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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Allendale County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2021-000985

THE STATE,

Respondent,

vs.

ROBERT LEE MILLER, III,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUE ON CERTIORARI

"Did the Court of Appeals err when it affirmed the trial court's admission of fifteen-year-old Petitioner's statement by failing to apply the special scrutiny afforded to statements made by juveniles and failing to examine the totality of the circumstances, which included Petitioner's youth and limited cognitive functioning, promises of leniency by police, the use of sophisticated interrogation techniques, the failure of the investigators to advise Petitioner of his constitutionally mandated warnings, and the absence of a parent, where the Court viewed the circumstances individually and held each was insufficient to require exclusion?"

COUNTER-STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals somehow err by affirming the trial judge's ruling admitting Miller's incriminating admissions to law enforcement into evidence during trial when the record contains evidence and testimony that supports the trial judge's determination the admissions were voluntarily made under the totality of the circumstances following a valid waiver of rights?

STATEMENT OF THE CASE

Procedural History

In June of 2014, Petitioner Robert Lee Miller, III, who was fifteen years old at the time, was taken into custody after he admitted to his involvement in the brutal murder of an eighty-six-year-old man. Based on Miller's age, a waiver hearing was conducted on March 24, 2015, in the Allendale County Family Court with the Honorable Gerald C. Smoak, Jr., family court judge, presiding. Upon considering the matter, the family court judge transferred Miller's case to the court of general sessions. In July of 2015, the Allendale County Grand Jury indicted Miller for one count of murder. On July 11, 2016, a jury trial was commenced in the Allendale County Court of General Sessions with the Honorable R. Lawton McIntosh, circuit court judge, presiding. At the conclusion of the four-day trial, the jury convicted Miller as indicted. Following the verdict, the trial judge deferred sentencing to a later date to afford Miller time to prepare mitigation evidence with the assistance of an expert. Subsequently, on June 5, 2017, a sentencing hearing was held, and the trial judge sentenced Miller to a fifty-five-year term of imprisonment. Miller then timely filed and perfected an appeal.

On appeal, the Court of Appeals—following briefing and oral argument—issued a published opinion affirming Miller's conviction. State v. Miller, 433 S.C. 613, 861 S.E.2d 373 (Ct. App. 2021). Thereafter, Miller petitioned the Court of Appeals for rehearing, and the petition was denied. Miller then filed a petition for a writ of certiorari in the Supreme Court.

Factual History

On the afternoon of Tuesday, June 17, 2014, Willie Johnson, an eighty-six-year-old church deacon and retired merchant marine who resided in Allendale, South Carolina, called Mary Bowman, who attended the same church as Johnson, to ask for assistance getting a ride the

next day. (R. p. 122; p. 131; p. 135; pp. 140-142; pp. 146-147; p. 167). However, Bowman did not answer because she was not home at the time, so Johnson left her a message asking her to give him a call back. (R. pp. 140-142).

At approximately 8:00 p.m. later that evening, Kiawah Cave, the daughter of Johnson's next-door neighbors, drove by Johnson's house on the way to work and noticed three younger males in Johnson's yard. (R. pp. 134-137). Of the three, two were heading around Johnson's house while the third, who had dreadlock-style hair, was locking Johnson's gate. (R. p. 135). Although she did not recognize any of the males, Cave did not think anything was amiss at the time because Johnson regularly had people come over to help him due to his advanced age, so she continued on to work unconcerned. (R. pp. 135-136).

Around the same time, Bowman received Johnson's message from earlier that afternoon and began trying to call him back. (Tr. pp. 142-143). However, Johnson's phone line was busy every time she tried to call, and she was unable to reach him. (R. pp. 142-143).

