview was recorded and appellant's statement was redacted prior to trial to remove all references to the unrelated incident in Fairfax. (2016 Tr.p.69, line 16-p.70, line 21).

I.

The circuit court did not err in failing to make a finding of irreparable corruption where such a finding is not required by case law prior to sentencing a juvenile to a term-of-years sentence for murder because such a sentence allows for the possibility of release, particularly where *Miller* and *Aiken* do not extend to any sentence other than life without parole, such as a *de facto* life sentence; regardless, Supreme Court jurisprudence does not put the burden on the State to prove appellant is irreparably corrupt beyond a reasonable doubt.

The sentencing judge did not err in failing to make a finding that appellant was permanently incorrigible. A careful reading of *Miller* indicates the Supreme Court does not mandate such a finding when sentencing a juvenile homicide offender to any sentence, particularly a term-of-years less than life without parole. Further, *Miller* does not place the burden on the State of proving irreparable corruption beyond a reasonable doubt.

The sentencing judge considered all evidence before him and made findings of fact before sentencing appellant to a term of years which did not implicate the need to determine whether appellant was permanently incorrigible because he is afforded the possibility of release at the end of his sentence. Contrary to appellant's assertions in his brief, neither *Miller* nor *Aiken* extended relief to those sentenced to anything other than life without parole, including a *de facto* life sentence. Further, neither Court has indicated what the length of such a sentence would be. Importantly, as will be discussed below, while the Supreme Court requires an examination of specific factors prior to sentencing a juvenile to life without parole, it does not constitutionally require formal fact findings. However, as noted, many of Court's concerns were not implicated here because appellant did not receive a life sentence.

Accordingly, appellant's term-of-years sentence is not cruel and unusual punishment under the Eighth Amendment and the judge did not err in his sentencing determination.

How the Issue Was Raised

Individualized Sentencing Hearing

On June 5, 2017, the trial court held an individualized sentencing hearing pursuant to *Aiken v. Byars*, 410 S.C. 534, 765 S.E.2d 572 (2014). (2017 Tr.pp.1-2). At the start of the hearing, defense counsel argued the presumption was appellant was not irreparably corrupt and the State had the burden of proving it before the court could consider the *Miller*² factors.³ (2017 Tr.p.3, line 21-p.4, line 25). The court disagreed and determined the standard he was required to follow as governed by *Aiken* was an examination of the *Miller* factors. (2017 Tr.p.5, line 1-p.6, line 25).

The State then proceeded to articulate its argument for a life sentence. The assistant solicitor maintained appellant's family and home life should not be the only deciding factor in sentencing because of the brutal nature of the crime. (2017 Tr.p.9, line 17-p.10, line 5). The solicitor reminded the trial court about the facts of the case and asserted appellant took an active role in the murder, given his admission he hit the victim and wrapped a trash bag taken from appellant's home around the victim's head which indicated planning and premeditation. (2017 Tr.p.8, line 6-p.9, line 16; p.10, line 6-p.11, line 6). Appellant demonstrated a propensity for violence, including an attempted murder charge that was dismissed due to the murder conviction and previous juvenile adjudications for second-degree burglary, third-degree assault and battery, and petty larceny. (2017 Tr.p.12, line 8-p.13, line 11).

The victim's son William Johnson (Teddy) spoke to the court. (2017 Tr.p.14, line 23-

² *Miller v. Alabama*, 567 U.S. 460 (2012).

³ The five factors are: (1) the hallmark features of youth; (2) the family and home environment; (3) circumstances of the homicide; (4) incompetency associated with youth and how they navigate the legal system; and; (5) the possibility of rehabilitation. *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (citing *Miller*, 567 U.S. at 477-78).

p.15, line 1). Teddy told the court his father was active in his church, was always there for his children, and cared for his family. (2017 Tr.p.15, lines 4-21). Teddy stated he lived with a lot of pain because his father's death was senseless. (2017 Tr.p.15, line 22-p.16, line 5). Teddy grew up in Allendale and it was hard to imagine someone being so mean and cruel, especially given the standards his father raised him to have. (2017 Tr.p.16, lines 6-10). Teddy asked the court to give appellant a life sentence, but the family would leave the decision in the court's discretion. (2017 Tr.p.16, line 13-p.17, line 17).

Defense counsel reminded the trial court about the premise of the case law regarding juvenile sentencing—juveniles have diminished levels of culpability and were less deserving of the most severe punishment because they have greater prospects for reform. (2017 Tr.p.18, line 2-p.19, line 12). Counsel reiterated her earlier argument the court was required to make a finding of irreparable corruption prior to sentencing appellant to life and the burden was on the State to prove the fact. (2017 Tr.p.20, lines 8-21).

