STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

Respondent,

v.

MATTHEW BRANDON FULLBRIGHT,

Appellant.

Appellate Case No. 2012-207553

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

I. In violation of Appellant's right against self-incrimination pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article One, Section Twelve of the South Carolina Constitution, the trial judge erred in admitting Appellant's video-recorded statements at his arraignment hearing where the statements were obtained through questioning by the brother of the deceased and Appellant neither received advisement of his right against self-incrimination nor voluntarily waived his right.

II. The trial court erred in admitting the video-recorded statements by Appellant at his arraignment, in which he responded to specific questions by the brother of the deceased, a non-judicial officer, concerning the crime by asking for forgiveness and essentially admitting his guilt where the danger of unfair prejudice substantially outweighed the probative value.

III. The trial judge erred in admitting Appellant's statement to police where the statement was obtained in violation of Appellant's right pursuant to the Fifth and Fourteenth Amendments to the United States Constitution and Article One, Section Twelve of the South Carolina Constitution due to Appellant's inability to knowingly and voluntarily waive his rights in light of his drug use and medical condition, and the lengthy interrogation employed by police.

STATEMENT OF THE CASE

On the night of October 23, 2009, Homer Staton and his wife JoAnne Staton were murdered in Anderson County. (R pp. 170-78, 198-241, 244-259, 395-415). On October 29, 2009, the Anderson County Sheriff's Office arrested appellant, Mathew B. Fullbright, for the Statons' murders. (R. pp. 204, ll. 15-24; p. 206, ll. 1-4; p. 221, l. 5 - p. 225, l. 7). On January 19, 2010, the Anderson County grand jury indicted Fullbright for two (2) counts of murder and two (2) counts of armed robbery in relation to the Statons' murders. *(Indictment Numbers 2010-GS-04-69 through 72).* Fullbright was represented on the charges by Scott Robinson, Esquire. The State was represented by the elected Solicitor Chrissy Adams and Assistant Solicitor Catherine Huey. (R. p. 109). Fullbright proceeded to trial from January 23rd - 27th, 2012 before Circuit Court Judge R. Lawton McIntosh and a jury.[1] At the conclusion of the trial, the jury found Fullbright guilty of both counts of murder and both counts of armed robbery. (R. p. 685, ll. 5-23). Judge McIntosh sentenced Fullbright to life imprisonment for each count of murder and thirty (30) year for each count of armed robbery. The sentences were ordered to run consecutively. (R. p. 686, ll. 1-6). This appeal followed.

RESPONDENT'S STATEMENT OF FACTS

Homer and JoAnn Staton ("the victims") were an elderly couple. Both victims wore glasses. Mr. Staton wore a hearing aid and a colostomy bag. The victims had bought and sold gold jewelry for approximately thirty (30) years at the time of their deaths. They would travel to various parts of the Upstate of South Carolina buying and selling gold jewelry. Mr. Staton

[1]A Jackson v. Denno, 378 U.S. 368, 84 S.Ct.1774 (1964), hearing was conducted prior to trial on November 17, 2011 before Judge McIntosh. (R. Nov. 17, 2011, pp. 1-108). Additional testimony regarding statements Fullbright made to police was taken on January 23, 2012, before the trial began. (R. pp. 110-136).

would usually carry approximately twenty five thousand ($25,000) dollars in cash on his person when engaging in these transactions. The cash would consist almost entirely of one hundred dollar ($100.00) bills. Mr. Staton also wore gold jewelry. Mrs. Staton would drive to the locations where the Statons were to purchase gold, and Mr. Staton would sit in the passenger seat. The Statons would not engage in buying and selling gold after dark unless they knew the person who they were to engage in the transaction with. (R. pp. 170-183, 404).

On Friday, October 23, 2009, at about 4 p.m., the Statons stopped by the Country Buffet restaurant in Greenville, S.C. to visit with their daughter, Traci, who worked there. The victims visited with their daughter for approximately twenty (20) to thirty (30) minutes and then left. Little did Traci know this was the last time she would see her parents alive. (R. pp. 170-183).

Later that evening, after visiting with their daughter at the restaurant, and after receiving a phone call at their home in Taylors, S.C., the Statons left their residence headed to Anderson County. The Statons were traveling in their *black Toyota Corolla*. (R. pp. 494-97, 268-274, 364-67, 198-201, 220-28).

The next day, the Staton's *black Corrolla* was discovered abandoned on Horton Road in Anderson County. The Anderson County Sheriff's Office responded to the abandoned vehicle, and forensics officers discovered the Statons' car was filled with vast amounts of blood, bone fragments, and human tissue matter. The front portions of the two (2) front seat belts in the car also contained blood, bone, and tissue matter, indicating the two (2) front occupants in the car were seated with their seatbelts fastened when they were assaulted. The Statons, however, were nowhere to be found. Obviously, foul play was suspected, but the case was opened as a missing person(s) case. One of the first steps law enforcement took was to try to obtain Mr. and Mrs.

Staton's cell phone records. (R. pp. 198-201,312-340, 418-421, 494-96, 268-274, 364-67, 220-28, 484-88).

While law enforcement was investigating the case, two (2) days later, on Sunday, October 25th, the body of Homer Staton was discovered by a man walking his dog on Asaville School Road, also in Anderson County. Mr. Staton's jewelry was missing from his body, and there was no cash on his person. An autopsy was performed, and the manner of death was determined to be homicide. Mr. Staton died as a result of blunt force trauma to the head. He was hit a minimum of twelve (12) times. Some, if not all, of the injuries, were caused by an object consistent with the head of a hammer. The missing person(s) case had now become a murder investigation, but JoAnn Staton had still not been found. (R. pp. 198-201, 395-96, 488-89).

Once the Anderson County Sheriff's Office received the Statons' cell phone records, investigators looked at Mr. Staton's last phone calls. One (1) of the last phone numbers on those records was the phone number of Irving "Ernie" Ramirez. Investigators immediately interviewed Ramirez at his home in Belton, S.C. After investigators spoke with Ramirez, their investigation turned to the appellant, Matthew B. Fullbright ("Fullbright"), because Ramirez, a neighbor of Fullbright, informed investigators Fullbright had borrowed his cell phone the evening of October 23, 2009. (R. pp. 201-04, 268-274, 483-492).

On Wednesday evening, October 28th, Fullbright turned himself in to police on unrelated charges. Thereafter, Fullbright agreed to speak with investigators at the Anderson County Sheriff's Office. JoAnn Staton had still not been found even though more than five (5) days had passed since her disappearance and three (3) days since her husband's body had been found. (R.

pp. 201-41, 244-259, 492-503).

Questioning of Fullbright began around 6:30 p.m. at the Sheriff's Office. Finally, after 10 p.m. on the same date, October 28th, Fullbright told Sheriff John Skipper he knew where Mrs. Staton was and agreed to lead investigators to her. (R. pp. 204-220, 492-97).

Fullbright led investigators to JoAnn Staton by giving police directions as he was seated in the front passenger seat of a patrol car. Fullbright directed police to a new, but desolate, higher-end residential development in Iva, S.C. It was pitch black when investigators and Fullbright arrived at this location, and Fullbright guided police to within fifty (50) feet of JoAnn Staton. Based on Fullbright's directions and pointing out the general area where she would be found, investigators found JoAnn Staton's body. (R. pp. 264-271, 517-522).

Mrs. Staton's autopsy revealed she also died as a result of blunt force trauma to the head, also consistent with a hammer like object. She was hit a minimum of eighteen (18) times. (R. pp. 406-17).

The autopsies of both victims revealed they had been struck numerous times on the right side of the head. The pathologist testified, at trial, the victims' injuries were consistent with being murdered in their car and being attacked by someone in the back seat of their car wielding a hammer like weapon. This was also confirmed by a crime scene reconstruction expert. (R. pp. 395-417, 418-422).

After directing investigators to Mrs. Staton's body and after returning to the Sheriff's Office, Fullbright confessed to being an integral part of the murders and armed robberies of the Statons. Fullbright admitted the motive for the murders was robbery, in that the Statons were expected to have a large amount of cash on them and jewelry. Fullbright also admitted he had

previous dealings with the Statons and knew they carried a large amount of cash. (R. pp. 229-241, 170-183, 244-259, R. 688 & 697, State's Ex. 2 & 4).

Fullbright gave police a detailed account of what happened Friday, October 23, 2009. He explained the plan was to set up a fake jewelry buy in a secluded place and to lure the Statons there. He arranged for the Statons to pick him up near his residence and to travel to and meet a fictitious gold seller, "a big fish," if you will. Fullbright admitted the Statons picked him up as planned, and Jo Ann drove, Homer Staton was in the passenger seat, and Fullbright was seated in the back seat of the victims' *Corrolla*. Fullbright explained when the three (3) of them [the Statons and Fullbright] reached the secluded destination, a newer neighborhood on Lake Secession in Iva, the Statons were bludgeoned to death in their own car with a hammer and then robbed of their expensive jewelry and vast amounts of cash they were known to carry. Fullbright explained JoAnn Staton was still seated in the front driver's seat of the vehicle when she was attacked, and Homer Staton was seated in the front passenger seat when he was attacked. Fullbright also explained JoAnn Staton was discarded at the murder scene on Waterside Drive, and he drove the Staton's car with Homer Staton, dying or deceased, still in the passenger seat, to Asaville School Road where Homer Staton's body was discarded. Fullbright stated the Staton's car was eventually abandoned on Horton Road. Fullbright even described the murder weapon, which was a hammer, and then led investigators to where a hammer was discarded in a swamp off Monitor Road in Anderson County. The swamp was eventually drained and a hammer consistent with that described by Fullbright as the murder weapon was recovered in the swamp. (R. pp. 244-259, 299-300, 341-42, 344-45, 3473, 492-519).

