STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM YORK COUNTY
Court of General Sessions
Grace Gilchrist Knie, Circuit Court Judge

Appellate Case No. 2018-000103

THE STATE, ...RESPONDENT,

v.

WARREN TREMAINE DUVANT,...APPELLANT.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

Page

Table of Contents i

Table of Authorities ii

Respondent's Statement of Issues on Appeal 1

Statement of the Case 2

Statement of Facts 3

Standard of Review 7

Argument:

I. The trial judge properly denied Appellant's motion for a directed verdict because there was sufficient evidence demonstrating Appellant's guilt of the offense of trafficking cocaine 8

II. Any error in the trial judge instructing the jury that "Actual knowledge of the presence of the cocaine is strong evidence of [Appellant]'s intent to control its disposition or use" is harmless due to the substantial evidence of Appellant's guilt 11

III. The trial judge properly denied Appellant's motion to suppress his statements made during his interrogation, and the evidence obtained therefrom, because was properly informed of his constitutional rights pursuant to Miranda[1] 15

Conclusion 18

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

TABLE OF AUTHORITIES

Cases

California v. Prysock, 453 U.S. 355 (1981) 19, 20
Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000) 13
Jackson v. Denno, 378 U.S. 368 (1964) 18
Jackson v. Virginia, 443 U.S. 307 (1979) 10
Lowry v. State, 376 S.C. 499, 657 S.E.2d 760 (2008) 13
Miranda v. Arizona, 384 U.S. 436 (1966) .... i, 18, 19
Sheppard v. State, 357 S.C. 646, 594 S.E.2d 462 (2004) 13
State v. Austin, 299 S.C. 456, 385 S.E.2d 830 (1989) 12
State v. Bennett, 415 S.C. 232, 781 S.E.2d 352 (2016) 10
State v. Breeze, 379 S.C. 538, 665 S.E.2d 247 (Ct. App. 2008) 18
State v. Bryant, 372 S.C. 305, 642 S.E.2d 582 (2007) 7
State v. Cheeks, 401, S.C. 322, 737 S.E.2d 480 (2013) .... passim
State v. Cherry, 361 S.C. 588, 606 S.E.2d 475 (2004) 9
State v. Condrey, 349 S.C. 184, 562 S.E.2d 320 (Ct. App. 2002) 9
State v. Curtis, 356 S.C. 622, 591 S.E.2d 600 (2004) 9, 10
State v. Dantonio, 376 S.C. 594, 658 S.E.2d 337 (Ct. App. 2008) 9
State v. Ezell, 321 S.C. 421, 468 S.E.2d 679 (Ct. App. 1996) 13
State v. Foust, 325 S.C. 12, 479 S.E.2d 50 (1996) 13
State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002) 9
State v. Holland, 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009) 12
State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994) 14
State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838 (Ct. App.1996) 18, 19
State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007) 17, 19
State v. Nix, 288 S.C. 492, 343 S.E.2d 627 (Ct. App. 1986) 9
State v. Pearson, 415 S.C. 463, 783 S.E.2d 802 (2016) 10
State v. Richburg, 250 S.C. 451, 158 S.E.2d 769 (1968) 10
State v. Robinson, 310 S.C. 535, 426 S.E.2d 317 (1992) 10
State v. Simmons, 384 S.C. 145, 682 S.E.2d 19 (Ct. App. 2009) 12
State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006) 8, 9, 11
State v. Wharton, 381 S.C. 209, 672 S.E.2d 786 (2009) 13
State v. Williams, 367 S.C. 192, 624 S.E.2d 443 (Ct. App. 2005) 12

STATEMENT OF ISSUES ON APPEAL

I. The trial judge properly denied Appellant's motion for a directed verdict because there was sufficient evidence demonstrating Appellant's guilt of the offense of trafficking cocaine.

II. Any error in the trial judge instructing the jury that "Actual knowledge of the presence of the cocaine is strong evidence of [Appellant]'s intent to control its disposition or use" is harmless due to the substantial evidence of Appellant's guilt.

III. The trial judge properly denied Appellant's motion to suppress his statements made during his interrogation, and the evidence obtained therefrom, because was properly informed of his constitutional rights pursuant to Miranda.