Regarding the *Miller* factors, defense counsel stated the hallmark features of youth applied to appellant because he was fifteen-years-old at the time of the crime, and he enjoyed cartoons, used a security blanket until he was twelve, wanted to work but was too young, felt older because he had experienced a lot, and if he was given the opportunity he would have made different choices. (2017 Tr.p.20, line 22-p.22, line 9). Counsel's examination of appellant's home and family environment indicated he was in foster care from a young age, had problems in school, and tried to take care of everyone while no one took care of him. (2017 Tr.p.22, line 10-p.24, line 21).

Moving on to the third factor, defense counsel stated the circumstances of the homicide indicated appellant had a low IQ of 76 and was influenced by peer pressure given one of his co-

defendants was his brother. (2017 Tr.p.27, lines 12-21). Counsel also indicated appellant had ADHD, and his father had expressed concern about his level of maturity. (2017 Tr.p.25, line 14-p.26, line 17). As for incompetency of youth, counsel stated the record indicated appellant did not understand the legal process, he went to sleep on the floor after his interview with SLED agents, and he answered the questions how officers wanted him to answer. (2017 Tr.p.28, line 5-p.29, line 3).

Finally, defense counsel addressed the fifth factor and stated there was evidence appellant could be rehabilitated given he liked to read and write poetry, and had expressed a desire to get his GED once he got to SCDC and to attend college one day. (2017 Tr.p.24, line 22-p.25, line 4; p.25, lines 5-13; p.30, lines 6-14). Counsel also indicated appellant did well within the structured environment of a correctional institution, had no disciplinary infractions since incarceration, and showed a capacity for rehabilitation. (2017 Tr.p.29, line 10-p.30, line 5). Counsel asked the court to consider the thirty-year minimum sentence. (2017 Tr.p.30, line 15-p.31, line 9).

Prior to sentencing, the trial court made findings related to the *Miller* factors. The court noted appellant had little if any direct parental supervision, but he had an older brother he looked up to and a friend's mother who was there for him. (2017 Tr.p.38, lines 11-20; p.39, lines 14-22). The court found the murder itself was brutal and an impetuous act, and appellant had a history of violent crimes. (2017 Tr.p.38, line 20-p.39, line 13). The court also found there was an indication of some influence by his co-defendants, but found appellant also admitted his direct involvement. (2017 Tr.p.39, line 23-p.40, line 10). As for the incompetencies of youth, the court found appellant dealt well with police, assisted his attorney, and there was no indication he did not understand the process. (2017 Tr.p.40, lines 11-21). The court asked defense counsel to

reiterate the possibility for rehabilitation, before sentencing appellant to fifty-five years for murder. (2017 Tr.p.42, line 25-p.43, line 2).

Defense counsel objected to the failure to make a finding of irreparable corruption and to the sentence, arguing it was the functional equivalent of a life sentence. (2017 Tr.p.43, lines 10-19).

Analysis

Standard of Review

In criminal cases, appellate courts only review errors of law. *State v. Gamble*, 405 S.C. 409, 415, 747 S.E.2d 784, 787 (2013) (citing *State v. Jacobs*, 393 S.C. 584, 586, 713 S.E.2d 621, 622 (2011)). This Court reviews those questions of law *de novo*. *State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012) (citations omitted).

No Finding of Permanent Incurability Required

In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court held mandatory life without parole sentences for juvenile homicide offenders violated the Eighth Amendment's prohibition against cruel and unusual punishment. 567 U.S. at 465, 470. *Miller* did not categorically bar life sentences for juvenile murderers; rather, the Court held only that a sentencing court is required to "take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison." *Id.* at 480. The Court noted the difficulty of distinguishing "the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption." *Id.* at 479-80. Yet, the Court did not articulate "irreparable corruption" as a required factual finding.

In expressing the factors that must be examined prior to sentencing a juvenile to life

without parole, the *Miller* Court held a sentencing authority must consider youth as "more than a chronological fact," but also a circumstance which carries with it immaturity, irresponsibility, and recklessness. *Id.* at 476. Further, the defendant's family background, mental and emotional development, and possibility of rehabilitation must also be considered in assessing his culpability. *Id.* at 476, 478. The Court held a juvenile convicted of murder could still be sentenced to life without parole, but only after an individualized hearing in which the various mitigating factors were considered. *Id.* at 479-80. In other words, *Miller* mandated only that a sentencing court follow a certain process before imposing a particular penalty and did not require specific words be used. *Id.* at 483.

Two years later, our Supreme Court held *Miller* applied retroactively to juveniles in South Carolina previously sentenced to life without parole. *Aiken*, 410 S.C. at 540-41, 765 S.E.2d at 575. Acknowledging *Miller* applied only to mandatory sentencing schemes rather than discretionary schemes such as ours, our Court stated "whether their sentence is mandatory or permissible, any juvenile offender who receives a sentence of life without the possibility of parole is entitled to the same constitutional protections afforded by the Eighth Amendment's guarantee against cruel and unusual punishment." *Aiken*, 410 S.C. at 544, 765 S.E.2d at 577.