Fullbright, in his confessions, admitted to planning to kill and rob the Statons, but he did

not admit to swinging the hammer himself. He blamed that on Ernie Ramirez.[2] Fullbright claimed he was outside the car on the ground, pretending to be robbed, when Ramirez entered the rear of the victims' car and attacked them. However, Fullbright admitted to planning the murders and robberies, to being present, to being an integral part of these crimes, and getting proceeds from these crimes after the murders were completed. Fullbright also admitted it was he who disposed of Homer Staton's body, and it was he who disposed of the victims' *Corrolla* on Horton Road. (T. pp. 229-241, 244-259, 492-519, R. 688 & 697, State's Ex. 2 & State's Ex. 4).[3]

Fullbright also admitted involvement in the crimes at his bond/arraignment hearing on a conspiracy charge. At this hearing, which took place on November 4, 2009, Fullbright was asked by *the victim Homer Staton's brother* why he, Fullbright, killed the victims. Fullbright responded that he had gotten into a lifestyle [drugs] that led to these murders, and like *David of the Bible*, who murdered Uriah to have his wife, God could forgive him, Fullbright, for the victims' murders. This conversation with the victims' relative was recorded on video-tape by WYFF News Channel 4, who happened to be at the hearing, and was played for the jury at Fullbright's trial. (R. pp. 196-97, 515, State's Ex. 15 [videotape]).

The testimony at trial also established the motive for the robbery and murders of the Statons. Fullbright was a heavy user of illegal drugs. Police were able to locate a drug dealer, who testified before the jury, that on the night of the victims' murders, Fullbright contacted him,

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[2]The police investigation eventually determined Ramirez was not involved in *the murders*; however, Ramirez had picked up Fullbright after the murders and after Fullbright had abandoned the victims' car on Horton Road. (R. pp. 268-274, 525-530).

[3]Fullbright actually gave two (2) different written statements to police. The first was lengthy, and Fullbright initialed several pages of the same but refused to sign this statement because he was sleepy and did not like the order of events as set forth in the statement. The 2nd statement was shorter and basically a synopsis of the 1st written statement, which Fullbright gave after being given some time to sleep, and Fullbright did sign this 2nd statement as true and correct. (R. pp. 229-241, 244-259, 492-519, R. 688 & 697, State's Ex. 2, State's Ex. 4).

by phone, and arranged a meeting. When Fullbright arrived at the meeting, he was driving a *small black car*. The dealer had never seen Fullbright in this car before. This meeting took place shortly after the victims were murdered. Fullbright then purchased a large amount of drugs from the drug dealer with cash. Some of the cash included one hundred dollar ($100.00) bills. Over the next several days, Fullbright purchased even more drugs from the same dealer, and the dealer described these purchases as more than the usual amount Fullbright bought from him on previous occasions before the night the Statons were murdered. (R. pp. 355-363, 364-377).

Cell phone records also established Fullbright had in fact been in contact with the Statons before the day of their disappearance by contacting them on his aunt's telephone. Additionally, in his confessions, Fullbright admitted he used Ramirez' phone to "set up" the Statons on the day of their murders. Furthermore, cell phone records established that on the date of their murders the Statons were contacted at their home in Taylors around 6:00 p.m., and they then drove through Williamston, S.C., to Belton, S.C., and eventually ended up in Iva. Mr. Staton stopped making cell phone calls on his personal cell phone around 8:00 p.m. on the night of his murder. Cell phone records also showed Fullbright started making cell phone calls to a friend and then the drug dealer after 9:00 p.m. the same night on a "Go Phone" recently purchased by Homer Staton, which Fullbright also admitted in his confession. The box for this Go Phone was recovered in the victims' abandoned *Corrolla*. However, the cell phone records and investigation showed Fullbright did not immediately call Ramirez after the victims were murdered, as he claimed in his confessions, and in fact Ramirez was at his home during the time period that the murders occurred. (R. pp. 268-274, 364-377, 423-28, 429-484, 497-500, 510-14, 517-19).

The State was also able show, through receipts and surveillance video footage, that the day following the victims' murders, Fullbright entered a Walmart and purchased two (2) gas cans and then gasoline at an adjoining gas station. Ramirez informed police that the day following the victims' murders, he accompanied Fullbright deer hunting, where Fullbright burned items in a burn pile. Ramirez took police to the location of the burn pile. Police photographed the burn pile, and these photographs were admitted before the jury. Fullbright also admitted in his confession to burning items from the murders in the burn pile. The State also established through two (2) separate witnesses, Fullbright also entered a convenience store on Saturday October 24th, the day following the murders, and made three (3) separate purchases each with a one hundred dollar ($100.00) bill, and on these occasions, Fullbright purchased items that could be used to smoke drugs. (R. pp. 268-274, 341-42, 378-390, 259, 501-09).

ARGUMENT I.

Judge McIntosh did not err in admitting the video-recorded statements of Fullbright at his bond/arraignment hearing because it was not required that Fullbright be advised of his Miranda rights where he was questioned by the brother of the victim who was not acting as an agent of the State; further, he received advisement of his right against self-incrimination and voluntarily waived his right, and, even if the admission of this evidence was erroneous, its admission was harmless given the other overwhelming evidence of Fullbright's guilt.

What Occurred Below

As previously stated, at a bond/arraignment hearing on a conspiracy charge, which took place on November 4, 2009, *the victim Homer Staton's brother* asked Fullbright why he committed the murders. Fullbright responded with an admission that he committed the murders of the victims because of his drug lifestyle, but God would forgive him. (State's Ex. 15). Prior to trial, Fullbright objected to the admission of his video-recorded statements *to the victim's brother* alleging they were taken in violation of his 6th Amendment right to counsel. (R. pp. 138-143, 149-171, 184-194). In fact, several times counsel pointed out he was not arguing the Fifth Amendment but the Sixth Amendment right to counsel. (R. pp. 141-42). While counsel acquiesced that the issue he was raising brought in Miranda[4] concerns, he repeatedly raised a Sixth Amendment right to counsel violation, not a Fifth Amendment violation. (R. pp. 139-143).

There was no evidence admitted during the pre-trial hearing or during the trial itself that the victim's brother was acting at the behest of the State or law enforcement when he asked Fullbright why he committed the murders. (R. pp. 139-143, 149-171, 184-194, 391-93). Judge McIntosh ruled Fullbright's statements to the victim's brother were admissible as admissions against interest. Judge McIntosh also ruled Fullbright's Fifth Amendment and Sixth Amendment

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

rights were not violated, and he would allow Fullbright to make any objection preserving the issues for appeal. (R. 139-143, 149-171, 184-194, 391-93).[5] The State introduced the videotaped admissions of Fullbright during the trial and published them to the jury. (State's Ex. 15, R. pp. 196-97, 540, 684). Fullbright did not contemporaneously object when the tape was played for the jury. (R. pp. 196-97, 391-93, 540, 684).

Lack of Preservation of the Issue Raised on Appeal

On appeal, Fullbright argues his statements made on television to the victim's brother in response to the victim's brother's questions at an arraignment proceeding before a magistrate should be suppressed because his *Fifth* Amendment right not to incriminate himself was violated. (See BOA, p. i, 1, 4-17).[6] This issue is not preserved for appellate review because it was not raised by Fullbright below. (R. pp. 139-143, 149-171, 184-194) *Cf.* Mize v. Blue Ridge Ry. Co., 219 S.C. 119, 64 S.E.2d 253 (1951); State v. Fletcher, 363 S.C. 221, 609 S.E.2d 572 (Ct. App. 2005); Duncan v. Hampton County Sch. Dist. No. 2, 335 S.C. 535, 517 S.E.2d 449 (Ct. App. 1999)(*cert. denied*); Wierszewski v. Takarick, 308 S.C. 441, 418 S.E.2d 557 (Ct. App. 1992)(issue not preserved for review merely because the trial judge mentions it). While the trial court later stated Fullbright objected on both Fifth and Sixth Amendment grounds (See R. pp.

5 Specifically, Judge McIntosh found Fullbright's Fifth Amendment right against self-incrimination was not violated because he was not subject to custodial interrogation by law enforcement as held in State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008), and therefore Miranda was not applicable. Judge McIntosh held Fullbright's Sixth Amendment right to counsel was not violated because the Sixth Amendment right to counsel was offense specific, and while the right was applicable to an arraignment hearing, Fullbright did not invoke his right to counsel on this specific charge. Further, Fullbright executed a waiver of his right to counsel. (R. pp. 391-93).

6 Under this ground in his brief, Fullbright does not argue his 6^{th} Amendment right to counsel was violated; however, he does mention this ground was raised below by his counsel. (IBOA. pp. 4-17). He repeatedly argues under this ground only that his 5^{th} Amendment right against compulsory self-incrimination was violated. (See IBOA pp. 4-17). This is also clearly stated in his statement of issue on appeal. (IBOA, p. 1). Under the 2^{nd} ground of his brief, Appellant states he argued below both 5^{th} and 6^{th} Amendment concerns to the trial court. However, this is incorrect. Below, Appellant made clear he was arguing a 6^{th} Amendment violation, not a 5^{th} Amendment violation. (R. pp. 138-143). As a result, the issue Appellant argues under ground one is not preserved for appellate review.

391-93), this was incorrect. (R. pp. 139-143, 149-171, 184-194). Appellant raised only a Sixth Amendment violation below, not a Fifth Amendment violation. (R. pp. 139-143, 89-111, 184-194). Further, when the tape was actually introduced or played for the jury, there was no objection by Fullbright on any basis, including that his Fifth Amendment right *or* his Sixth Amendment right was violated, and the playing of the tape occurred at the end of the trial and again at the close of the State's closing argument. (Tr. pp. 515, 724). State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001); State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996); Ramos v. Hawley, 316 S.C. 534, 451 S.E.2d 27 (Ct. App. 1994)(failure to object to photographs at the time they were offered waives right to object on appeal). For all of these reasons, Petitioner's Fifth Amendment argument is not preserved for appellate review.[7]

The Lack of Merit of this Issue

Even if the issue Fullbright argues under ground one of his brief was somehow preserved for appeal, i.e. that his Fifth Amendment right against self-incrimination was allegedly violated, the issue has no merit as Judge McIntosh found.

Standard of Review
(On Appeal)

In criminal cases, an appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Wood, 362 S.C. 520, 525, 608 S.E.2d 435, 438 (Ct. App. 2004). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; State v. Landis, 362 S.C. 97, 101, 606 S.E.2d 503, 504 (Ct. App.

7 For the latter reason, any Sixth Amendment claim, if raised here is not preserved. Further, any Sixth Amendment claim was abandoned in the statement of issue on appeal and in the body of his brief. (BOA, pp. i, 1, 4-17).[7] Rule 208(b)(1)(B), Calhoun v. Calhoun, 339 S.C. 96, 529 S.E.2d 14 (2000)(ordinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal); *See* Eubank v. Eubank, 347 S.C. 367, 555 S.E.2d 413 (Ct. App. 2001)(statement of issue when read in conjunction with argument adequately raised issue).