STATEMENT OF THE CASE

On April 19, 2018, the York County Grand Jury indicted Appellant for trafficking cocaine, ten grams or more. On May 22–25, 2018, Appellant proceeded to a jury trial before the Honorable Grace Gilchrist Knie. Charles Harold Rudnick, Esquire, represented Appellant; Assistant Solicitors Thomas Blaine Pleming, Esquire, and Benjamin Hasty, Esquire, represented the State. The jury found Appellant guilty as charged, and, because it was his or subsequent offense for such behavior, sentenced Appellant to twenty-five years' incarceration.

Appellant filed a timely Notice of Appeal and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

On August 23, 2017, Detective David Vaughn of the York County's Sherriff's Office went to the home located at 403 Belaire Circle in Clover, South Carolina to investigate a sexual assault.[2] As he approached the residence, he observed a "marijuana rolled cigar" on a railing of the front porch. Detective Vaughn knocked on the door and Carolyn Johnson answered the door. As Detective Vaughn spoke with Johnson, he smelled the odor of marijuana from inside the residence. When Detective Vaughn asked Johnson whether she had been smoking marijuana, she replied in the affirmative. When he asked whether any additional marijuana was within the home, she confirmed his suspicions. As a result, Detective Vaughn locked down the house by searching the home for any additional people and asking every occupant to wait outside while he obtained a search warrant. Within the home, he found Appellant in a room, sleeping. After escorting Appellant outside, Detective Vaughn waited with Appellant and Johnson while another detective, Shifferle, obtained a search warrant from the information he obtained. Detective Shifferle returned with a search warrant approximately an hour later. (Tr.p.117, line 25–Tr.p.123, line 8).

Other officers also went to the residence to assist Detectives Vaughn and Shifferle. Investigator Ramsey was the officer who read Johnson and Appellant their Miranda rights and ascertained their understanding of said rights; he also had Appellant sign a form acknowledging his understood his Miranda rights. Investigator Ramsey instructed Appellant:

> Anything you say can be used against you in court. You have the right to talk to a lawyer for advice before answering any questions, and to have your lawyer present during questioning. You have the right to have the advice and presence of a lawyer, even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the court for you, if you wish.

[2] Appellant was not a subject of the investigation.

> If you wish, you may answer any questions without the presence of a lawyer. You may stop answering at any time you desire.

Another officer, Lieutenant Ligon, asked Appellant whether any additional drugs were in the evidence, and, if so, where they were located. Appellant initially declined to respond, but soon thereafter agreed to show officers the location of the drugs after Lieutenant Ligon informed him they would search the house once the search warrant arrived. He led officers back to his bedroom to a tote bag of clothing. He peeled back some of the clothing on top and revealed a tote bag with a substance which appeared to be cocaine. Officers noted Appellant's ID was on the room's nightstand, and the clothing within the room and the tote bag were all "male." Additionally, officers found marijuana inside Johnson's room and eventually discovered cocaine within her purse. In the kitchen, Pyrex containers which had been used to manufacture crack-cocaine were found, along with a scale, heat-sealing bags, and packaging material for drugs. (Tr.p.123, line 9–Tr.p.132, line 5; Tr.p.133, line 12–Tr.p.173, line 14; Tr.p.177, line 4–Tr.p.195, line 14; Tr.p.197, line 3–Tr.p.219, line 21).

At trial, Johnson testified Appellant lived at 403 Belaire Circle with her brother, Eric Johnson, and Appellant. On the day that police obtained the search warrant, Appellant had resided in the home approximately "three or four months." Further, no one else used his bedroom for any purpose. When police arrived, she admitted to smoking marijuana that day and that cocaine and additional marijuana were in the house. She confirmed both she and Appellant were apprised of their Miranda rights, and that Appellant initially denied possessing any drugs until officers informed him they would soon search the home. However, Appellant testified none of the drug paraphernalia in the kitchen belonged to her. (Tr.p.233, line 17–Tr.p.264, line 13

John Jay Adams, the bail bondsman who bonded Appellant out of jail following his arrest, testified Appellant listed his home as 403 Belaire Circle in Clover, South Carolina, on his bond paperwork. (Tr.p.265, line 18–Tr.p.271, line 25).