The *Aiken* Court held juveniles previously sentenced under our discretionary scheme who received a life without parole sentence were nevertheless entitled to resentencing to allow them "to present evidence specific to their attributes of youth and allow the judge to consider such evidence in light of its constitutional weight." *Id.* at 544, 765 S.E.2d at 577. The Court determined the factors in *Miller* were those which must be considered during the hearings, such as the offender's age and other features of youth, family life, circumstances of the crime, understanding of the legal process, and possibility of rehabilitation. *Id.* at 544-45, 765 S.E.2d at

577-78. Just as the *Miller* court held, our Court explained juveniles could still receive life without parole, but only after "an individualized hearing where the mitigating hallmark features of youth are fully explored." *Id.* at 545, 765 S.E.2d at 578.

In 2016, the United States Supreme Court held its rule in *Miller* was retroactive on state collateral review. *Montgomery v. Louisiana*, 136 S.Ct. 718, 736 (2016). It is notable the Court, when revisiting its holding in *Miller*, did not take the opportunity to constitutionally require judges to make *any* specific or formal factual findings when imposing sentences in juvenile homicide cases. *See id.* at 735 (explaining a sentencing court is not constitutionally required to make any specific findings of fact on the record when sentencing a juvenile offender pursuant to the guidelines of *Miller*). The Court noted *Miller* did not require trial courts to make a finding of fact regarding a child's permanent incorrigibility, which spoke "to the degree of procedure *Miller* mandated in order to implement its substantive guarantee." *Id.* A mandatory life sentence was problematic because it "disregard[ed] the possibility of rehabilitation even when the circumstances most suggest it," i.e. for all but the rare juvenile offender. *Miller*, 567 U.S. at 478. Nothing in *Miller* suggests the judge use any particular verbiage or recite any phrase prior to imposing a sentence.

Miller and the cases applying it repeatedly emphasize the importance of considering actual and potential rehabilitation to infer a level of incorrigibility rather than requiring an actual finding of irreparable corruption, or permanent incorrigibility. *See, e.g., Montgomery*, 136 S.Ct. at 733, 736 (discussing petitioner's submissions which he asserted showed his "evolution from a troubled, misguided youth to a model member of the prison community"); *United States v. Grant*, 887 F.3d 131, 141 (3d Cir. 2018) (quoting *Miller's* requirement to consider the possibility of rehabilitation), *reh'g en banc granted* 905 F.3d 285 (2018); *Landrum v. State*, 192 So.3d 459,

466 (Fla. 2016) (noting the requirement to consider the possibility of rehabilitating the defendant in light of *Miller*). In addition, other courts have also noted expressions of remorse or taking responsibility for prior criminal acts are important evidence of rehabilitation and indications of incorrigibility. See *United States v. Briones*, 890 F.3d 811, 819-20 (9th Cir. 2018) (explaining no finding of "permanent incorrigibility" is required by *Miller* and the record reflected the sentencing judge considered all evidence presented, including statements wherein the offender failed to take responsibility for his actions) (citations omitted). However, many of the concerns regarding sentencing a juvenile homicide offender to life without parole are not implicated here because appellant did not receive such a sentence.

i. Appellant did not receive functional equivalent of a life sentence

The sentencing judge did not err in failing to make a finding regarding "permanent incorrigibility" for two reasons. First, appellant did not receive a life sentence or the functional equivalent of one. He received a valid term-of-years sentence within the statutory range of murder. Appellant received a fifty-five sentence and will be released at the end of that term. Appellant has the possibility of release when his sentence ends. He was already afforded the relief *Miller* contemplates. Neither our courts nor the United States Supreme Court have held the *Miller* rule applied to sentences other than life without parole, such as a *de facto* life sentence or, for that matter, defined or determined what constitutes a *de facto* life sentence. While appellant cited in his brief to cases which found a term-of-years or aggregate sentence were the functional equivalent of life, there are many other courts which have found otherwise. See e.g., *Bunch v. Smith*, 685 F.3d 546, 552 (6th Cir. 2012) (determining until the Supreme Court rules term-of-year sentences resulting in the functional equivalent of life without parole offend the Eighth Amendment, such sentences do not violate clearly established federal law); *Contreras v. Davis*,