On the following day, Marquita Barron, a meals-on-wheels delivery driver who worked for the Allendale County Office on Aging, went to deliver a meal to Johnson at his residence like she typically did every Wednesday. (R. pp. 149-151). When she arrived, Barron knocked on the front door, which was uncharacteristically closed, but received no response from inside. (R. pp. 151-152). Having received no response, Barron left to make her other deliveries, but she came back to the residence several times throughout the day in an effort to get Johnson's meal to him. (R. pp. 153-154). Troublingly, Johnson never came to the door. (R. pp. 153-154).

Concerned, Barron alerted her supervisor, Jannette Bennett, since Johnson had always been home for his deliveries in the past. (R. pp. 155-156; pp. 160-161). In response, Bennett personally called Johnson several times on that date and again on the following day, Thursday

June 19, 2014. (R. pp. 161-162). However, Johnson's phone line was busy every time she called. (R. p. 162).

Ultimately, because no one had been able to get in touch with Johnson by phone, a member of Johnson's church who only lived a few blocks away was dispatched to check on him in person.[1] (R. pp. 122-125; pp. 146-148). Upon arriving early that Thursday afternoon, the church member knocked on the door and received no response. (R. p. 104; p. 125). The church member then opened the door, stepped into the residence, and found Johnson on the floor with his hands bound behind his back and a plastic bag tied over his head. (R. pp. 109-110; p. 126; p. 167; pp. 170-171). At that point, the church member quickly exited the home and alerted the authorities of his horrifying discovery. (R. p. 101; pp. 127-128).

Following that, officers and other emergency personnel rapidly responded to Johnson's residence, but, sadly, Johnson was already "very clear[ly]" dead by that point in time.[2] (R. p. 102; p. 111; pp. 129-132; p. 174; pp. 181-182). As a result, an investigation into the death was initiated, and, during the course of it, officers found pieces of Johnson's shattered dentures scattered throughout his house, Johnson's wallet on the floor next to his body, a safe that had been broken open abandoned in a ditch outside, and Johnson's phone off its hook.[3] (R. pp. 110-111; pp. 114-115; pp. 184-185; pp. 193-194). Furthermore, they located blood spots throughout

[1] Coincidentally, the church member's name was Robert Miller, II, but he was not in any way related to the petitioner. (R. p. 105; p. 122).

[2] As to Johnson's cause of death, the elderly man, who had no signs of any defensive injuries, died as a result of asphyxiation. (R. p. 172). In addition to being fatally asphyxiated, Johnson also sustained numerous blunt force trauma injuries, including to his eye, temple, scalp, mouth, and collarbone. (R. p. 167; pp. 171-172; p. 176). Along with that, several of his ribs were broken, and he had signs of petechiae in his eyes consistent with having been choked. (R. pp. 171-172).

[3] Notably, the officers were unable to locate any plastic bags inside the residence that were consistent with the one that had been placed over Johnson's head. (R. pp. 187-188).

the house along with a bloody handprint that contained fingerprint details on one of the residence's walls. (R. pp. 186-191).

As the investigation into Johnson's death continued, a juvenile was shot in Fairfax, South Carolina, with a gun believed to have been stolen from Johnson's home.[4] (R. p. 4; p. 33). Ultimately, Miller, who had dreadlock-style hair, was identified as a suspect in the shooting, and he went to the Fairfax Police Department in response on Tuesday, June 24, 2014, along with Tiffany Sabb, whom he was living with at the time and whom he considered to be "like a mother to [him]," and his best friend, Johnathan Capers, who was Sabb's son. (R. p. 32; p. 43; pp. 237-238; p. 248; p. 258; pp. 260-262; p. 267; p. 446).