2004). On appeal, the appellate court is limited to determining whether the trial court abused its discretion. State v. Walker, 366 S.C. 643, 653, 623 S.E.2d 122, 127 (Ct. App. 2005). The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982).

(Admission of Evidence)

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. State v. Morris, 376 S.C. 189, 205, 656 S.E.2d 359, 368 (2008); State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006); State v. Stanley, 365 S.C. 24, 33, 615 S.E.2d 455, 460 (Ct. App. 2005). 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. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); State v. Wilson, 345 S.C. 1, 5-6. 545 S.E.2d 827, 829 (2001). The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518.S.E.2d 588 (1999).

Admissibility of a Defendant's Statements

As a general rule, it is an exception to the hearsay rule that a defendant's out of court statement may be testified to by the witness who heard an oral statement, or received a written statement. State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); State v. Shorter, 85 S.C. 170, 67 S.E.121 (1910); State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992); State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992). Anything that a defendant has stated, which is relevant to any question involved in the trial, is admissible in evidence against him.

State v. Pittman, 137 S.C. 75, 134 S.E.514 (1926); State v. Turner, 117 S.C. 470, 109 S.E.119 (1921). This is true, so long as the statement, *if made to police during custodial interrogation*, was voluntarily made. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); State v. Sanders, 227 S.C. 287, 87 S.E.2d 826 (1955); State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946).

However, when evidence is obtained by a third (3rd) person, not acting at the direction of the police or prosecutors, there is no Fifth Amendment violation, because the suspect is not being compelled by a governmental actor or agent. State v. Kirton, 381 S.C. 7, 671 S.E.2d 107 (Ct. App. 2008)(statement made during arraignment hearing by defendant in response to magistrate's innocuous question was not in a custodial type setting and was admissible). Incriminating statements not deliberately elicited by agents of the State or judges, may be used against a defendant, and although a defendant that is incarcerated is "in custody" there is no requirement that Miranda warnings be given. State v. Edwards, 220 S.C. 373, 66 S.E.2d 348 (1951)(magistrate was permitted to testify that while the bond for certain co-defendants was being arranged, he heard several statements made in his presence about the case and the connection between the several defendants); State v. Kirton, *supra*; State v. Holliday, 333 S.C. 585, 510 S.E.2d 436 (Ct. App. 1999)(statements made by a defendant before a magistrate at a bond proceeding admissible against the defendant at trial); State v. Morris, 307 S.C. 480, 415 S.E.2d 819 (Ct. App. 1991)(where defendant was arrested, Mirandized, and taken to the jail to be booked, after having never invoked any of his Miranda rights, and during the booking process, and the jailer engaged in a normal conversation with the defendant, during which defendant made incriminating statements, to wit: "I shot him," and "If I would have had my .357 I would have killed him for sure," statements were admissible.).

The statements of Fullbright at the bond/arraignment hearing in this case are not different from those made by a defendant to a family member or friend in the presence of a police officer. Arizona v. Mauro, 481 U.S. 520, 107 S.Ct. 1931 (1987)(finding statements of defendant to his wife made in the presence of police officer who defendant knew was there and knew was recording the conversation, were admissible because the conversation between the defendant and his wife were not the functional equivalent of questioning by the police, where the officer never asked the defendant any questions, nor did the officer direct the defendant's wife to ask any questions); State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996)(statements made by the defendant to his employer, who was also a part-time magistrate, were admissible, where the magistrate was visiting the defendant in jail as an employer, and not as an agent of the State); Good, 308 S.C. 318(statement by juvenile [tried as adult] to his guardian (uncle) was not protected by any testimonial privilege, and therefore admissible through uncle's testimony); In re Drolshagen, 280 S.C. 84, 310 S.E.2d 927 (1984)(questioning of student by principal, in principal's office with police officer present, was not a custodial interrogation).

The requirements of Miranda only apply to custodial interrogations by the State or agents of the State. Accordingly, statements made to private persons are not subject to the requirements of Miranda. State v. Lynch, 375 S.C. 628, 654 S.E.2d 292 (Ct. App. 2007)(statements made by defendant who was a prison inmate to news reporter during interview with news reporter were not subject to requirements of Miranda because the news reporter was not acting as an agent of the State). *See e.g.* State v. Commander, 384 S.C. 66, 681 S.E.2d 81 (Ct. App. 2009)(where fellow inmate testified to statements defendant made to him about his trial strategy and inmate was not acting as agent of the State); State v. Turner, 371 S.C. 594, 641 S.E.2d 435

(2007)(statements defendant made to co-defendant in the back of a police car and recorded by police were admissible because there was no interrogation by law enforcement or its functional equivalent, therefore, Miranda did not apply). As a result, Jude McIntosh did not err in admitting this evidence. This ground has no merit and must be dismissed with prejudice.

Furthermore, the record shows that before the arraignment hearing, Fullbright had already been apprised of his Miranda rights at least three (3) times by police investigators, including the fact that anything he said could and would be used against him in a court of law, and Fullbright acknowledged he was aware of his Miranda rights and waived those rights. (State's Ex. 1, State's Ex. 3, State's Ex. 6, Tr. Nov. 17, 2011, pp. 5-93; Tr. pp. 24-50). Further, the evidence in the pre-trial hearing regarding the admissibility of the videotape reflected the magistrate at the arraignment proceeding had advised Fullbright of his Miranda rights. (Tr. pp. 53-57, 89-110, 125-35). The magistrate did not require Fullbright to answer the victim's brother's question. (State's Ex. 15). Fullbright knowingly and voluntarily chose to answer the victim's brother's question. As a result, and for this additional reason, there is no merit to this appellate ground.[8]

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8 Even if Fullbright was raising a Sixth Amendment claim here, *which he is not*, the issue would have no merit. As Judge McIntosh found, there was no Sixth Amendment violation. The Sixth Amendment Right to Counsel attaches when adversarial proceedings have been initiated and at all critical stages, and in the context of the questioning/statement setting, only to "post-indictment" interrogations. Michigan v. Harvey, 494 U.S. 344 (1990): State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996); State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838 (Ct. App. 1996). Further, the Sixth Amendment right to counsel is offense specific. Accordingly, if a defendant has been appointed or retained counsel in one case, it does not preclude the prosecution from talking to a defendant about another matter. McNeil v. Wisconsin, 501 U.S. 171 (1991); Arizona v. Roberson, 486 US. 675 (1988); State v. McCray, 332 S.C. 536, 506 S.E.2d 301 (1998); State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996). This is true even when the defendant is arrested on a related charge, arising out of the same transaction or occurrence. Texas v. Cobb, 532 U.S. 162 (2001); State v. Owens, 346 S.C. 637, 552 S.E.2d 745 (2001); State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996); State v. Wilder, 306 S.C. 535, 413 S.E.2d 323 (1991); State v. Howard, 295 S.C. 462, 369 S.E.2d 132 (1988). Although the 6th Amendment right to counsel may attach at an arraignment proceeding, the right must be invoked by the defendant, even if the charge is related to the same facts on which he may have invoked the right on other charges. Patterson v. Illinois, 487 U.S. 285 (1988). *See also* Montejo v. Louisiana, 556 US. 778 (2009). Furthermore, the victim's brother was not an agent of the State, so there was no 6th Amendment violation.

Harmless Error

Furthermore, even assuming *arguendo* Judge McIntosh erred in admitting Fullbright's videotaped admissions to a victim's family member, it was harmless given the other overwhelming evidence of Fullbright's guilt apart from the tape of the arraignment hearing. Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246 (1991)(holding error in admission of involuntary confession is subject to harmless error analysis); Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001)(same); State v. Perry, 74 S.C. 551, 54 S.E.764 (1906)(finding admission not prejudicial in part because defendant made same confession to others).

Completely separate from the videotape of the arraignment, the record shows the victims were last seen alive on the afternoon/evening of October 23, 2009 by their daughter in Greenville. The victims, who were residents of Taylors, S.C. regularly engaged in purchasing gold; however, the victims would not engage in such transactions after dark unless they knew the person involved. The victim Homer Staton wore expensive jewelry and carried approximately $25,000 in cash on his person, mostly in one hundred dollar ($100) bills. **(R. pp. 170-18, 404, 488-89).** Cell phone records established the victim Homer Staton received several cell phone calls on the night of his disappearance, including one (1) at his residence in Taylors, from a cell phone in Anderson County, belonging to Ernie Ramirez, a neighbor of Fullbright. **(R. pp. 268-274, 364-77, 423-28, 429-492).** The victims' car was then found the following morning in Anderson County abandoned on a secluded road with blood spatter, human bone fragments, and

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State v. Stahlnecker, 386 S.C. 609, 690 S.E.2d 565 (2010). Further, Fullbright had not been indicted for the conspiracy count or any offense when the questioning by the victim's brother took place. State v. Compton, 366 S.C. 670, 623 S.E.2d 661 (Ct. App. 2005). Finally, even if Fullbright could show a 6th Amendment violation, his confession on video-tape would have been admissible as impeachment evidence where he claimed he did not commit the crimes and did not confess. Kansas v. Ventris, 556 U.S. 586 (2009)(statement taken in violation of 6th Amendment is still admissible as impeachment evidence to prevent perjury).

human tissue inside. The evidence inside the car also indicated the victims were seated in the car with their seatbelts on when they were assaulted. Samples from inside the vehicle were consistent with Homer and JoAnn Staton's DNA. **(R. pp. 395-417, 418-22, 198-201, 312-340, 418-21, 494-97, 268-275, 364-67, 220-28).**

Two (2) days later, on October 25, 2009, Homer Staton's body was recovered on a secluded road in Anderson County. His jewelry and cash were missing from his person. His autopsy determined he died from blunt force trauma to the head consistent with being struck in the head with a hammer. The autopsy also determined he had been struck at least eleven (11) times. JoAnn Staton had not been located at that time. **(R. pp. 198-201, 395-96, 488-89, 509).**

Based on Homer Staton's cell phone records, police interviewed Ernie Ramirez, who indicated appellant Fullbright had possession of Ramirez' cell phone on the night of the Staton's disappearance. **(R. pp. 201-04, 268-74, 483-92).**