716 F. App'x 160, 163 (4th Cir. 2017) (declining to determine whether a 77-year sentence was a *de facto* life sentence that violated *Miller* and *Graham*); *In re Harrell*, 6th Cir. No. 16-1048, 2016 WL 4708184 (Sept. 8, 2016) (denying motion for successive federal habeas corpus petition, because defendant's 60-150 year sentence for murder when he was seventeen was not the functional equivalent of mandatory life without parole; defendant was eligible for parole at seventy-seven-years old); *State v. Nathan*, 522 S.W.3d 881, 893 (Mo. 2017) (en banc) (holding sentencing a juvenile to consecutive, lengthy sentences for multiple non-homicide offenses along with homicide was not the functional equivalent of life without parole); *State v. Ali*, 895 N.W.2d 237, 246 (Minn. 2017) (holding *Miller* did not apply to consecutive life sentences with possibility of release on multiple counts of murder, even if such sentence, in aggregate, was functional equivalent of life without possibility of parole); *Hobbs v. Turner*, 431 S.W.3d 283, 285, 289 (Ark. 2014) (holding an aggregate term of 55 years was constitutional under *Miller* because *Miller* applies only to mandatory sentences of life without parole); *State v. Kasic*, 228 P.3d 410, 414 (Ariz. Ct. App. 2011) (finding a sentence of 139.75 years, exceeding life expectancy, was not constitutionally excessive). A defendant's average life expectancy is not a "guaranteed date of death" and might change depending on his individual health, available healthcare, and other factors such as drug use. It is difficult to draw a line to conclude at what point a juvenile received a *de facto* life sentence so his term-of-years sentence violates the constitution, particularly in this case where no evidence of appellant's individual characteristics was presented at his sentencing hearing.⁴

⁴ Moreover, it is questionable whether the argument regarding a functional equivalent of a life sentence is preserved for this Court's review. Appellant presented no evidence or argument at his sentencing hearing to support the contention he makes on appeal, but simply made the statement following sentencing, "We believe that anything above 38 [years] would be equivalent to life without parole." (2017 Tr.p.43); *see also State v. Johnston*, 333 S.C. 459, 462, 510 S.E.2d

ii. *No formal fact findings constitutionally required*

Second, as discussed above, the sentencing judge was not constitutionally required to make a finding of irreparable corruption nor was it the State's burden to prove the fact. The decision in *Miller* does not require the judge to determine appellant to be "incorrigible." "Instead, it mandates only that a sentencing judge follow a certain process—considering an offender's youth and attendant characteristics—before imposing a particular penalty." *Miller*, 567 U.S. at 483. Put a different way, while the Supreme Court requires an examination of specific factors prior to sentencing a juvenile to life without parole, it does not constitutionally require formal fact findings. *See Montgomery*, 136 S.Ct. at 735 (explaining a sentencing court is not constitutionally required to make any specific findings of fact on the record when sentencing a juvenile offender pursuant to the guidelines of *Miller* and noting *Miller* did not require trial courts to make a finding of fact regarding a child's permanent incorrigibility, which speaks "to the degree of procedure *Miller* mandated in order to implement its substantive guarantee").

The judge properly applied the evidence before him to sentence appellant to fifty-five years for murder. The judge made findings on the record based on the *Miller* factors. (2017 Tr.pp.38-42); *see also Aiken*, 410 S.C. at 544, 765 S.E.2d at 577 (quoting *Miller*, 567 U.S. at 477-78) (listing the factors a sentencing court must consider including; (1) the age of the offender and the hallmark features of youth; (2) his family and home environment; (3) the circumstances of the homicide offense, including the extent of the offender's participation; (4) the offender's ability to deal with legal process; and, (5) the possibility of rehabilitation). The judge then sentenced appellant to fifty-five years for murder based on his findings, his

423, 425 (1999) ("[A] challenge to sentencing must be raised at trial, or the issue will not be preserved for appellate review."). However, given the timely, albeit, short objection following the general statement, respondent addresses the argument out of an abundance of caution.

observations during trial, and the evidence presented at the sentencing hearing. (2017 Tr.pp.42-43). The record demonstrates the judge acted within his discretion to tailor a sentence appropriate for appellant given all the information he had before him. Our Supreme Court in *Aiken* noted it was not prepared to set out "a definite resentencing procedure," but explained it trusted trial courts to exercise their discretion wisely to sentence juveniles within "the new constitutional jurisprudence." *See Aiken*, 410 S.C. at 545 n.10, 765 S.E.2d at 578 n.10 ("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."); *see also Wasman v. United States*, 468 U.S. 559, 563 (1984) (holding a judge or 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). The judge considered and gave effect to the mitigating evidence presented during the individualized sentencing hearing as required. Therefore, because the sentencing judge was not required to make a finding of "permanent incorrigibility"⁵ and

