STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN DURANT,

APPELLANT

APPELLATE CASE NO. 2016-001390

FINAL BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3727

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF ISSUES ON APPEAL

The trial court did not abuse its discretion in admitting Appellant's statements to Officer Happ and Investigator Wynn. The trial court properly concluded the statements were knowingly and voluntarily made by Appellant, and his intoxication did not render them involuntary. Further, the trial court properly found Investigator Wynn did not violate Appellant's right to remain silent. (Appellant's Issues I and II).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On November 12, 2014, Wiley Jones and Appellant lived at the Pee Dee Transitional Shelter in Florence, South Carolina. (T.98; R.66). Jones and Appellant did not really get along. (T.98; R.66). However, that night Jones asked Appellant if he wanted to go get some drinks. Appellant tried to tell Jones how he should be spending his money, and when Jones didn't agree, Appellant became offended. (T.108; R.76).

Appellant and Jones went back to the shelter. Appellant found Carl Wheeling, who was a resident of the shelter but also the person responsible for keeping the director informed of what happens after hours. (T.70-71; R.38-39). Appellant told Wheeling that he and Jones had been drinking and Jones was bragging about his money. According to Wheeling, this bothered Appellant and caused words between him and Jones. (T.72; R.40). Additionally, Wheeling said Appellant told him that Jones had been "messing with him" and that if it continues "there's going to be a problem." According to Wheeling, Appellant said he was going to "hurt" Jones. (T.72; R.40).

When Appellant left from the cubicle where Wheeling talked with him, Jones was standing there listening. (T.72-73; R.40-41). Jones indicated he thought Appellant was "going to leave [their problems] outside" and not bring them into the shelter. (T.73; 99; R.41; 67). According to Wheeling, Jones and Appellant went their separate ways. Jones indicated he went to the bathroom after talking with Appellant. (T.100; R.68).

Jones testified he was standing at a urinal when someone came in behind him. It was Appellant. Appellant had a knife and started stabbing Jones. (T.100; R.68). He stabbed him multiple times in the back. (State's Exhibits 13 and 14; R.___). Jones said he got turned around

and asked Appellant why he stabbed him, and Appellant responded "I told you to leave me alone." (T.101; R.69).

While Wheeling was passing through the TV lounge, he heard a "rumble" in the bathroom "like individuals fighting." (T.73; R.41). When he entered, he was "mortified at what [he] saw." Wheeling testified: "I remember seeing [Appellant]. He had Wiley Jones. With his left hand, he was holding him up against the urinal. His right hand - - he had the knife clinched with the blade in a downward position." (T.73; R.41). Wheeling indicted Appellant "was jumping up and reaching over, which would have caught [Jones] right her or in the back. So I had - - I saw him - - actually the blade hit Wiley about twice." (T.73; R.41). Jones was offering no resistance, but was trying to prevent being stabbed in the face or chest. (T.79; R.47). According to Wheeling, Jones did not have a weapon. Wheeling said Appellant "just kept chopping at [Jones]." (T.79; R.47).

Wheeling, who had recently had heart surgery, made a quick decision. He grabbed Appellant's arm holding the knife as he was about to thrust it into Jones again. He held Appellant so he could not stab Jones and allowed Jones to escape. (T.74; 101-102; R.42; 69-70). Jones got out of the bathroom. (T.74; 102; R.42; 70). After Jones left, wheeling released Appellant and went to call the shelter director. (T.74; R.42).

Jones ran out the back door and headed to the parking lot to get away from Appellant. (T.102; R.70). As he left, he saw Appellant still holding the knife down to his side. (T.103; R.71). Jones called 911. EMS arrived and took Jones to the hospital where he had to have fifty-two staples and stitches to close his wounds. (T.104; R.72).

Wheeling saw Jones being treated by EMS when he arrived outside after calling the director. (T.74-75; R.42-43). He said Appellant came around from the back corner of the

shelter. He said Appellant seemed calm and was "waking like nothing had ever happened." (T.75; R.43).

Tommy Nesmith lived at the transitional shelter with Appellant and Jones on November 12, 2014. He was outside smoking a cigarette, when he saw Appellant exit the shelter. He saw Appellant throw a knife over the fence at the back of the facility. (T.91; R.59). Nesmith went and retrieved the knife a couple days later from the other side of the fence. (T.92; R.60). He went and got the knife because other people were being accused of having the knife and he knew where it was thrown. (T.93; R.61). Nesmith gave the knife to Jones. (T.93; R.61). The knife had a red stain on it when Nesmith found it. (T.94-95; R.62-63). Jones took the knife to the director of the shelter. (T.107; R.75).