Fullbright came in for questioning, after which he eventually admitted that he knew where JoAnn Staton was located. Fullbright then directed police to the location of JoAnn Staton's body in a secluded wooded area of Anderson County, some thirty (30) to forty (40) minutes from the Anderson County Sheriff's Office. While still dark, Fullbright directed Anderson County investigators to within fifty (50) feet of JoAnn Staton's body, and police were able to recover her body only as a result of Fullbright's directions. **(R. pp. 204-241, 244-59, 492-497).**

Mrs. Staton's autopsy also revealed she was bludgeoned to death with a hammer and was struck approximately eighteen (18) times. **(R. pp. 406-17).** Fullbright described *to police* the weapon used to murder both Homer and JoAnn Staton as a hammer, drew the weapon on a piece

of paper, and described the various colors on the hammer. Fullbright eventually led police to a swamp on property owned by or adjacent to property owned by his father where he alleged the murder weapon had been thrown. Only after draining the swamp, were police able to recover the hammer that matched the description Fullbright had given them of the murder weapon. **(R. pp. 244-59, 299-300, 341-42, 344-45, 347, 492-515, State's Ex. 2, State's Ex. 4, State's Ex. 5, State's Ex. 6).**

In his two (2) written confessions, one (1) of which was initialed, and the other which was signed by Fullbright, Fullbright admitted being an integral part in the planning of the armed robbery of the victims, and explained to police the motive for the murders. In his last statement, Fullbright admitted the plan all along was to murder the Statons and rob them of the cash and jewelry they were expected to have on their persons. Fullbright also admitted leading the victims to the location where they were to be robbed and murdered, sitting in the back seat behind the victims on the way to where the murders and armed robberies were to occur, participating in the robberies and murders as an aider and abetter, disposing of Mr. Staton's body, disposing of the victims' vehicle, and receiving proceeds from the murders and robberies that he helped plan and commit. These confessions were admitted before the jury. **(R. pp. 244-59, 299-300, 341-42, 344-45, 347, 492-519, State's Ex. 2 & State's Ex. 4).**

Cell phone records also established Fullbright had in fact been in contact with the Statons *before the day of their disappearance* by contacting them on his Aunt Edna's telephone. Additionally, Fullbright admitted at trial he had known the Statons for a considerable period of time, and he had arranged previous gold transactions for them, in which he received a finder's fee from the Statons for arranging the transactions. Further, in his confessions, Fullbright

admitted he used Ramirez' phone to "set up" the Statons on the day of their murders. Furthermore, cell phone records established the Statons were contacted at their home in Taylors, S.C. around 6:00 p.m., and they then drove through Williamston, through Belton, and eventually ended up in Iva, S.C. where they were in fact murdered. The cell phone records also established Mr. Staton stopped making cell phone calls on his personal cell phone around 8:00 p.m. on the night of his murder. Cell phone records also showed Fullbright started making cell phone calls to *a friend* and then *a drug dealer* after 9:00 p.m. on a Go Phone recently purchased by Homer Staton, which Fullbright also admitted in his confession *to police*. The box for this Go Phone was recovered in the victims' abandoned *Corrolla*. However, the cell phone records showed Fullbright *did not* immediately call Ramirez after the victims were murdered, as he claimed in his confessions implicating Ramirez in the murder, and in fact Ramirez was at his home during the time period that the murders occurred. The phone records also established that on the night of the victims' murders Fullbright made phone calls from the the area where Mr. Staton's body was dumped, and the area where the victims' car was abandoned. The phone records also established Fullbright *did* meet with the drug dealer at an abandoned store, as described by the drug dealer in his testimony. **(R. pp. 268-74, 364-77, 423-28, 429-484, 492-519).**

The drug dealer testified that on the night of the victims' murders, Fullbright contacted him, by phone, and arranged a meeting. When Fullbright arrived at the meeting, he was driving a *small black car*. The dealer had never seen Fullbright in this car before. This meeting took place shortly after the victims were murdered. Fullbright then purchased a large amount of drugs from the drug dealer with cash. Some of the cash included one hundred dollar ($100.00) bills. Over the next several days, Fullbright purchased even more drugs from the same dealer, and the

dealer described these purchases as more than the usual amount Fullbright bought from him on previous occasions before the night the Statons were murdered. **(R. pp. 355-63, 364-377).**

The State also established, through receipts and surveillance video footage, the day following the victims' murders, Fullbright entered a Walmart and purchased two (2) gas cans and then gasoline at an adjoining gas station. Ernie Ramirez informed police that the day following the victims' murders, he accompanied Fullbright deer hunting, where Fullbright burned items in a burn pile. Ramirez took police to the location of the burn pile and this was photographed by police. The photographs of the burn pile were admitted before the jury. **(R. pp. 268-74, 341-42, 378-390, 259, 492-519).**

The State also established through two (2) separate witnesses that Fullbright also entered a convenience store the day after the Staton's murders and made three (3) separate purchases each with a separate one hundred dollar ($100.00) bill, and on these occasions, Fullbright purchased items that could be used to smoke drugs. **(R. pp. 268-74, 341-42, 378-390, 259, 492-519).**

As a result, even if Judge McIntosh erred in admitting the video of the arraignment, the error was harmless where the evidence of Fullbright's guilt was overwhelming independent of this evidence, including two (2) written confessions and taking police to one (1) victim's dead body. **(R. pp. 170-83, 198-241, 244-59, 268-74, 299-300, 312-42, 344-45, 347, 364-77, 378-90, 395-417, 418-22, 423-28, 429-84, 492-519, State's Ex. 2 & State's Ex. 4).** State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); *see also* State v. Williams,

321 S.C. 455, 469 S.E.2d 49 (1996)(error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006)("The admission of improper evidence is harmless where the evidence is merely cumulative to other evidence").

ARGUMENT II.

Judge McIntosh did not err in admitting the video-recorded admission of of Fullbright to a relative of the victim under Rule 403, SCRE because the probative value of the admission of guilt was not substantially outweighed by any prejudicial effect to Fullbright.

Judge McIntosh also denied Fullbright's *in limine* objection to the admission of the videotape of the arraignment proceeding under Rule 403, SCRE. Fullbright argued the prejudicial effect of his video recorded admissions to a relative of the victim *substantially outweighed* any probative value of the evidence. Judge McIntosh found the probative value of the admissions outweighed any prejudicial effect and admitted this evidence under Rule 403, SCRE. (Tr. pp. 53-77, 89-111, 125-35, 353-55).

Lack of Preservation of the Issue

As previously set forth under ground one, at the time the videotape was published for the jury, even though Judge McIntosh had informed Fullbright he would allow him to place his objections on the record to preserve the issue for appeal, Fullbright did not renew his objection to the admission of the videotape on any basis, including under Rule 403, SCRE. (Tr. pp. 515, 724). As a result, Respondent submits this issue is not preserved for appellate review. State v. Wannamaker, 346 S.C. 495, 552 S.E.2d 284 (2001); State v. Simpson, 325 S.C. 37, 479 S.E.2d 57 (1996); Ramos v. Hawley, 316 S.C. 534, 451 S.E.2d 27 (Ct. App. 1994)(failure to object to photographs at the time they were offered waives right to object on appeal).

The Lack of Merit of this Ground

Regardless, even if this Court determines this issue is preserved for appellate review, it has no merit for the reasons stated below.

Standard of Review

In reviewing a trial court's ruling on the admissibility of evidence, appellate courts recognize that the trial judge has considerable latitude in this regard and will not disturb such rulings absent a prejudicial abuse of discretion. State v. Whitner, 399 S.C. 547, 557, 732 S.E.2d 861, 866 (2012); State v. Clasby, 385 S.C. 148, 154, 682 S.E.2d 892, 895 (2009). "An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support." Whitner, 399 S.C. at 557, 732 S.E.2d at 866 (citation omitted).

Under Rule 403, SCRE, "evidence may be excluded if its probative value is **substantially outweighed** by the danger of unfair prejudice ..." Rule 403, SCRE (emphasis added). "A trial judge's decision regarding the comparative probative value and prejudicial effect of relevant evidence should be reversed only in exceptional circumstances." State v. Martuci, 380 S.C. 232, 250, 669 S.E.2d 598, 607 (Ct. App. 2008); State v. Vang, 353 S.C. 78, 87, 577 S.E.2d 225, 229 (Ct. App. 2003). "Unfair prejudice means an undue tendency to suggest a decision on an improper basis." State v. Spears, 403 S.C. 247, 253, 742 S.E.2d 878, 881 (Ct. App. 2013); State v. Collins, 398 S.C. 197, 727 S.E.2d 751 (Ct. App. 2012).

The probative value of Fullbright's admission to the commission of the murders of JoAnn and Homer Staton is clear, compelling, and highly relevant. Fullbright was on trial for two (2) counts of murder and two (2) counts of armed robbery. His admission to the victim's brother

that he committed the murders, and why, identified him as the murderer of Homer and JoAnn Staton, or at the least as a participant in their murders, and established the motive for the murders. Fullbright admitted it was his drug addiction and lifestyle that led to the victims' murders. (State's Ex. 15). Appellant concedes the video recorded statement provided probative evidence of the crimes with which Fullbright was charged because in the tape Fullbright admitted his guilt to the murders. (BOA, p. 19). Further, *in his opening statement to the jury*, Fullbright told the jury that **he did not make the written confessions police would testify he made and signed**, and **he was completely innocent of the crimes** and had been **framed by police.** (R. pp. 144-49). This claim before the jury further enhanced the probative value of the evidence at issue here (State's Ex. 15), because it showed Fullbright had confessed to the crime and was not trying to hide his guilt shortly after making the written confessions. (State's Ex. 15, State's Ex. 2, State's Ex. 4). The video-taped confession of Fullbright completely undercut and disproved Fullbright's claim he did not confess and was innocent of the crimes.

The prejudice to Fullbright was minimal. The jury knew Fullbright was arrested and charged with the victims' murders and their armed robberies. Therefore, the jury knew Fullbright was incarcerated at some point pending trial. Additionally, an investigator testified to Fullbright's detention after arrest and accompanying the officer to several locations in an attempt to recover evidence. Further, Fullbright admitted in his own trial testimony that he had been incarcerated for two (2) years prior to trial. (R. pp. 541-83, 592-611). Jurors are well aware that inmates detained temporarily or permanently in a county jail facility wear uniforms issued by the county jail facility. The prejudice from this fact was minimal. Furthermore, Fullbright was not dressed in an orange jumpsuit at trial but street clothes. It was only in the video of the

arraignment hearing that Fullbright was dressed in orange. The relevance of the video was Fullbright's *statements made on the video*, i.e. his admission he committed the murders and why.