⁵ Appellant does not indicate in his brief what such a finding would require from a sentencing court. Several states and the Seventh Circuit have determined a sentencing authority is not required to make a finding of "irreparable corruption" and the United States Supreme Court has not been inclined to review those decisions. *See State v. Ramos*, 387 P.3d 650, 659, 665-55) (Wash. 2017) (explaining *Miller* does not required the state assume the burden of proving a standard range sentence should be imposed or make an explicit finding the offense reflects irreparable corruption on the part of the juvenile), *cert. denied* 138 S.Ct. 467 (2017); *State v. Valencia*, 386 P.3d 392, 395-96 (Ariz. 2016) (finding *Miller* did not require trial courts to make a finding of fact regarding a child's incorrigibility), *cert. denied*, 138 S.Ct. 467 (2017); *Newton v. State*, 83 N.E.3d 726, 743 (Ind. Ct. App. 2017) (quoting *Montgomery*, 136 S.Ct. at 735) (noting *Montgomery* did not "impose a strict procedural requirement on courts in sentencing such as requiring trial courts 'to make a finding of fact regarding a child's incorrigibility'"); *Brown v. State*, 2016 WL 1562981 at *6 (Tenn. Ct. App. Apr. 15, 2016) ("Importantly, the Court stopped just shy of requiring 'trial courts to make a finding of fact regarding a child's incorrigibility,' leaving that task, instead, to 'the State's sovereign administration of their criminal justice systems.'"), *cert. denied* 137 S.Ct. 1331 (2017); *see also Kelly v. Brown*, 851 F.3d 686, 687-88

because he did not misapprehend or ignore any of the evidence regarding appellant's youth, the judge did not err in determining appellant's sentence.

(7th Cir. 2017) ("all [a juvenile is] entitled to under *Miller*" is for a sentencing court to have "considerable leeway" and to have "considered his age when deciding on the appropriate term").

II.

The circuit court properly ruled appellant's statements were admissible because considering the testimony at the pre-trial *Denno* hearing, the totality of the circumstances demonstrated appellant made a knowing, voluntary waiver of his *Miranda* rights and was not coerced or intimidated into making the statements, even in light of his age.

The trial court did not abuse its discretion in determining appellant's statements were admissible by a preponderance of the evidence. Law enforcement did not coerce appellant into providing any of the statements at issue because the pre-trial *Denno* record is clear appellant voluntarily waived his right to remain silence and right to an attorney, even when considering his age and the circumstances of his interview. Moreover, any error in the trial court's preliminary ruling is harmless because appellant admitted his guilt to two other people, including a lifelong friend and a woman he thought of as a mother, who properly testified about the confessions at trial. Accordingly, the court's ruling was proper and any error is harmless beyond a reasonable doubt.

How the Issue Was Raised

Prior to trial, several law enforcement officials testified during a *Jackson v. Denno*, 378 U.S. 368 (1964), hearing regarding the admissibility of appellant's statements. Fairfax Police Chief Marvin Williams (Williams) testified appellant was at the department being questioned about an unrelated incident, he was not in handcuffs, and he was not in custody at the time. (2016 Tr.p.39, lines 9-13; p.42, line 14-p.43, line 22). Williams advised appellant of his *Miranda*⁶ rights and appellant signed the adult waiver of rights form, completing the form and initialing next to each individual right. (2016 Tr.p.39, line 17-p.42, line 1). According to Chief Williams, appellant appeared to understand the conversation regarding waiver. (2016 Tr.p.50,

⁶ *Miranda v. Arizona*, 384 U.S. 436 (1966).

lines 1-21). Appellant did not ask for an attorney at any time during the questioning and Williams stated no one threatened or coerced appellant into talking. (2016 Tr.p.43, line 23-p.44, line 9; p.50, lines 22-25). Williams testified appellant did not appear to be under the influence of any drugs or alcohol and answered all questions properly. (2016 Tr.p.56, lines 11-20). Williams stated appellant was at the police department for a couple of hours and never asked to leave. (2016 Tr.p.53, lines 7-14).

Chief Williams testified he asked appellant about an unrelated shooting of a teenager in Fairfax when appellant volunteered information about the murder, specifically telling Williams he thought Williams wanted to question him about the "beating of the old man in Allendale." (2016 Tr.p.44, line 10-p.45, line 2). Appellant told Williams he and his co-defendants went to the victim's house to rob him, it got out of hand, and they did not mean to kill him, but he saw their faces, so they put a bag over his head and beat him. (2016 Tr.p.45, line 3-p.46, line 2). Williams testified there was no audio or video recording or written version of the statement, and once appellant admitted to the murder, Williams stopped asking him questions about it. (2016 Tr.p.46, lines 15-25). Williams notified SLED which was investigating the murder. (2016 Tr.p.46, lines 6-14).

SLED agent Richard Johnson (Johnson) testified he interviewed appellant which was recorded, and he did not give an additional *Miranda* warning because it had already been properly done by Williams. (2016 Tr.p.57, lines 15-16; p.57, line 22-p.59, line 13). Johnson stated there was another agent in the room, along with Tiffany Sabb for a time, who appellant stated was like a mother to him. (2016 Tr.p.60, lines 11-24). Johnson testified there was an indication appellant may have been smoking marijuana at some point prior to the interview, but Johnson testified he interviewed appellant for an hour and he did not appear to be under the

influence of any drugs nor did he have any trouble understanding or communicating with the agents. (2016 Tr.p.59, line 24-p.60, line 3; p.61, lines 7-23; p.64, lines 4-6). Johnson testified appellant never indicated he did not want to talk to agents and did not ask for an attorney. (2016 Tr.p.60, line 25-p.61, line 6). However, at one point, appellant wanted Johnson to leave because Johnson believed he appeared intimidating, so Johnson left. (2016 Tr.p.65, lines 4-11). Johnson reentered the room at the request of the other agent and he told appellant it would be best if he "came clean" and appellant began to admit his involvement in the murder. (2016 Tr.p.63, lines 4-10; p.65, lines 4-p.67, line 8). Johnson testified he never promised appellant any leniency in sentencing, and he would have stopped questioning appellant if he ever asked him to. (2016 Tr.p.63, lines 19-25; p.67, lines 9-19).