Jennifer Clayton, a forensic DNA analyst from SLED, tested several swabs from the restroom, dining room, and exterior wall of the transitional shelter along with the knife blade. (T.163; 172-175; State's Exhibit 15; R.127; 136-139; 199-201). The swabs and knife all contained blood and the DNA from the blood matched Jones with a probability of randomly selecting an unrelated individual having the same DNA profile as one in 28 quintillion. (T.174-175; R.138-139).

ARGUMENT

I. The trial court did not abuse its discretion in admitting Appellant's statements to Officer Happ and Investigator Wynn. The trial court properly concluded the statements were knowingly and voluntarily made by Appellant, and his intoxication did not render them involuntary. Further, the trial court properly found Investigator Wynn did not violate Appellant's right to remain silent. (Appellant's Issues I and II).

The trial court did not abuse its discretion in finding Appellant knowingly and voluntarily made his statements to Officer Happ and Investigator Wynn. Appellant's voluntary intoxication did not render the statements involuntary. Further, Investigator Wynn did not violate Appellant's right to remain silent because Appellant continued contact with Investigator Wynn. The trial court, after considering the totality of the circumstances, properly admitted Appellant's statements to Officer Happ and Investigator Wynn.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The circuit court must examine the totality of circumstances surrounding the statement and determine whether the State has carried its burden of proving the statement was given voluntarily. State v. Miller, 375 S.C. 370, 382, 652 S.E.2d 444, 450 (Ct. App. 2007). The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). When reviewing a trial court's ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966). In order to introduce into evidence a confession, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and, if the result of custodial interrogation, was taken in compliance with Miranda. See State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). To determine the voluntariness of a statement, the circuit court must first conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). "The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused." State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)).

In Miranda v. Arizona, the United States Supreme Court (USSC) created procedural safeguards to protect an individual's right against compelled self-incrimination, holding:

> [W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda, 384 U.S. 436, 478–79. Failure to comply with these constitutional safeguards renders the person's statements inadmissible against that person. Id. The USSC has embraced a flexible approach regarding Miranda warnings whereby courts consider the totality of the circumstances. See Wyrick v. Fields, 459 U.S. 42, 47–49 (1982). The waiver must also be made with the full

awareness of the nature of the right being abandoned and the consequences of the decision to abandon it. Moran v. Burbine, 475 U.S. 412, 421 (1986). The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of the totality of the circumstances surrounding the waiver. State v. Doby, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979). The critical question is whether the defendant's "will has been overborne [or] his capacity for self-determination **critically impaired** . . . ." Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973) (emphasis added).

Effect of Intoxication

In reviewing a statement given by someone intoxicated, the South Carolina Supreme Court has stated:

> The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words. Therefore, proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law, unless the accused's intoxication was such that he did not realize what he was saying. Proof of intoxication, short of rendering the accused unconscious of what he is saying, goes to the weight and credibility to be accorded to the confession, but does not require that the confession be excluded from evidence.

State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973).

In the instant case, the trial court conducted a Denno[1] hearing outside the presence of the jury. The court heard from both investigators and was able to review the audio recording by Officer Happ and in-car camera recordings of the statement given to Investigator Wynn. (State's Exhibits 1 and 2). Appellant maintained his intoxication rendered his statements involuntary, while the State asserted he knowingly and voluntarily gave his statements to both officers and

[1] Jackson v. Denno, 378 U.S. 368 (1964).

that his intoxication did not arise to the level in which he would not have understood his rights or what he was saying.

Officer Happ testified he read Appellant his Miranda rights and then had a conversation with him next to his patrol vehicle. (T.27-28; R.5-6). He testified he did not threaten, pressure, or coerce Appellant. (T.29-30; R.7-8). Further, he indicated there was nothing about Appellant's physical or mental condition that gave him any pause in regard to Appellant's ability to knowingly and voluntarily give a statement. (T.28; R.6). Additionally, he noted Appellant was responsive to the questions being asked. (T.28-29; R.6-7). Officer Happ did acknowledge that Appellant had been drinking. (T.32-33; R.10-11). Appellant's statement was recorded on Officer Happ's digital voice recorder and played for the trial court. (State's Exhibit 1).

Investigator Wynn testified he took a statement from Appellant while Appellant was in the back seat of Officer Happ's vehicle. It was recorded by Officer Happ's in-car camera and played for the trial court. (State's Exhibit 2). Investigator Wynn was asked: "So did he appear to be to a level of intoxication or have any sort of physical or mental issues that you perceived that would have given . . . you pause as far as speaking with him and getting a statement from him that night?" Investigator Wynn responded: "No." (T.39; R.17). Investigator Wynn indicated Appellant understood the nature of the questions and provided valid responses. (T.39; R.17). Investigator Wynn acknowledged Appellant had been drinking and had slurred speech. (T.40-41; R.18-19). Investigator Wynn indicated he spoke with the first officer on the scene, Officer Cantey, who informed him both the victim and Appellant had been drinking. However, Investigator Wynn did not remember Officer Cantey describing Appellant as "extremely intoxicated." (T.43; R.21). Investigator Wynn did admit Officer Cantey's incident report described both the victim and Appellant as extremely intoxicated. (T.44-45; R.22-23).