In order to exclude relevant probative evidence, the prejudice must *substantially outweigh* the probative value of the evidence. Rule 403, SCRE. In this case, Fullbright has not shown any conceivable prejudice to him from the videotape substantially outweighed the probative value of his admission of guilt to the murders and admission to the motive for the murders.

Further, even if the evidence had not been admitted in the State's case in chief, its probative value, which *was* already great, was heightened even further by Fullbright's trial testimony that he did not confess to investigators; his written confessions were fabricated by police, and he was completely innocent of the crimes. (R. pp. 541-83, 592-611). The videotaped admission would have been admissible in reply and its probative value far outweighed any prejudicial effect where Fullbright contended at trial *he was completely innocent* of the murders in this case and never confessed to the crimes. (R. pp. 541-83, 592-611, State's Ex. 15). Rule 403, SCRE.

Harmless Error

Furthermore, as stated under the previous ground, even assuming *arguendo* Judge McIntosh erred in admitting this evidence under Rule 403, it was harmless given the other overwhelming evidence of Fullbright's guilt apart from the videotape. Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246 (1991)(holding error in admission of involuntary confession is subject to harmless error analysis); Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001)(same); State v. Perry, 74 S.C. 551, 54 S.E.764 (1906)(finding admission not prejudicial in

part because defendant made same confession to others).

Completely separate from the videotape, the record shows the victims, who were residents of Taylors, S.C., were last seen alive in Greenville the afternoon/evening of October 23, 2009 by their daughter. The victims regularly engaged in buying gold; however, they would not engage in such transactions after dark unless they knew the individual involved. Mr. Staton wore expensive jewelry and carried approximately twenty-five thousand ($25,000) in cash with him at any one (1) time consisting of mainly one hundred dollar ($100) bills. Cell phone records established the victim Homer Staton received several cell phone calls, including one at his home, on the night of his disappearance from a cell phone located in Anderson County belonging to Ernie Ramirez, a neighbor of Fullbright. The victims' car was then found the following morning in Anderson County abandoned on a secluded road. Inside the vehicle, police found blood spatter, human bone fragments, and human tissue. The evidence inside the car also indicated the victims were seated in the car with their seatbelts on when they were assaulted. Samples from inside the vehicle were consistent with Homer and JoAnn Staton's DNA.

On October 25, 2009, Homer Staton's body was recovered on a secluded road in Anderson County. His jewelry was missing and no cash was found on his person. His autopsy determined he died from blunt force trauma to the head consistent with being struck in the head with a hammer. The autopsy also determined he had been struck at least eleven (11) times. JoAnn Staton had not been located.

Police interviewed Ernie Ramirez, who indicated appellant Fullbright had possession of his cell phone on the night of the Staton's disappearance. Cell phone records showed the victim Homer Staton received a phone call from that phone around 6:00 p.m. the night of the victims'

disappearance.

Fullbright came in for questioning, after which he eventually admitted he knew where JoAnn Staton was located. Fullbright then directed police to the location of JoAnn Staton's body in a secluded wooded area of Anderson County, some thirty (30) to forty (40) minutes from the Anderson Sheriff's Office. While still dark, Fullbright directed investigators to within fifty (50) feet of JoAnn Staton's body, and police were able to recover her body only as a result of Fullbright's directions.

Mrs. Staton's autopsy also revealed she was bludgeoned to death with a hammer and was struck approximately eighteen (18) times. Fullbright described the weapon used to murder both Homer and JoAnn Staton as a hammer, drew a picture of the hammer for police, described the various colors on the hammer, and led to police to a swamp located on property owned by his father or on property adjacent to property owned by his father where Fullbright alleged the murder weapon had been thrown. Only after draining the swamp, were police able to recover a hammer that matched the description Fullbright had given them of the murder weapon.

In his two (2) written confessions, one of which was initialed, and the other which was signed, Fullbright admitted being an integral part in the planning of the armed robbery of the victims, and explained to police the motive for the murders. In his last statement, Fullbright admitted the plan from the beginning was to murder the Statons and rob them of the cash and jewelry they were expected to have on their person. Fullbright also admitted leading the victims to the location where they were to be robbed and murdered, sitting in the back seat behind the Staton's on the way to where the murders and armed robberies were to occur, participating in the robberies and murders as an aider and abetter, and then disposing of Mr. Staton's body, the

victims' car, and receiving proceeds from the murders and robberies he helped plan and commit. These written confessions were admitted before the jury.

Cell phone records also established Fullbright had in fact been in contact with the Statons before the day of their disappearance by contacting them on his aunt's telephone. Further, in his confessions, Fullbright admitted he used Ramirez' phone to contact the Statons on the day of their murders and lure them to Anderson County. Furthermore, cell phone records established the Statons were contacted at their home in Taylors around 6:00 p.m., and then they drove through Williamston, through Belton, and eventually ended up in Iva, where they were in fact murdered. Mr. Staton stopped making cell phone calls on his personal phone around 8:00 p.m. that night. Cell phone records also showed Fullbright started making cell phone calls to a friend and then a drug dealer after 9:00 p.m. on the night of the murders on a Go Phone recently purchased by Mr. Staton, which Fullbright also admitted in his confession. The box for this phone was found in the Staton's abandoned *Corrolla*. However, the cell phone records showed Fullbright did not immediately call Ramirez after the victims were murdered, as he claimed in his confessions implicating Ramirez, and in fact Ramirez was at his home during the time period that the murders occurred. The cell phone records established Fullbright made cell phone calls on the night of the victims' murders from near where Homer Staton's body was dumped, and near where the victims' car was abandoned. The cell phone records also established Fullbright did meet with the drug dealer at an abandoned store, as described by the drug dealer in his testimony, shortly after the victims' murders, where Fullbright purchased illegal drugs.

Fullbright arrived at this drug transaction in a *small black car* the drug dealer had never seen Fullbright in before. In the following days, Fullbright purchased more drugs from the same

drug dealer, and the purchases were for more drugs that Fullbright purchased from the same drug dealer prior to the victims' murders. In one of the drug transactions, Fullbright purchased drugs with one hundred dollar ($100.00) bills.

The State also established, through receipts and surveillance video footage, that the day following the victims' murders, Fullbright entered a Walmart and purchased two (2) gas cans and then gasoline at an adjoining gas station. Ramirez informed police that the day following the victims' murders, he accompanied Fullbright deer hunting, where Fullbright burned items in a burn pile. Ramirez took police to the location of the burn pile and this was photographed by police. The photographs of the burn pile were admitted before the jury.

The State also established through two (2) separate witnesses, Fullbright also entered a convenience store the day after the murders, and made three (3) separate purchases each with a separate one hundred dollar ($100.00) bill, and on these occasions, Fullbright purchased items that could be used to smoke drugs.

As a result, even if Judge McIntosh erred in admitting the video *of the arraignment/bond hearing* under Rule 403, the error was harmless where the evidence of Fullbright's guilt was overwhelming independent of this evidence, including two (2) written confessions and taking police to one (1) victim's body. State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); *see* State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(error in admission of evidence is harmless where it is cumulative to other evidence properly admitted); Douglas, 367 S.C. at 520, 626 S.E.2d at 71 (admission of improper evidence

is harmless where the evidence is merely cumulative to other evidence).

ARGUMENT III.

Judge McIntosh did not err in admitting Fullbright's statements *to police* because the statements were not obtained in violation of Fullbright's constitutional rights, and Fullbright's statements were voluntary under the totality of the circumstances.

STANDARD OF REVIEW
(On Appeal)

In criminal cases, an appellate court sits to review errors of law only. Baccus, 367 S.C. at 48, 625 S.E.2d at 220; Wood, 362 S.C. at 525, 608 S.E.2d at 438. An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.; Landis, 362 S.C. at 101, 606 S.E.2d at 504. On appeal, the appellate court is limited to determining whether the trial court abused its discretion. Walker, 366 S.C. at 653, 623 S.E.2d at 127. The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed absent a prejudicial abuse of discretion. Bridges, 278 S.C. at 448, 298 S.E.2d at 212.

(Admission of Evidence)

The admission or exclusion of evidence is within the sound discretion of the trial judge and is reversible only for an abuse of discretion. Morris, 376 S.C. at 205, 656 S.E.2d at 368; Pagan, 369 S.C. at 208, 631 S.E.2d at 265; Stanley, 365 S.C. at 33, 615 S.E.2d at 460 . An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Pittman, 373 S.C. at 577, 647 S.E.2d at 170; Wilson, 345 S.C. at 5-6, 545 S.E.2d at 829. The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court, and a ruling will be disturbed only upon a showing of an abuse of discretion. State v. Rosemond, 335 S.C. 593, 518.S.E.2d 588 (1999).

Admissibility of a Defendant's Statements

As a general rule, it is an exception to the hearsay rule that a defendant's out of court statement may be testified to by the witness who heard an oral statement, or received a written statement. State v. Plyler, 275 S.C. 291, 270 S.E.2d 126 (1980); State v. Shorter, 85 S.C. 170, 67 S.E.121 (1910); State v. Hambright, 310 S.C. 382, 426 S.E.2d 806 (Ct. App. 1992); State v. Good, 308 S.C. 313, 417 S.E.2d 643 (Ct. App. 1992). Anything that a defendant has stated, which is relevant to any question involved in the trial, is admissible in evidence against him. State v. Pittman, 137 S.C. 75, 134 S.E.514 (1926); State v. Turner, 117 S.C. 470, 109 S.E.119 (1921). This is true, so long as the statement, if made to police during custodial interrogation, was voluntarily made. State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989); State v. Sanders, 227 S.C. 287, 87 S.E.2d 826 (1955); State v. Judge, 208 S.C. 497, 38 S.E.2d 715 (1946).

Standard of Review / Jackson v. Denno Hearing

In a pre-trial Jackson v. Denno[9] hearing, the prosecution's burden is to present evidence which establishes by *a preponderance of the evidence* that the statement made by the defendant was voluntary, that Miranda warnings were properly administered, and that the statement is admissible. Lego v. Twomey, 404 U.S. 477, 92 S.Ct. 619 (1972); State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988): State v. Neeley, 271 S.C. 33, 244 S.E.2d 522 (1978); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977)("It has been uniformly held a confession may be introduced upon proof of its voluntariness by a preponderance of the evidence."); State v. Moses, 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010). In determining whether a defendant's statement should be admitted, the trial judge should not rely on whether the statement is in fact true, only

[9]378 U.S. 368 (1964).

whether it is voluntary and legally admissible. Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735 (1961).