After arriving at the police department, Miller, who was then fifteen years old, was interviewed by Chief Marvin Williams alone in an office beginning around 4:56 p.m. (R. pp. 28-31; p. 41; p. 44; p. 266). At the outset of that interview, Chief William advised Miller of his rights, explained them to him, and presented Miller with a waiver form. (R. pp. 29-30; pp. 38-39; pp. 44-45; pp. 267-268; p. 275). Before proceeding any further, Miller personally read his rights aloud from the form, initialed after each of his rights, and signed the form. (R. p. 30; pp. 268-271; p. 445). Chief Williams then began questioning Miller about the shooting, and Miller denied any involvement in it. (R. p. 33; p. 35). However, in doing so, Miller remarked he believed the officer wanted to speak with him about something that had occurred in Allendale. (R. p. 33). At that point, Chief Williams asked Miller what he was talking about, and Miller—without being questioned about it—volunteered he had been involved in the killing of Johnson, whom he referred to as "the old man." (R. pp. 33-35; p. 37; p. 274). More specifically, Miller stated he went to rob Johnson along with some unnamed individuals, he repeatedly hit Johnson

[4] Later on during trial, the jury was not presented with any testimony about that shooting. (R. p. 271).

during the robbery, and he placed a bag over Johnson's head because Johnson kept looking at him. (R. p. 34; pp. 273-274).

Based on Miller's shocking admissions, Chief Williams alerted several SLED agents that were already present at the Fairfax Police Department of what Miller had told him. (R. p. 35; pp. 37-38; pp. 53-54). In response, the agents—Agent Richard Johnson and Agent Natasha Merrell—first spoke with Capers, who revealed Miller had confessed to him a few days earlier about being involved in Johnson's murder. (R. p. 40; pp. 46-47; pp. 57-58; p. 238). After that, the two agents began their interview with Miller. (R. p. 47).

At the outset of that interview, Miller was present in the room along with Sabb, the two SLED agents, and Chief Williams. (R. p. 49; p. 58; pp. 60-61; pp. 446-447). Prior to any substantive questioning, Agent Johnson confirmed Miller was "good," was "okay" speaking with them, was "okay" not having his mother present, and was capable of both reading and writing. (R. pp. 446-447; State's Ex. # 34 (Recording of SLED Interview)). Agent Johnson then asked Sabb to step out of the room, and she complied. (R. p. 447; State's Ex. # 34). At that point, Miller indicated he would prefer speaking with just one officer and identified Agent Merrell as the one he wanted to interview him. (R. p. 447; State's Ex. # 34). In response, Agent Johnson asked Miller if he intimidated him, and Miller denied that while explaining he simply respected women more, which resulted in some laughter. (R. p. 296; p. 447; State's Ex. # 34). Following that, Agent Johnson left the interview room, but, before he did, he confirmed Miller did not need to use the restroom, Miller clearly understood it was "up to [him] if [he] wan[ted] to talk," and Miller did still want to do so. (R. p. 44; p. 447; State's Ex. # 34).

Once Agent Johnson was gone, Agent Merrell began questioning Miller, and Miller confirmed he knew they were there to discuss the killing. (R. pp. 448-450; State's Ex. # 34).

However, Miller denied being present for it, claimed to have an alibi, and identified a person that could purportedly corroborate it. (R. p. 450; p. 453 State's Ex. # 34). Miller further claimed he had heard multiple stories about what he had supposedly done, insisted the truth was he "had nothing to do with it," and asserted he had only either been at school or home with his mother. (R. pp. 452-453; State's Ex. # 34). Beyond that, Miller indicated he had recently spoken with an officer he knew, and the officer had been seeking his brother and an individual named "Gabriel."[5] (R. p. 449; pp. 453-454; State's Ex. # 34). However, Miller insisted he did not know "Gabriel" and had never been with him "a day in [his] life." (R. pp. 453-454; State's Ex. # 34).