This case is similar to several considered by the South Carolina Supreme Court and other courts. In addition to Saxon, the South Carolina Supreme Court has clearly indicated intoxication does not per se render a statement involuntary. In State v. Bellue, 259 S.C. 487, 193 S.E.2d 121 (1972), the defendant contended "by reason of the use of drugs he lacked capacity to understand the Miranda warnings and to volunteer a statement." Id. at 494, 193 S.E.2d at 123. The defendant presented the testimony of Dr. Pat Elam, general practitioner at the South Carolina Department of Corrections and clinical consultant to a drug abuse program. Dr. Elam examined the defendant in Columbia two days after he was arrested. He testified that in his opinion the defendant was "not normal" at the time of the confessions. The State presented the testimony of two police officers who indicated the defendant was normal at the time of the confession. The South Carolina Supreme Court indicated the trial court held a proper Denno hearing. The Supreme Court found no error when the trial court "made his independent determination of voluntariness and then allowed the jury to make their independent determination." Id. at 495, 193 S.E.2d at 123.

In State v. White, this Court held that a suspect voluntarily waived his Miranda rights when he was in hospital bed on four point restraints and had been given sodium pentothal five hours prior to the questioning. State v. White 311 S.C. 289, 294-95, 428 S.E.2d 740, 743 (Ct. App. 1993). This Court stated: "The fact that he had been under medication and was strapped to his bed was, at best, only a circumstance the trial court was to consider in determining voluntariness." Id. at 294-295, 428 S.E.2d at 743; *see also* Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (holding coercive police activity is a necessary predicate to a finding that a confession is not voluntary, and a defendant's mental condition by itself and apart from official coercion does not dispose of the issue of voluntariness).

The Supreme Court considered a variation of the question in State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984), when a trial judge instructed the jury regarding the effect of intoxication on the voluntariness of a statement. The first question by the jury was: "Is a person legally responsible for statement he makes while under the influence?" In response, the judge stated: "... voluntary intoxication is never a defense to the commission of a crime. Since that is true, I tell you—charge you that a person is legally responsible for a statement he makes while under the influence." Id. at 413, 319 S.E.2d at 337. The judge had conducted a hearing and concluded that the Defendant's statement was voluntary even though he was intoxicated. The Court concluded the charge was not in error citing, *inter alia*, to Saxon. Id.

Other courts have also found intoxication does not render a statement involuntary. See People v. Veloz, 946 P.2d 525, 532-533 (Colo. App. 1997) (finding intoxicated defendant who was "stumbling around" and "extremely intoxicated" was properly advised of his rights and made statements voluntarily); State v. Finson, 447 A.2d 788, 792 (Me. 1982) (Even though defendant was "heavily intoxicated" the Court found "A person under the influence of alcohol is not necessarily incapable of waiving his constitutional rights or giving a voluntary statement, if despite the degree of intoxication he is aware and capable of comprehending and communicating with coherence and rationality."); U.S. v. Phillips, 506 F.3d 685 (8th Cir. 2007) (waiver was voluntary despite defendant's claimed intoxication from four ecstasy pills and a cup of brandy); United States v. Curtis, 344 F.3d 1057 (10th Cir. 2003) (found waiver knowing and voluntary even though defendant was "a little punchy," laid his head on the table, closed his eyes at times, and had bloodshot eyes when under the influence of marijuana, crack cocaine, and alcohol).

In the instant case, a review of the statements given indicated Appellant was responsive to all questions; spoke coherently when answering the questions; and while he slurred his speech

on occasion, he never appeared to be "critically impaired" such that he was not aware of what he was doing. In his statement to Investigator Wynn he even corrects several statements made by Wynn and indicates he remembers everything he has done that night even though he had been drinking. He denied involvement in the stabbing to both Officer Happ and Investigator Wynn. Further, he indicated he no longer had a knife that he had earlier, once saying it fell out of his pocket and the second time indicating it was at his cousin's house. Appellant indicated he had been in trouble before, indicated clearly he understood his rights, and knowingly and voluntarily gave statements to Officer Happ and Investigator Wynn. (State's Exhibits 1 and 2). Appellant was not "critically impaired," but instead, he was aware enough of the situation to deny involvement in the stabbing and to formulate a story regarding what happened to the knife he had on his person. The trial court, after considering the totality of the circumstances, did not err in finding Appellant's intoxication did not rise to the level necessary to render his statements involuntary.