At the conclusion of the State's case, trial counsel requested a directed verdict in favor of Appellant. He argued that only circumstantial evidence proved his guilt because the evidence only proved the drugs were located in the vicinity of his person and no evidence indicates drugs were found on his person. In response, the State noted several witnesses testified to Appellant leading officers to the drugs and knowing their precise location in the tote bag in his room. Due to his residency in the home and his knowledge of their location in his bedroom, the jury could reasonably infer Appellant's guilt of his charged offense. The trial judge denied the motion. (Tr.p.334, line 1–Tr.p.335, line 16).

During closing arguments, the State noted Appellant had actual knowledge of the cocaine, and that such knowledge was strong evidence that he intended to control its disposition or use. During his instructions to the jury, the trial judge reiterated this point, stating:

> Actual possession means that the cocaine was in the actual physical custody of the defendant. Constructive possession means that the defendant had dominion and control, or the right to exercise dominion or control over either the cocaine itself or the property on which the cocaine was found. Mere presence at the scene where the drugs were found is not enough to prove possession.
>
> Actual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control its disposition or use. The defendant's knowledge and possession may be inferred when a substance is found on the property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you, along with the other evidence in the case, and to be given the weight you decide it should have. Two or more persons may have joint possession of a drug.

> Mere presence at the scene is not sufficient to prove someone guilty of a crime. The defendant's presence where a crime is being committed, or mere association with a person who commits a crime, does not make a defendant an accomplice, or, an aider or abettor of the person committing the crime. The burden is on the State to prove every element of the crime charged. If you find, after reviewing all of the evidence, that the State has proved that the defendant was only present at the scene of a crime, and that they have not proved beyond a reasonable doubt any other participation in the crime, then you must find the defendant not guilty. The law is that proof of [being] at the scene of the crime is not sufficient to find someone guilty. Suspicious circumstances alone are not a justification for finding -- for a finding of guilty against any defendant.

(Tr.p.345, line 20–Tr.p.363, line 6; Tr.p.381, line 4–Tr.p.382, line 10).

STANDARD OF REVIEW

"In criminal cases, an appellate court reviews errors of law only and is bound by the factual findings of the trial court unless clearly erroneous." State v. Bryant, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007). "The conduct of a criminal trial is left largely to the sound discretion of the trial judge, who will not be reversed in the absence of a prejudicial abuse of discretion. Id. "An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law." Id.

ARGUMENT

I.

The trial judge properly denied Appellant's motion for a directed verdict because there was sufficient evidence demonstrating Appellant's guilt of the offense of trafficking cocaine.

Appellant argues the trial judge erred in denying his motion for directed verdict because there was insufficient evidence of Appellant's guilt, beyond a reasonable doubt, of trafficking cocaine. The State disagrees with this allegation of error. Initially, the State notes Appellant misconstrues the directed verdict standard in his brief; Appellant claims the trial judge erred in failing to grant the directed verdict because "the State failed to provide sufficient evidence to support the jury's finding that Appellant as guilty beyond a reasonable doubt of trafficking cocaine"; however, it is the duty of the trial judge to deny a motion for a directed verdict and submit a case to a jury when the evidence and all reasonable inferences, viewed in the light most favorable to the State, support a finding of guilt. Further, even interpreting Appellant's argument as claiming an insufficiency of circumstantial evidence so that submission to the jury was improper, Appellant mistakenly conflates the existence of circumstantial evidence with its weight; it was the duty of the jury, not the trial judge, to weigh the credibility of the witnesses' testimonies and determine Appellant's guilt, which was supported by a combination of direct and substantial circumstantial evidence at trial.

Standard of Review

On appeal from the denial of a directed verdict, the appellate court must view the evidence and all reasonable inferences in the light most favorable to the State. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the appellate court

must find the case was properly submitted to the jury. Weston, 367 S.C. at 292–93, 625 S.E.2d at 648; State v. Cherry, 361 S.C. 588, 593–94, 606 S.E.2d 475, 477–78 (2004). The appellate court may only reverse the trial judge's denial of a directed verdict motion if there is no evidence supporting the trial judge's ruling or if the ruling is based on an error of law. State v. Gaster, 349 S.C. 545, 555, 564 S.E.2d 87, 92 (2002); State v. Dantonio, 376 S.C. 594, 603, 658 S.E.2d 337, 342 (Ct. App. 2008). Indeed, "unless there is a total failure of evidence tending to establish the charge laid in the indictment, the trial judge's ruling upon a motion for a directed verdict must stand absent an error of law." State v. Nix, 288 S.C. 492, 496, 343 S.E.2d 627, 629 (Ct. App. 1986).