Where there is conflicting evidence as to whether the defendant's statement is voluntary, it is, in the first instance, the province of the trial court to determine this factual issue by a preponderance of the evidence. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988); State v. Washington. *supra*; State v. Davis, 267 S.C. 474, 229 S.E.2d 594 (1976); State v. Crowe, 258 S.C. 258, 188 S.E.2d 279 (1972); State v. Barrs, 257 S.C. 193, 184 S.E.2d 708 (1971); State v. Cannon, 248 S.C. 506, 151 S.E.2d 752 (1966), *after remand*, 250 S.C. 437, 158 S.E.2d 357 (1967); State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009). Whenever there is conflicting evidence relative to the validity of the statement or confession, as is quite often the case, it becomes the initial duty of the trial judge to make a factual finding as to the validity of the statement. If found valid, the court should allow the statement to go to the jury for its ultimate determination of validity. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Atchison, 268 S.C. 588, 599, 235 S.E.2d 294, 299 (1977); State v. Valenti, 265 S.C. 380, 218 S.E.2d 726 (1975). Validity deals with whether the statement was voluntary or not. Von Dohlen, *supra*; State v. Goolsby, 275 S.C. 110, 268 S.E.2d 31 (1980), *overruled on other grounds by* State v. Torrence.

In a Jackson v. Denno hearing, the circuit court has the opportunity to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh their testimony accordingly. State v. Miller, 375 S.C. 370, 387, 652 S.E.2d 444, 453 (Ct. App. 2007). In passing on the preliminary question of admissibility, a trial judge is not bound to accept as true the defendant's testimony as to intimidation, even if such testimony is not directly controverted

by the testimony of other witnesses. State v. Boone, 228 S.C. 438, 90 S.E.2d 640 (1955), *overruled on other grounds* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991); State v. McAlister, 133 S.C. 99, 130 S.E. 511 (1925). In a suppression hearing, there is no requirement that the State present every witness who may have knowledge about any statement made by the defendant, and the failure of the State to present every such witness does not render any statement of the defendant inadmissible. State v. Brown, 212 S.C. 237, 47 S.E.2d 521 (1948); State v. Howard, 35 S.C. 197, 14 S.E. 481 (1892).

The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. Baccus, 367 S.C. at 48, 625 S.E.2d at 220; Von Dohlen, 322 S.C. at 242, 471 S.E.2d at 695; State v. Franklin, 390 S.C. 535, 702 S.E.2d 568 (Ct. App. 2010); State v. Arrowood, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2008). An appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Baccus, 367 S.C. at 48, 625 S.E.2d at 220. When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); State v. Franklin; State v. Arrowood.

What Occurred Below

The Jackson v. Denno Hearing

Prior to trial and prior to the admission of Fullbright's statements, Judge McIntosh conducted a Jackson v. Denno hearing as required by South Carolina law. (R., Tr. Nov. 17, 2011, pp. 1-108). *See* Simmons, *supra*; Miller, 375 S.C. at 379, 652 S.E.2d at 448. Additional

testimony was taken *in camera*, on the first day of trial, regarding statements Fullbright made to police after his two (2) written confessions and regarding a drawing of the murder weapon by Fullbright after his two (2) written confessions. (R. pp. 110-36).

In these *in camera* or *in limine* Denno proceedings, the State called four (4) witnesses, and Fullbright called one (1) witness. (R., Tr. Nov. 17, 2011, pp. 1-108 & pp. 110-36). The State also introduced the Miranda[10] waiver forms executed by Fullbright, the written statements initialed or signed by Fullbright, and a drawing of the murder weapon made and initialed by Fullbright. (State's Ex. 1, 2, 3, 4, 5, & 6). The State's witnesses all testified Fullbright was read his Miranda rights multiple times, understood his Miranda rights, signed waivers of his Miranda rights, waived his Miranda rights, and each statement he gave was voluntarily, intelligently, and knowingly made. (R., Tr. Nov. 17, 2011, pp. 5-94 & pp. 110-36). The State's witnesses also testified Fullbright's statements were not the result of any promise, threat, or hope of reward. (R., Tr. Nov. 17, 2011, pp. 5-94 & pp. 110-36). The State's witnesses also testified Appellant initialed his 1st statement and signed his 2nd statement. (R., Tr. Nov. 17, 2011, pp. 5-94, pp. 110-36).

Specifically, the State's witnesses testified that Fullbright's questioning first began on the evening of October 28, 2009 when he reported to the Anderson County Sheriff's Office and was questioned in a conference room beginning at approximately 6:30 p.m. At that time, Fullbright was read his Miranda rights and executed a written Waiver of Rights Form waiving all of his Miranda rights. Fullbright talked with investigators for approximately four (4) hours. At approximately 10:00 p.m., Fullbright appeared as if he was sick or about to pass out and fell out

[10]Miranda v. Arizona, 384 U.S. 436 (1966).

of his chair onto the floor. An investigator with training in emergency medicine checked Fullbright's eyes, performed a sternum rub, and determined Fullbright was not unconscious. However, out of an abundance of caution, E.M.S. was contacted and an E.M.T. responded and evaluated Fullbright. It was determined that there was nothing physically wrong with Fullbright. Fullbright also twice refused any medical treatment. At this time, the Sheriff of Anderson County, who had not been involved in the interrogation, knelt beside Fullbright [who was still on the floor], and informed him it was time for him to tell police the truth about where Mrs. Staton was. Fullbright acknowledged he knew where Mrs. Staton was located and informed the Sheriff that he would take investigators to her. (R., Tr. Nov. 17, 2011, pp. 5-70).

Fullbright then led police to Mrs. Staton's body by giving police directions to her body in rural Anderson County. During the ride, Fullbright talked about and answered some questions about the crimes and how they occurred, but Fullbright was sobbing and upset and told investigators he did not really feel able to answer questions about the crimes themselves at that time, only giving directions to where Mrs. Staton was. However, Fullbright did not invoke his right to remain silent. Fullbright continued to give police directions until he led them to within fifty (50) feet of Mrs. Staton's body, which police recovered. (R., Tr. Nov. 17, 2011, pp. 5-70).

On the return trip to the Sheriff's Office, investigators testified Fullbright was more composed and relaxed. Investigators asked Fullbright if he needed anything to eat, to which he responded that he would like something to eat. Officers stopped at a Taco Bell and obtained food for themselves and Fullbright. After, returning to the Sheriff's Office, Fullbright ate with the investigators. (Tr. Nov. 17, 2011, pp. 5-55).

Fullbright stated he was willing to talk about the crimes, and gave police a detailed

account of how and why the victims were murdered. (R., Tr. Nov. 17, 2011, pp. 5-55, State's Ex. 1 & 2). Fullbright explained he contacted the victims using a cell phone that belonged to Ernie Ramirez. Fullbright explained the plan was to stage a fake buy of gold to lure the victims to Anderson County. Fullbright further explained the victims knew him, and he contacted them and arranged what the victims believed was a purchase of gold. When the victims arrived, he got into the rear of their vehicle and led them to a secluded location where, unknown to the victims, they were to be robbed by Ramirez, and he, Fullbright, was to pretend he was a victim of the robbery as well. Fullbright explained that when he and the victims arrived at the location which he and Ramirez had predetermined, Ramirez came out of the woods and pretended to rob him [Fullbright], and then Ramirez then got into the back of the victims' car and beat the victims to death with the butt of a pistol and then a hammer. Fullbright told investigators Ramirez hit the victims numerous times with the hammer. Fullbright then explained that Ramirez removed Mrs. Staton from the car and drug her body into the woods near the crime scene. After Ramirez robbed Mr. Staton of cash and jewelry, he, Fullbright, then drove the victims' car with Mr. Staton still in the passenger seat to Asaville School Road where he, Fullbright, disposed of Mr. Staton's body. Fullbright then told officers he took the victims' car and abandoned it on Horton Road. Fullbright also admitted he personally received proceeds of the murders and robbery from Ramirez. (R., Tr. Nov. 17, 2011 pp. 5-55, 71-88, State's Ex. 1 & 2).

At the end of this interview, Fullbright informed officers he wanted to "come clean" with them. Fullbright then admitted that the plan all along was to murder the victims and then rob them, not just to rob them. Fullbright reviewed several pages of this first (1st) statement and initialed them, but told officers before he signed the statement, he wanted some of the sequence

of events changed because the sequence was not correct in the statement, and he [Fullbright] was also tired and would like to get some rest before signing the statement. However, Fullbright agreed to continue to talk with investigators and make the necessary changes he wanted after he got some sleep. Fullbright was then taken to the Anderson County Detention Center so he could get some rest. This interview terminated at approximately 4:00 a.m. on October 29th. (R. November 17, 2011, pp. 5-55, State's Ex. 1 & 2).

The following day, at approximately 2:30 p.m., investigators met with Fullbright at the Detention Center. Fullbright appeared more rested and agreed to continue to speak with officers. Fullbright was again read his Miranda rights and executed a Waiver of Rights Form. (State's Ex. 3). This interview was conducted in a conference room at the Detention Center. Fullbright gave a 2nd written statement which he signed. (State's Ex. 4). In this statement, Fullbright again admitted his role in luring the victims to Anderson County and participating in their murders and armed robbery. This statement included the fact that the plan all along was to murder the victims not just to rob them. This statement was basically the same as his 1st statement, just more concise. Fullbright signed this statement as true and correct. After the completion of this 2nd statement, Fullbright also drew for investigators the hammer he contended was the murder weapon and initialed it. (R., Tr. Nov. 17, 2011, pp. 5-55, 71-89, State's Ex. 4, R. pp. 110-36, State's Ex. 5).

Investigator Danny Barton testified that on October 29, Fullbright, went with he [Barton] and another officer after agreeing to attempt to locate some of the items of evidence Fullbright mentioned in his earlier two (2) written statements. Fullbright accompanied the investigator to several locations describing items that were discarded after the murders. (R. pp. 110-36).

The same investigator testified that on October 30th, he met with Fullbright again, at which time Fullbright executed another Waiver of Rights Form. (State's Ex. 6). On this occasion, Fullbright accompanied the same investigator and another investigator to several locations pointing out again where he believed items of evidence were discarded. One of these locations was the swamp where Fullbright claimed the hammer was discarded. (R. pp. 110-36).