Right to Remain Silent

Additionally, the trial court properly determined the statement to Investigator Wynn was not taken in violation of Appellant's right to remain silent. As part of Miranda's warnings, a person subject to custodial interrogation must be given the right to remain silent and not answer questions of the officer. "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease." Miranda, 384 U.S. at 473. Interrogation is the express questioning, or its functional equivalent which includes "words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response." State v. Sims, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991) (citing Rhode Island v.

Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690, 64 L.Ed.2d 297, 308 (1980)). However, "[i]f an accused makes a statement concerning the right to counsel 'that is ambiguous or equivocal' or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her Miranda rights." Berghuis v. Thompkins, 560 U.S. 370, 381 (2010).

After Investigator Wynn read Appellant his Miranda rights, he asked Appellant if he wanted to talk with him. Appellant responded: "No, sir." In order to verify what Appellant stated, Investigator Wynn responded: "You don't?" He did not continue the interrogation by asking any questions intended to elicit an incriminating response. He simply intended to verify Appellant's response. Appellant then again stated "No" but continued by asking Investigator Wynn was speaking with him and what Investigator Wynn wanted. Investigator Wynn indicated he just wanted to ask him a couple questions. Appellant then stated: "Ok, Ok, I mean I ain't trying to be funny." Investigator Wynn tells him: "That's fine, that's your right I mean if you don't want to talk to me about it." Appellant then stated: "I can talk to you. I don't mind talking to you." Investigator Wynn then asks: "So you understand what is going on?" Appellant interrupts saying he understands what is going on and then continues to answer questions asked by Investigator Wynn.

Investigator Wynn reasonably needed to clarify Appellant's response that he did not want to talk with him because Appellant had already given a statement to another officer and was placed in the vehicle to speak with Investigator Wynn. As the Ninth Circuit has explained: "There is a critical distinction between, on the one hand, an inquiry for the limited purpose of clarifying whether the defendant is invoking his right to remain silent or has changed his mind regarding an earlier assertion of the right and, on the other hand, questioning aimed at eliciting

incriminating statements concerning the very subject on which the defendant has invoked his right." United States v. Lopez-Diaz, 630 F.2d 661, 665 (9th Cir. 1980); see also, United States v. Gordon, 895 F.2d 932, 940 (4th Cir. 1990) (allowing police to ask only limited questions to clarify invocation by a defendant of his or her right to remain silent).

As a result, the trial judge who considered all the testimony, listened to argument of counsel, and examined the recorded statements properly determined intoxication did not render the statements *per se* involuntary. In reviewing the totality of the circumstances, the trial court did not abuse his discretion in finding Appellant's statements to Officer Happ and Investigator Wynn were knowing and voluntary.

Harmless Error

Finally, any error in the admission of either statement or even both statements is entirely harmless in light of the overwhelming evidence presented in this case and the fact Appellant does not confess to the crime and instead denies involvement in his statements. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (holding improperly admitted evidence was harmless error given the overwhelming evidence of guilt).

The police received a call about an earlier dispute on Church Street which Appellant admitted was between him and Jones. In the phone call, it was reported Appellant had a knife. (State's Exhibit 2). During the actual incident, the victim clearly identified Appellant as his attacker, indicating he was stabbed multiple times while in the restroom. An eye witness, Wheeling, that served as a resident supervisor of the shelter entered the restroom and witnessed Appellant stabbing Jones. Both Jones and Wheeling identified Appellant in court as the person with the knife stabbing Jones. Finally Nesmith identified Appellant as the person who exited the shelter and disposed of the knife by throwing it over the fence. Nesmith retrieved the knife, gave

it to Jones who turned it into the director of the shelter. DNA testing on the knife matched blood on the knife and blood on the wall of the shelter to Jones.

In the statements, Appellant admitted the argument at 413 Church Street, but continuously denied involvement in the stabbing. He admitted he had a knife earlier in the night as reported by the caller, but indicated it was either lost (State's Exhibit 1) or at his cousin's house. (State's Exhibit 2). He never confessed and only maintained his innocence in the statements.

As a result, the admission of the statements could not have been unduly prejudicial even if they were improperly admitted. Further, based on the overwhelming evidence presented, any error in their admission was entirely harmless.

CONCLUSION

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

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY: 
William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

September 13, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2016-001390

The State, Respondent,

vs.

Melvin Durant, Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: _____
William M. Blitch, Jr.

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

ATTORNEYS FOR RESPONDENT

September 13, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2016-001390

The State, Respondent,

vs.

Melvin Durant, Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 13th day of September, 2017.

Anne Mueller

Anne A. Mueller
Legal Assistant

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