When ruling on a motion for a directed verdict, the trial court is concerned with the existence or non-existence of evidence, not its weight. State v. Curtis, 356 S.C. 622, 633, 591 S.E.2d 600, 605 (2004); State v. Condrey, 349 S.C. 184, 190, 562 S.E.2d 320, 323 (Ct. App. 2002). Ultimately, the question is whether, in view of the evidence in the light most favorable to the State, a rational trier of fact could find all the elements of the crime beyond a reasonable doubt. State v. Robinson, 310 S.C. 535, 539, 426 S.E.2d 317, 318 (1992) (finding any rational trier of fact could have found all the elements of the crime beyond a reasonable doubt in affirming the denial of a motion for directed verdict and citing Jackson v. Virginia, 443 U.S. 307 (1979)). The task of the trial court is to simply determine "whether the evidence presented is sufficient to allow a reasonable juror to find the defendant guilty beyond a reasonable doubt." State v. Bennett, 415 S.C. 232, 237, 781 S.E.2d 352, 354 (2016). The reviewing court should affirm if in viewing the evidence in the light most favorable to the State, "the evidence could induce a reasonable juror to find [the defendant] guilty." See State v. Pearson, 415 S.C. 463, 474, 783 S.E.2d 802, 808 (2016); also State v. Richburg, 250 S.C. 451, 459, 158 S.E.2d

769, 772 (1968) ("When the evidence is susceptible of more than one reasonable inference, questions of fact must be submitted to the jury.").

Analysis

Notably, Appellant's argument misconstrues the gatekeeping role of the trial judge. It is not the trial judge's duty to weigh the evidence and determine whether, beyond a reasonable doubt, a defendant is guilty of a charged crime; a trial judge is concerned with the existence or non-existence of evidence, not its weight. See Curtis, 356 S.C. at 633, 591 S.E.2d at 605. Provided the evidence, viewed in the light most favorable to the State, proves all the elements of the charged crime, a trial judge does not err in submitting a case to a jury. Weston, 367 S.C. at 292–93, 625 S.E.2d at 648.

Appellant's entire argument on this issue examines Johnson's credibility and that it was *possible* the drugs and drug paraphernalia found in the home could have belonged to another individual. Appellant's argument ignores the evidence the State did present at trial; (1) Appellant listed the 403 Belaire address as his home on his bail bond paperwork; (2) Johnson testified Appellant lived in the home; (3) Appellant was found sleeping in a bed at the address; (4) Appellant led the officers to the exact location of the drugs hidden in the room, buried under clothes in a tote bag; (5) numerous items of drug paraphernalia were found in the kitchen of the home. As noted in State v. Cheeks, 401, S.C. 322, 737 S.E.2d 480 (2013), discussed more fully infra, actual knowledge of the presence of a drug is strong evidence of intent to control its disposition or use. Id. at 328–29, 737 S.E.2d at 484. Viewing this evidence in the light most favorable to the State, there was direct and circumstantial evidence of Appellant's guilt of trafficking cocaine. Accordingly, the trial judge did not err in denying Appellant's motion for a directed verdict.

II.

Any error in the trial judge instructing the jury that "Actual knowledge of the presence of the cocaine is strong evidence of [Appellant]'s intent to control its disposition or use" is harmless due to the substantial evidence of Appellant's guilt.

Appellant asseverates the trial judge erred in instructing the jury, "[a]ctual knowledge of the presence of the cocaine is strong evidence of [Appellant]'s intent to control its disposition or use." The State concedes this *instruction*, pursuant to State v. Cheeks, 401, S.C. 322, 737 S.E.2d 480 (2013), was improper. However, as noted by Cheeks, such evidence was properly presented to, and considered by, the jury. Accordingly, given the combination of direct and circumstantial evidence presented to them, the jury properly found Appellant guilty of his charged offense. Given this substantial evidence of guilt, any error in the trial judge's instruction was harmless.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). In reviewing a trial judge's jury instructions, the appellate court must view the jury charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009). "A request to charge a correct statement of the law on an issue raised by the indictment and the evidence presented at trial should not be refused." State v. Austin, 299 S.C. 456, 458, 385 S.E.2d 830, 831 (1989). "It is error for the trial court to refuse to give a requested instruction which states a sound principle of law when that principle applies to the case at hand, and the principle is not otherwise included in the charge." State v. Williams, 367 S.C. 192, 195, 624 S.E.2d 443, 445 (Ct. App. 2005) (quoting Clark v. Cantrell, 339 S.C. 369, 390, 529 S.E.2d 528, 539 (2000)).