Fullbright's only witness in the Denno hearing was his father, who testified the initials on the 1st statement, 2nd Miranda Waiver, and 2nd statement were not his son's, i.e. not Fullbright's, handwriting. (R., Tr. Nov. 17, 2011 pp. 94-99). The implication from the father's testimony was investigators had fabricated Fullbright's confessions and 2nd waiver of his Miranda rights. The State's witnesses had already testified when called by the State that the initials on Fullbright's 1st statement, and the initials and signature on the 2nd Waiver and 2nd statement were written by appellant Fullbright himself in their presence. (R., Tr. Nov. 17, 2011, pp. 1-93). Investigator Barton also testified prior to the trial beginning that Fullbright executed the 2nd waiver and signed the 2nd statement. (R. pp. 110-36).

Judge McIntosh ruled that under the totality of the circumstances, and by a preponderance of the evidence, Fullbright's statements were voluntarily, knowingly, and intelligently made and therefore admissible before the jury. In making this determination, Judge McIntosh considered the continuity of the questioning, Fullbright's age, the location of the questioning, the lack of any coercion, the lack of any testimony Fullbright invoked any of his constitutional rights, the execution of voluntary waivers of rights by Fullbright prior to any questioning, and that necessities were not withheld from Fullbright in any fashion. As a result, Judge McIntosh ruled Fullbright's statements would be submitted to the jury for their

consideration if the State proved to the jury the statements were voluntarily, knowingly, and intelligently made beyond a reasonable doubt. (R., Tr. Nov. 17, 2011, pp. 100-105, R. pp. 137-39)

The Lack of Merit of this Ground

It was in Judge McIntosh's discretion to determine the credibility of the witnesses at the Denno hearings and whether to admit Fullbright's statements. Simmons, *supra* (in determining whether the defendant made voluntary statements, the circuit court properly considered the credibility of the witnesses, as it must); Miller, 375 S.C. at 387, 652 S.E.2d at 453 (finding in a Denno hearing, the circuit court has the opportunity to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh the evidence accordingly). *See also* State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008)(similar). As previously stated, in passing on the preliminary question of admissibility, a trial judge is *not* bound to accept as true the defendant's claims as to intimidation, promises, or threats, even if such testimony is not directly controverted by the testimony of other witnesses. State v. Boone, *supra*; State v. McAlister, *supra*. In the present case, the State's witnesses [the investigators] directly contradicted the claims of Fullbright's father. And, there is no requirement that the State present every witness who may have knowledge about any statement made by the defendant, and the failure of the State to present every such witness does not render any statement of the defendant inadmissible. State v. Brown, *supra*; State v. Howard, *supra*. Furthermore, before the trial judge admits a statement to the jury, the State need only show its voluntariness by a preponderance of the evidence. Smith, 268 S.C. at 354, 234 S.E.2d at 21. A preponderance of the evidence is by the greater weight of the evidence.

In determining whether the State has shown by a preponderance of the evidence that a statement was freely, voluntarily, and knowingly made, the trial judge is to look at the totality of the circumstances. Saltz, 346 S.C. at 136, 551 S.E.2d at 252; Miller, 375 S.C. 370, 652 S.E.2d 444. Appellate courts have looked at the following factors in determining, under the totality of the circumstances, whether the prosecution has met its burden of proof to show the statement(s) was/were voluntary by a preponderance of the evidence: the length of the interrogation, its location, its continuity, the defendant's age or maturity, education, physical condition, and mental health. Id. The factors also include the failure of police to advise the defendant of his rights to remain silent and to have counsel present during custodial interrogation, whether threats of violence were made, whether promises of leniency were made, whether police made misrepresentations regarding evidence, and whether the deprivation of food or sleep was used as a punishment. Id. The factors also include the background, experience, and conduct of the accused. Id. No one (1) factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances. State v. Parker, *supra*. Judge McIntosh considered each of these factors in concluding that under the totality of the circumstances Fullbright's statements were admissible. **(R., Tr. Nov. 17, 2011, pp. 100-105).**

The totality of the circumstances supports Judge McIntosh's finding that the State met its burden by the preponderance of the evidence that Fullbright's statements were voluntary.

Fullbright was read his Miranda rights not once but several times by police officers. On October 28th, Fullbright was read his Miranda rights and voluntarily admitted he was present at the crime scene and guilty of murder and armed robbery. (R., Tr. Nov. 17, 2011, pp. 5-55, State's Ex. 1 & State's Ex. 2). Fullbright was again read his Miranda rights before being questioned at

all about the murder on October 29th. (R., Tr. Nov. 17, 2011, pp. 5-55, R. pp. 110-36 & **State's Exhibit 3).** Fullbright executed this waiver and gave a written signed confession that he was guilty of the murders and armed robberies of the victims. Fullbright executed an additional Waiver of Rights Forms before he took an investigator to various locations where he claimed evidence of the crimes was discarded. (State's Ex. 6). Fullbright signed each Waiver each time indicating that his rights were read to him, that he understood them, and he signed the form indicating that he was waiving and giving up those rights and voluntarily talking to detectives. (R., Tr. Nov. 17, 2011, 5-55, R. pp. 110-36). **(State's Exhibits 1, 3, & 6).** This factor weighs in favor of the voluntariness of Fullbright's statements.

Fullbright's first questioning began around 6:30 p.m on October 28th and ended around 4:00 a.m. in the early morning hours of October 29th. (R., Tr. Nov. 17, 2011, pp. 5-55). Investigators testified the total questioning lasted approximately ten (10) hours; however, this included smoke breaks, bathroom breaks, an approximately one (1) hour and a half (1/2) trip to the crime scene and back, stopping at a restaurant to get something for Fullbright and investigators to eat, and then taking more time to eat this evening meal. (R., Tr. Nov. 17, 2011, pp. 5-55). Additionally, more time was taken because Fullbright had appeared to faint during the interrogation; E.M.S. was contacted, and E.M.S. evaluated Fullbright for approximately forty (40) to forty-five (45) minutes. (R., Tr. Nov. 17, 2011, pp. 5-93). Further, because Fullbright was sleepy, the questioning ceased so Fullbright could be taken back to the jail where he could get some sleep. The length of the actual questioning in this case, approximately seven and a half (7 ½) hours, after considering various breaks, is in favor of voluntariness. *See* State v. Crawley, 349 S.C. 459, 562 S.E.2d 683 (Ct. App. 2002)(statement was voluntary where interrogation

lasted approximately seven and a half (7 ½) hours in which defendant also received dinner and rest-room breaks); State v. Saltz, *supra* (six and a half (6 ½) hours); State v. Chaffee-Ferrell, 285 S.C. 21, 328 S.E.2d 464 (1984)(five (5) hours); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 1973)(five and a half (5 ½) hours). This factor weighs in favor of the voluntariness of Fullbright's statements.

Fullbright's 2nd questioning the following day did not last very long at all. This factor weighs in favor of the admissibility of Fullbright's 2nd statement. Von Dohlen, 322 S.C. at 245, 471 S.E.2d 696 (finding three (3) hour interrogation did not render statement involuntary based on the totality of the circumstances); State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)(two and a half (2 ½) hours).

Investigators testified that Fullbright was not threatened or coerced in any way to give a statement. Neither the investigators nor Fullbright testified that Fullbright was hungry and asked for anything to eat, except for the one (1) instance on the return trip from the crime scene where officers got him something to eat, and he did eat an evening meal. (R., Tr. Nov. 17, 2011, pp. 5-55). Necessities were not withheld from Fullbright in an attempt to force him to give a statement. (R., Tr. Nov. 17, 2011, pp. 5-55). Further, when Fullbright said he was tired, investigators stopped questioning him and did not resume questioning until around 2:20 p.m. the next day, after he had been given an opportunity to get some rest. (R., Tr. Nov. 17, 2011, pp. 5-55, R. pp. 110-36). This factor weighs in favor of the voluntariness of Fullbright's statements.

Respondent submits Fullbright's interrogation did not take place in a police dominated atmosphere. With regard to his 1st statement, only one (1) officer was doing the questioning; the other was in the conference room taking notes. *See* State v. Dye, 384 S.C. 42, 681 S.E.2d 23 (Ct.

App. 2009)(finding when defendant confessed he was not in a police dominated atmosphere as only one (1) officer was present in the room). And, Fullbright was not interrogated in a cell at the jail, but questioned in conference room at the Sheriff's Office, in an investigator's office upon returning from locating Ms. Staton's body, or in a converted conference room at the Detention Center. This factor weighs in favor of the voluntariness of Fullbright's statements.

Fullbright was twenty-nine (29) to thirty (30) years old at the time he was questioned. **(Tr. Nov. 17, 2011 94-99, State's Ex. 1, 3, & 6).** Fullbright had also completed his GED. This factor weighs in favor of the voluntariness of Fullbright's statements. *See* Davis v. North Carolina, 384 U.S. 737 (1966); State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007).

Nor is there any evidence Fullbright was under the influence of drugs or alcohol when questioned. During the written statement, Fullbright denied that he was under the influence of any alcohol or drugs. The investigators who questioned Fullbright testified that he did not appear to be under the influence of alcohol or drugs when giving his statements. An EMS technician also testified that while Fullbright told him he had taken some prescription pills within the past seventy-two (72) hours, Fullbright did not appear to him, the trained E.M.T., to be under the influence of alcohol or drugs at the time he examined Fullbright, which would have been approximately one-half (½) way through Fullbright's initial questioning on the 28th. Further, Fullbright's 2nd questioning did not occur until 2:20 p.m. on October 29th, and there was no indication Fullbright was under the influence of any drugs or alcohol at that time. (Tr. Nov. 17, 2011, pp. 5-93). This factor weighs in favor of the voluntariness of Fullbright's statements. State v. Belue, 259 S.C. 487, 193 S.E.2d 121 (1972); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999).