SLED agent Natasha Merrell (Merrell) was the case officer in charge of the murder investigation.⁷ (2016 Tr.p.68, lines 19-20; p.69, lines 1-3). She testified she also interviewed appellant, he never asked for his mother, and he was comfortable with Sabb acting as his representative. (2016 Tr.p.69, lines 8-13; p.71, line 14-p.72, line 1). Merrell stated appellant made incriminating statements on the recorded interview, and when he asked if they would let him go, Merrell told him no, he was going to jail given his admissions. (2016 Tr.p.72, lines 18-22; p.73, line 8-p.74, line 5).

Appellant did not testify.⁸

The State argued under the totality of the circumstances, appellant's statements were

⁷ As noted previously, appellant's recorded statement was redacted prior to trial to remove all references to the unrelated incident in Fairfax. (2016 Tr.pp.69-70).

⁸ A public defender who represented appellant before he was transferred to General Sessions Court testified the psychologist who conducted the pre-waiver evaluation went over the *Miranda* rights with appellant and he told her he did not understand them and she had to explain them to him. (2016 Tr.p.81, lines 14-p.84, line 5).

admissible. The State noted age was only one factor to consider and there was no requirement a parent be with a juvenile during questioning. (2016 Tr.p.85, lines 5-19). The State submitted no one threatened appellant and agents told him he could stop talking at any time. (2016 Tr.p.86, lines 1-13). Further, when appellant said he wanted to go home and agents said he could not, appellant continued to talk and did not ask for an attorney. (2016 Tr.p.86, lines 14-24). Importantly, the State asserted when appellant finally said he was done answering questions, agents stopped interviewing him and appellant's will was never overborne. (2016 Tr.p.86, line 5-p.87, line 16). The State argued Johnson told appellant he was not a judge or a lawyer, so he could not promise him anything, but did tell him he might minimize his time if he cooperated. (2016 Tr.p.87, line 17-p.88, line 7). The State argued under the totality of the circumstances test, it met its burden to admit the statements. (2016 Tr.p.88, lines 8-14).

In rebuttal, defense counsel argued for suppression given appellant was fifteen years old at the time he was interviewed and he was not free to leave. (2016 Tr.p.89, lines 2-14). Counsel argued appellant was coerced into giving the statements by Johnson who intimidated him, appellant was crying, there was no guardian in the room most of the time, and there were concerns about his level of intelligence. (2016 Tr.p.89, line 15-p.91, line 16). Counsel also noted it appeared to her appellant was telling Johnson what he wanted to hear rather than the truth. (2016 Tr.p.91, line 17-p.93, line 2). Counsel argued appellant was intimidated into giving the statements, and under the totality of the circumstances the statements were not voluntarily and intelligently given. (2016 Tr.p.93, lines 3-23).

The trial court took the matter under advisement to consider the arguments, and ruled the following morning. (2016 Tr.p.93, line 24-p.94, line 7). The court considered the *Denno* testimony under the totality of the circumstances, looking to determine whether, by a

preponderance of the evidence, appellant's statement appeared voluntary and noted age was just one factor to consider. (2016 Tr.p.100, lines 7-24). The court ruled the statements were admissible under this standard because: (1) there was no undue police coercion; (2) while appellant's formal education level was limited to the eighth grade due to his age at the time, he was street smart and the interview indicated he was trying to set up an alibi; (3) police did not misrepresent the situation to appellant, threaten him or promise leniency for his cooperation; and, (4) any isolation was minor as appellant indicated he was fine talking to the agents. (2016 Tr.p.100, line 25-p.104, line 15). The court ruled the statements were admissible at trial subject to objection and it was up to the jury to decide if the State met its burden of proving voluntariness beyond a reasonable doubt. (2016 Tr.p.104, lines 16-20).

Defense counsel renewed the motion to suppress at trial and it was denied. (2016 Tr.p.249, line 11-p.251, line 10). Williams, Johnson, and Merrell then testified to substantially similar information as they did during the *Denno* hearing. (2016 Tr.p.313, line 20-p.324, line 15; p.329, line 5-p.357, line 11; p.362, line 18-p.372, line 7). The statements were admitted subject to the trial court's prior rulings. (2016 Tr.p.368, lines 10-18). Further, defense counsel renewed the motion to suppress the statements at the end of the State's case which the court again denied. (2016 Tr.p.385, lines 12-15).