When reviewing the trial judge's jury instructions, the appropriate test involves determining what a reasonable juror would have understood the charge to mean. Sheppard v. State, 357 S.C. 646, 664, 594 S.E.2d 462, 474 (2004). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009). A jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996). So long as the jury instructions presented are substantially correct and cover the applicable law, reversal is not warranted. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996).

Errors, including erroneous jury instructions, are subject to harmless error analysis. Lowry v. State, 376 S.C. 499, 510-11, 657 S.E.2d 760, 766 (2008). Further, where an erroneous jury charge does not contribute to the jury's verdict, the error is harmless. See State v. Jefferies, 316 S.C. 13, 446 S.E.2d 427 (1994).

In State v. Cheeks, 401 S.C. 322, 737 S.E.2d 480 (2013), the Supreme Court of South Carolina found the trial judge erred in instructing the jury:

> Now, mere presence at a scene where drugs are found is not enough to prove possession. **Actual knowledge of the crack cocaine is strong evidence of a defendant's intent to control its disposition or use.** The defendant's knowledge and possession can be inferred when a substance is found on property under the defendant's control. However, this inference is simply an evidentiary fact to be taken into consideration by you along with other evidence in this case and to be given the amount of weight you think it should have. Two or more persons may have joint possession of a drug.

Id. at 327, 737 S.E.2d at 483 (emphasis in original). Specifically, the court found the judge's instruction "both improperly weigh[ed] the evidence, and that it largely negate[d] the mere presence charge." Id. at 328, 737 S.E.2d at 484. However, it noted that the evidence itself could

be considered by the jury as evidence of guilt, and that the State may argue such to the jury; the only impropriety was allowing the trial judge to charge the jury on the evidentiary inference because such instruction placed an "undue emphasis" on that piece of circumstantial evidence. Id. at 328–29, 737 S.E.2d at 484. Ultimately, the count concluded the defendant was not prejudiced by the charge because there was no evidence he was "merely present" at the scene of the crime; all evidence indicated he was actively cooking crack cocaine when he was found by officers and that he possessed 650 grams of crack cocaine found on the home's kitchen counter. Id. at 329, 737 S.E.2d at 484.

Analysis

Appellant complains the portion of the jury charge instructing the jury that "[a]ctual knowledge of the presence of the cocaine is strong evidence of the defendant's intent to control its disposition or use." Appellant is correct that, pursuant to Cheeks, the trial judge's instruction was an improper comment on the facts. What Appellant fails to consider is that, also similar to Cheeks, Appellant was not prejudiced by the use of this charge given the overwhelming evidence of his guilt.

In Cheeks, the Supreme Court of South Carolina found the "strong evidence" charge improper because it undermined the mere presence charge and placed undue emphasis on the defendant's knowledge of the drugs and "deprive[d] the jury of its prerogative both to draw inferences and weigh evidence." Id. at 328–29, 737 S.E.2d 480, 484. However, the court noted that while the trial judge giving such instruction was improper, it was entirely proper for the State to argue such a proposition and for the jury to draw such an inference. Id. It then found that, because there was no evidence that there was no evidence Cheeks was "merely present" and

because of the overwhelming evidence of his guilt, Cheeks could not demonstrate prejudice warranting reversal of his conviction. Id.

Similar to Cheeks, the State's evidence of Appellant's guilt was overwhelming and no evidence was presented indicating Appellant was "merely present" at the home. Appellant was found at the home, asleep in a private bedroom. Johnson testified Appellant lived at that address, and when completing his bond paperwork Appellant listed the 403 Belaire address as his residence. Then, Appellant informed officers that drugs were hidden in home, led them to his bedroom, and removed the drugs from a hidden location in a tote bag in his room, a fact unchallenged at trial. Accordingly, due to this overwhelming evidence, Appellant was not prejudiced by the trial judge's use of the "strong evidence" charge.