There was no evidence Fullbright was ever physically assaulted or threatened with a physical assault. The only testimony was that an investigator touched Fullbright *only to see if he was unconscious* after Fullbright appeared to have passed out and fell on to the floor of the Sheriff's Office conference room. Out of an abundance of caution, an investigator contacted EMS. Further, the EMS technician testified Fullbright did not need medical attention, and Fullbright declined any further medical treatment two (2) different times. (R., Tr. Nov. 17, 2011, pp. 5-93). And, Fullbright did not testify in the Denno hearing that he was threatened with physical violence nor was any physical violence used against him. Investigators testified they did not threaten or coerce Fullbright in any way. There was no testimony that there was any yelling or screaming at Fullbright by police officers (R., Tr. Nov. 17, 2011, pp. 5-93, R. pp. 110-36). This factor weighs in favor of the voluntariness of Fullbright's statements.

Furthermore, there was no evidence elicited in the pre-trial Denno hearings that police misrepresented the evidence in the case. In fact, there was no testimony from anyone that police misrepresented any facts regarding the murders of the Statons to Fullbright in an attempt to get him to confess. (R., Tr. Nov. 17, 2011, pp. 5-99; R. pp. 110-36). This factor weighs in favor of the voluntariness of Fullbright's statements.

With regard to Fullbright's claim that investigators fabricated his confession, made through the testimony of his father, it was within Judge McIntosh's discretion to find this claim and testimony was not credible given all of the evidence before him. It is clear Judge McIntosh determined that Fullbright's argument, and his father's testimony, was not credible and that the investigator's testimony, that Fullbright signed his waivers, initialed his 1st statement, and signed his 2nd statement, was credible. This is implicit in his ruling. This is supported by the fact that

Fullbright's father admitted he was not present during any of Fullbright's statements to police. In fact, Fullbright did not testify at the Denno hearing and establish any coercive or threatening conduct by the police. (R., Tr. Nov. 17, 2011, pp. 5-108; R. pp. 110-36).

The investigators' testimony and credibility are supported by the waivers and written statements of Fullbright. In the waivers, Fullbright acknowledged, by his signature, that he was making the statements freely and voluntarily with full understanding of his constitutional rights. He also acknowledged by his signature that *no* threats, force, or promise *of any kind* had been made *by anyone* to induce or cause him to waive his rights and answer questions. In fact, he initialed several pages of his 1st statement, only wanted to change the order of events in that statement, and signed the 2nd statement indicating that this statement was true and correct. Under the totality of the circumstances, Judge McIntosh did not abuse his discretion in finding Fullbright's first (1st) or second (2nd) statements were made voluntarily, intelligently, and knowingly given the evidence before him by a preponderance of the evidence. (R., Tr. Nov. 17, 2011, pp. 1-93; R. pp. 110-36; State's Ex. 1, 2, 3, 4, 6).

Additionally, Judge McIntosh, who had the opportunity to view the investigators, Fullbright's father's testimony, and that of the EMS technician, could judge their credibility accordingly. Miller, 375 S.C. at 387, 652 S.E.2d at 453. This determination was within his discretion. Id. He was not required to accept Fullbright's father's testimony as credible or believable. State v. Boone; State v. McAlister. He was not required to believe Fullbright's *allegation* the police fabricated his confessions. State v. Brown; State v. Howard. *See e.g.* State v. Dillard, 327 S.C. 340, 486 S.E.2d 278 (Ct. App. 1997)(a trier of fact must not always believe uncontradicted testimony because "[t]here remains the question of the inherent probability of the

testimony and the credibility of the witness or the interest of the witness in the result of the litigation."), *citing* Black v. Hodge, 306 S.C. 196, 410 S.E.2d 595 (Ct. App. 1991)(trier of fact is not required to believe uncontradicted testimony, since there remains the question of the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation). *See also* State v. Wright, 354 S.C. 48, 55, 579 S.E.2d 538, 542 (Ct. App. 2003)(stating the "evaluation of demeanor and credibility [are] matters within the peculiar province of the circuit court").

Furthermore, the credibility of Fullbright's claim at the Denno hearing was dubious, at best. Each investigator who testified at the Denno hearing testified Fullbright signed each Miranda waiver form, and Fullbright either initialed or signed his written statements. Judge McIntosh was entitled to reject Fullbright's *claims* at the Denno hearing as not credible. Miller; Boone; McAlister; Brown; Howard; Dillard; Wright.

And, given the facts and evidence developed at the Denno hearing, Judge McIntosh did not abuse his discretion in finding the State had proven the voluntariness of Fullbright's statements by a preponderance of the evidence. Especially, in light of the fact that in his written statements and waivers Fullbright acknowledged that he was answering questions **knowingly, intelligently, and voluntarily.**

Furthermore, the investigators all testified Fullbright's statements were voluntary, and he was not promised anything in order to get him to talk about the murder of the victims in this case. *See* State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851, 854 (1982)(holding even though interrogating officers encouraged defendant to make a statement, their actions were not coercive or threatening). This evidence was before Judge McIntosh. He could accept it or reject it in his

own discretion. Finally, Fullbright did not testify at the Denno hearing providing any testimony as to the voluntariness of his statements. (R., Tr. Nov. 17, 2011, pp. 5-108; R. pp. 110-36).

Judge McIntosh did not abuse his discretion in admitting Fullbright's statements. Given the record below, Fullbright has failed to show Judge McIntosh's ruling is not supported by any evidence. Fullbright has failed to show Judge McIntosh's ruling on the preponderance of the evidence was manifestly erroneous. Baccus, 367 S.C. at 48, 625 S.E.2d at 220; Von Dohlen, 322 S.C. at 242, 471 S.E.2d at 695; Franklin, *supra*; Arrowood, *supra*. Therefore, this appeal must be dismissed.

Harmless Error

Even assuming *arguendo*, error in the admission of Fullbright's statement(s), their admission was harmless. Arizona v. Fulminante, 499 U.S. 279, 310, 111 S.Ct. 1246 (1991)(error in admission of involuntary confession is subject to harmless error analysis); Franklin v. Catoe, 346 S.C. 563, 552 S.E.2d 718 (2001); State v. Perry, 74 S.C. 551, 54 S.E.764 (1906)(finding admission not prejudicial in part because defendant made same confession to others).

The Evidence against Fullbright

In making a determination regarding harmless error, this Court will look at the entire record. State v. Miller, 367 S.C. 329, 626 S.E.2d 328 (2006). This Court will not set aside a conviction for an insubstantial error not affecting the result when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached. State v. Kelley, 319 S.C. 173, 460 S.E.2d 368 (1995). The evidence against Fullbright was overwhelming. Guilt was conclusively proven, and no other rational conclusion could have been reached.

The victims were last seen alive on October 23, 2009. The victim Homer Staton bought

and sold gold jewelry and regularly carried $25,000 on his person at a time. The victims traveled all over the Upstate of South Carolina to buy and sell gold jewelry, but they would not engage in such transactions after dark unless they knew the person involved. Phone records showed Fullbright had previously contacted the victims before October 23, 2009 using his Aunt's phone. Cell phone records established Homer Staton received a phone call at his residence in Taylors around 6:00 p.m. the date of his disappearance. This phone call was from a phone belonging to Ernie Ramirez, a neighbor of Fullbright. Cell phone records established that after receiving this call the victims left Taylors and traveled to Anderson County. The records established the victims traveled through Williamston eventually arriving in Belton, where Fullbright lived. The testimony at trial established Fullbright had borrowed Ramirez phone the evening of the victim's disappearance. After arriving in Belton, phone records showed the victims then traveled to Iva, S.C. with Mr. Staton making his last phone call on his personal cell phone around 8:00 p.m. in Iva. Testimony and phone records established Fullbright began making phone calls on Mr. Staton's "Go Phone" around 9:00 p.m., and Fullbright then appeared at an arranged meeting to purchase drugs in a *small black car* he had never been seen in before. Phone records also showed Ramirez was at his home during the time period the victims were murdered, not in Iva from where Fullbright was making his calls. Phone records also established Fullbright made a phone call to Ramirez from the area of Horton Road the night of the victim's disappearance and murder, and Ramirez received the call at his home in Belton. The victims' car was found the next day abandoned on Horton Road filled with blood, bone fragments and human tissue matter containing the victims' D.N.A. The pathologist and crime scene reconstruction expert determined the victims were murdered while seated in the front seat of their car by someone

seated in the back seat striking them with a hammer type weapon. Receipts and surveillance footage established early the morning following the victims' murders, Fullbright purchased two (2) gas cans at Walmart and gasoline at a nearby gas station. Ramirez informed police that the morning after the victims were murdered he accompanied Fullbright deer hunting and witnessed Fullbright burning items in a burn pile. Ramirez led police to the burn site and photographs of the burn pile were taken and admitted before the jury. The burn site was located on property owned by Fullbright's father. The same day Fullbright appeared at a convenience store on three (3) separate occasions and each time made purchases with a separate one hundred dollar ($100) bill. Each time, Fullbright purchased items that could be used to smoke or use illegal drugs. Over the next few days, Fullbright purchased even more illegal drugs, more than he had ever purchased before the victims' murders. Fullbright admitted to the victim's brother at his arraignment hearing that he committed the murders of Homer and Jo Ann Staton. Fullbright admitted his drug lifestyle was what led to the victims' murders.

Therefore, the admission of Fullbright's statements, even if erroneous, was harmless beyond a reasonable doubt. Perry, *supra* (finding admission not prejudicial in part because defendant made same confession to others); State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)(admission of improper evidence is harmless where it is merely cumulative to other evidence); State v. Braxton, 343 S.C. 629, 541 S.E.2d 833 (2001); State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334 (1978); State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)(error in admission of evidence is harmless where cumulative to other evidence properly admitted); State v. Douglas, 367 S.C. 498, 520, 626 S.E.2d 59, 71 (Ct. App. 2006)(admission of improper evidence is harmless where the evidence is merely cumulative to other evidence"). This appeal

must be dismissed. Arizona v. Fulminante; Franklin v. Catoe.

CONCLUSION

Based on the foregoing, Fullbright's convictions for the murders and armed robberies of Homer and Joanne Staton and the resulting sentences must be affirmed.

Respectfully submitted,

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March 25, 2014

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County
The Honorable R. Lawton McIntosh, Circuit Court Judge

THE STATE,

Respondent,

v.

MATTHEW BRANDON FULLBRIGHT,

Appellant.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court entitled A Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

ANTHONY MABRY
Assistant Attorney General

March 25, 2014

CERTIFICATE OF SERVICE

I, Anthony Mabry, hereby certify that I have served the ***Final Brief of Respondent*** in the foregoing action by depositing copies in the InterAgency Mail to Susan B. Hackett, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 25th day of March, 2014.

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