Analysis

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). An appellate court is bound by the trial judge's factual findings unless they are clearly erroneous. *Id.* at 48, 625 S.E.2d at 220. The appellate courts are bound by findings of fact findings in pre-trial hearings when the findings are

supported by the evidence, not clearly erroneous, or controlled by error of law. *State v. Amerson*, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993).

The trial court determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. *State v. Washington*, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988). The jury must determine whether the statement was freely and voluntarily given beyond a reasonable doubt. *Id.* at 55-56, 370 S.E.2d at 612. On appeal, the conclusion of the trial court as to the voluntariness of a statement will not be reversed unless governed by an abuse of discretion. *State v. Von Dohlen*, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996). When reviewing a trial court's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

Law Enforcement Did Not Coerce Appellant Into Providing Statements

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under *Miranda*. *Miranda v. Arizona*, 384 U.S. 436 (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. *Saltz*, 346 S.C. at 136, 551 S.E.2d at 252. 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 (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." *Moses*, 390 S.C. at 513, 702 S.E.2d at 401; *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

"[E]ach case requires careful scrutiny of all the surrounding circumstances." *State v. Pittman*, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007). The factors to be considered when making a voluntariness determination have been broadly defined by our courts and include: "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.* at 566, 647 S.E.2d 164 (citing *Schneckloth*, 412 U.S. at 226). Our courts have also considered the accused's background, experience, conduct, maturity, physical condition, mental health, misrepresentations by law enforcement, isolation of a minor from a parent, direct or indirect promises, repeated and prolonged questioning, and exertion of improper influence. *Moses*, 390 S.C. at 513-14, 702 S.E.2d at 401 (citing *Withrow v. Williams*, 507 U.S. 680 (1993)). Further, coercive police activity "is a necessary predicate" to finding a confession was not voluntary within the meaning of the due process clause of the Fourteenth Amendment. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986).

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); *see also 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*, 381 S.C. 68, 81, 671 S.E.2d 619, 622, 626 (Ct. App. 2008) (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) (finding confession of a thirteen-year-old inadmissible because law enforcement did not repeat *Miranda* warnings immediately prior to oral confession). Youth by itself does not render a statement inadmissible. The same examination of surrounding circumstances applies even where the confessor is a juvenile. *Parker*, 381 S.C. at 72, 671 S.E.2d at 622.

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 *Moses*, 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 that case, an officer questioned a special education student, and the Court found the record did not demonstrate any threats or a lengthy interrogation, particularly where Moses twice testified he understood his *Miranda* rights and he was not coached regarding what to say when executing his waiver. *Moses*, 390 S.C. at 515, 702 S.E.2d at 402. While "the trial court failed to specifically mention his mother's alleged request to be present during questioning," our Supreme Court did not find that factor dispositive on the issue of voluntariness. *Moses*, 390 S.C. at 515, 702 S.E.2d at 402.

Further, the voluntariness of a sixteen-year-old's confession in *Parker* was upheld on appeal when the inculpatory statement was taken after the defendant spent a 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. The questioning of Parker 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 no one presented him with a written or verbal waiver of his *Miranda* rights. *Id.* at 80-82, 671 S.E.2d at 624-26. Parker did not ask for a parent to be present, but when an officer asked 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. 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 juvenile 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. 471, 477, 476 S.E.2d 153, 157 (1996) (citing *Fare v. Michael C.*, 442 U.S. 707 (1979) (holding a request for a non-attorney third party does not invoke a Fifth Amendment invocation of counsel during custodial police interrogation)).

The totality of the circumstances surrounding appellant's confession supports the trial court's ruling. Consider the environment of appellant's confession as told by Williams and the SLED agents. All law enforcement who interacted with appellant testified they did not threaten or coerce him, told appellant he could stop talking to them at any time, and Johnson even left the room for a time when appellant asked him to leave. (2016 Tr.pp.43-44; pp.59-62; pp.70-71). There is no evidence in the record any of the agents or Williams coerced appellant to induce his statement. *See Connelly*, 479 U.S. at 167 (holding coercive police activity "is a necessary predicate" to finding a confession was not voluntary). Also, the timing of appellant's waiver and confession were not accompanied by any indicators of a drawn-out detention. Williams testified appellant was at the police department for a couple of hours and he never asked to leave, while Johnson stated he and Merrell questioned appellant for about an hour. (2016 Tr.p.53; p.61).

The record's dearth of duress is bolstered by testimony that appellant at no time asked for an attorney, never indicated he did not want to talk to investigators, or asked for his mother. (2016 Tr.p.50; pp.60-61; pp.71-72). Appellant also indicated he was fine with Sabb's presence either in the room or nearby, a woman he considered like a mother. (2016 Tr.p.60; pp.71-72). Appellant also did not appear to suffer from the influence of drugs or alcohol. (2016 Tr.p.56; p.64; p.74). According to Williams, appellant appeared to understand the rights he was waiving and the significance of his conversation with investigators. (2016 Tr.pp.39-42; pp.50-51). Further, appellant indicated to Williams he believed he was there about the murder, so he was clearly aware why he was there. (2016 Tr.pp.44-46).