III.

The trial judge properly denied Appellant's motion to suppress his statements made during his interrogation, and the evidence obtained therefrom, because was properly informed of his constitutional rights pursuant to Miranda.

Appellant argues the trial judge erred in failing to suppress Appellant's incriminating statements made during his questioning by officers, and the evidence such statements subsequently uncovered as the "fruit of the poisonous tree." The State disagrees with this allegation of error: Appellant made his incriminating statements knowingly and willingly following his receipt of his Miranda rights, rendering his statements and the evidence discovered therefrom proper.

Standard of Review

The process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury. State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007). Initially, the trial judge must conduct an evidentiary hearing in the absence of the jury. Id. At this phase of the proceedings, the State must show the statement was voluntarily made by a preponderance of the evidence. Id. If the trial court determines the State met its burden, the statement is submitted to the jury where its voluntariness must be established beyond a reasonable doubt. Id.

This hearing is commonly referred to as a Jackson v. Denno hearing based on the United States Supreme Court's decision in that case. Jackson v. Denno, 378 U.S. 368 (1964). This Court has noted the following:

> Our role when reviewing a trial court's ruling concerning the admissibility of a statement upon proof of its voluntariness is not to reevaluate the facts based on our view of the preponderance of the evidence. Rather, our standard of review is limited to

> determining whether the trial court's ruling is supported by any evidence. Thus, on appeal the trial court's findings as to the voluntariness of a statement will not be reversed unless they are so erroneous as to show an abuse of discretion.

State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008).

Based on the Fifth Amendment's protection against self-incrimination, the United States Supreme Court announced, "[T]he prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards. . . ." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Before the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App.1996). Notably, no "talismanic incantation" is required to satisfy the requirements of Miranda; provided the warnings given to the defendant were the functional equivalent of those stated in Miranda, said warnings will be deemed adequate. California v. Prysock, 453 U.S. 355, 359–62 (1981).

Volunteered exculpatory or inculpatory statements arising from custodial interrogation are not barred by the Fifth Amendment. Kennedy, 325 S.C. at 303, 479 S.E.2d at 842. The test of voluntariness is whether a suspect's will was overborne by the circumstances surrounding the given statement. Miller, 375 S.C. at 384, 652 S.E.2d at 451. In making this determination, the trial court must examine the totality of the circumstances surrounding the statement. Id.

Analysis

In the instant case, the warnings given to Appellant mirror the requirements set forth in Miranda and its progeny. Appellant was informed: (1) he had the right to remain silent; (2)

anything he said could be used against him in legal proceedings; (3) he had the right to speak with a lawyer for advice before answering any questions, or to have one present during questioning; (4) he had the right to an attorney even if he could not afford to hire one; (5) law enforcement was unable to appoint him a lawyer, but one would be appointed if he so desired. Further, these warnings were also provided to Appellant in writing, on the same form he signed. Appellant was well aware that he could consult a lawyer before answering any questions or speaking with police, but chose not to do so. Appellant's warnings conveyed to him his rights pursuant to Miranda, and accordingly the trial judge properly admitted his incriminating statements and the information gained therefrom. See Prysock, 453 U.S. at 359–62.

CONCLUSION

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

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

June 7, 2019

STATE OF SOUTH CAROLINA
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APPEAL FROM YORK COUNTY
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Grace Gilchrist Knie, Circuit Court Judge

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THE STATE, ...RESPONDENT,

v.

WARREN TREMAINE DUVANT,..APPELLANT.

PROOF OF SERVICE

I, Shana Montgomery, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending two copies of the same to:

Nisha Sandhu, Esq.
Pro Hac Vice, LA Bar No. 30340
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I further certify that all parties required by Rule to be served have been served. This 7th day of June, 2019.

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ALAN WILSON
ATTORNEY GENERAL

June 7, 2019

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RE: State v. Warren Tremaine Duvant
Appellate Case No. 2018-000103

Dear Mr. Sandhu:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

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SC Court of Appeals

WFS/ssm
Enclosures

cc: The Honorable Jenny A. Kitchings (original and one enclosed)
Christopher Lane Williams (two copies enclosed)
Victim Advocacy Division