Nothing in the record indicates appellant's statements did not appear voluntary by a preponderance of the evidence. The record instead demonstrates the State met its burden during the *Denno* hearing: there exists no evidence of undue coercion, misrepresentation, concealment

of the right to invoke legal counsel, or immaturity on the part of appellant. Appellant's waiver can only be construed as a deliberate choice.

Therefore, the trial court properly submitted appellant's inculpatory statements to the jury to determine whether the statement was given freely and voluntarily beyond a reasonable doubt.

Harmless Error

Any possible error in admitting the evidence was harmless beyond a reasonable doubt. 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, 22 (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. Bernotas*, 277 S.C. 106, 108-09, 283 S.E.2d 580, 581 (1981). Harmless error also applies when voluntariness is the only reasonable inference to be drawn from evidence regarding a defendant's confession. *State v. Victor*, 300 S.C. 220, 224, 387 S.E.2d 248, 50 (1989).

The statements to law enforcement were cumulative to other confessions properly admitted at trial. Appellant's friend testified appellant told him about his involvement in the murder, detailing the robbery plan and beating. (2016 Tr.pp.277-81). The friend stated appellant told him the victim fought back, so they tied him up, put a bag over his head, and beat him, and further admitted to taking money and a gun. (2016 Tr.pp.280-82). Tiffany Sabb (Sabb), the woman who was with appellant at the police department, also testified appellant told her he was involved with the murder. Sabb stated appellant told her the plan was not his idea, but he provided details and explained they killed him because he had seen their faces. (2016 Tr.pp.287-

92).

The State also presented other evidence to connect appellant to the crime, including his print found in the victim's blood on the wall and evidence the black trash bag found over the victim's head came from appellant's home. (2016 Tr.pp.220-21; pp.260-63; p.267).

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 principal, the evidence shows he acted as an accomplice in the robbery. 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.

In light of the other evidence establishing appellant's guilt, it is clear the jury would have convicted appellant even if the statements given to law enforcement evidence had not been admitted at trial. Therefore, while respondent submits the trial court's ruling was not an abuse of discretion, any alleged error was harmless beyond a reasonable doubt.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgments and sentences of the trial court as to both issues should be affirmed.

Respectfully submitted,

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January 2, 2019.

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Allendale County
R. Lawton McIntosh, Circuit Court Judge

RECEIVED
JAN 03 2019
SC Court of Appeals

THE STATE,

Respondent,

v.

ROBERT LEE MILLER, III,

Appellant.

Appellate Case No. 2017-001347

CERTIFICATE OF SERVICE

I, Sherrie Butterbaugh, counsel for the Respondent, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two (2) copies of the same in the United States mail, addressed to her attorney of record: Susan B. Hackett, Esq., SCCID/Division of Appellate Defense, 1330 Lady Street, Suite #401, Columbia, South Carolina 29201.

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

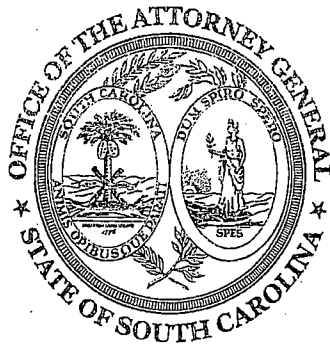
This 2nd day of January, 2019.



SHERRIE BUTTERBAUGH

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-6305

ATTORNEY FOR RESPONDENT



ALAN WILSON
ATTORNEY GENERAL

January 2, 2019

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SC Court of Appeals

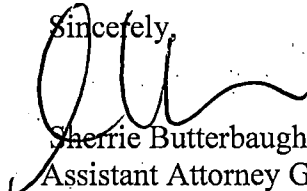
The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: *The State v. Robert Lee Miller, III*
Appeal from Allendale County
Appellate Case No. 2017-001347

Dear Ms. Kitchings:

Enclosed for filing please find the original Initial Brief of Respondent and Designation of Matter, together with Certificate of Service in the above-referenced case. If you should have any questions, please feel free to contact me.

Sincerely,



Sherrie Butterbaugh,
Assistant Attorney General

SB/dmd
Enclosures

cc: Susan B. Hackett, Esq. (w/two copies of encls.)
The Honorable Isaac McDuffie Stone, Solicitor 14th Judicial Circuit (w/copy of encls.)
Trisha Allen, Victim Advocacy Division (w/copy of encls.)

OFFICE OF THE ATTORNEY GENERAL
State of South Carolina

P. O. Box 11549 - Columbia SC 29211-1549

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