After that, Agent Johnson returned to the room. (R. p. 454; State's Ex. # 34). Once he had done so, Agent Johnson promptly made clear to Miller he was going to jail that day no matter what was said, and Miller confirmed he was aware of that fact. (R. p. 454; State's Ex. # 34). Agent Johnson then explained he wanted to try to help him "on the far end," indicated Miller and his confederates were all going to be charged with the same crimes under a "the hand of one is the hand of all" theory, and stated everyone would wind up getting the same amount of time except for the one who cooperated. (R. pp. 454-455; State's Ex. # 34). Agent Johnson further claimed they already had what they needed. (R. p. 455; State's Ex. # 34). Following those remarks, Miller asked: "How many years I got?" (R. p. 455; State's Ex. # 34). In response, Agent Johnson suggested Miller was facing "an ass of time," Miller quickly asked what he could do to get out of the "situation," and the agent alerted him he could not get out of it. (R. p. 455; State's Ex. # 34). However, Agent Johnson explained Miller could "minimize the

[5] "Gabriel" was later determined to be Gabriel Joiner. (R. p. 225; p. 314). Joiner and Miller's brother, Kashawn Bynum, were the other individuals identified as being involved in Johnson's murder. (R. p. 2; p. 225; p. 241; p. 314; p. 455).

kind of time" while further explaining he could not personally tell Miller what time he would get and, instead, could only let the prosecutor know if Miller "came clean" and cooperated. (R. p. 455; State's Ex. # 34). At that point, Miller indicated he wished to tell the truth, denied wanting to be involved in the incident, and claimed it had been initiated by "Gabriel." (R. p. 455; State's Ex. # 34). Miller then proceeded to admit to knocking on the victim's door, hitting him, holding him down, watching him while the others searched the house, and putting the bag over his head. (R. pp. 455-457; State's Ex. # 34). Miller further admitted to removing the victim's wallet, which prompted Agent Johnson to state: "[Y]ou know your prints and stuff will be on that wallet[.]" (R. p. 457; State's Ex. # 34). The agent then advised Miller he would alert the prosecutor of what Miller had said while noting nothing could be done to stop "jail time." (R. p. 457; State's Ex. # 34). Upon hearing that, Miller indicated he was done talking, stated he had already admitted he did it, and terminated the interview. (R. p. 457; State's Ex. # 34).

Subsequent to that, Miller was arrested and indicted for Johnson's murder, and he proceeded forward to trial. (R. p. 43; pp. 477-478). Towards the outset of trial, Chief Williams, Agent Johnson, and Agent Merrell all testified about the circumstances surrounding the statements made by Miller. (R. pp. 28-65). Through their testimony, the three confirmed: (1) Miller was advised of his rights prior to questioning and indicated he understood them; (2) Miller signed a waiver form; (3) Miller appeared to understand both his rights and the questions he was subsequently asked; (4) Miller communicated in an understandable way; (5) Miller was not handcuffed or charged with any crimes at the time of the questioning; (6) Miller did not appear to be under the influence of any intoxicating substances; (7) an adult Miller identified as being like an mother to him was present with Miller prior to questioning; (8) during his initial interview with Chief Williams, Miller volunteered the information about Johnson's murder

without being directly asked about it and without being subjected to any threats, promises, force, or coercion; and (9) during the subsequent roughly-hour-long interview with Agent Johnson and Agent Merrell, Miller made incriminating admissions without being subjected to any threats, promises, or coercion. (R. pp. 29-30; pp. 32-34; p. 37; p. 39; p. 43; p. 45; pp. 48-50; pp. 52-53; pp. 59-63). In addition to that, a recording of the SLED agents' interview was played for the trial judge. (R. pp. 61-62; p. 66). Furthermore, Kimberly Jordan, who had represented Miller during earlier proceedings related to the murder case and was the only witness to testify for the defense during the in camera hearing, testified about a pre-trial evaluation she had observed and opined Miller did not understand his right to counsel or right to remain silent during that evaluation until those rights were explained to him. (R. pp. 68-71).

Following the presentation of that testimony and evidence, the solicitor argued Miller's confession to law enforcement was voluntarily made under the totality of the circumstances after a valid waiver of rights and, therefore, was admissible. (R. pp. 71-75). Conversely, defense counsel alleged she personally believed Miller was intimidated and coerced into making his confession and asserted it should be excluded from evidence. (R. pp. 75-80).

After listening to the arguments of counsel and thoroughly considering the matter, the trial judge found Miller's statement to be voluntary and admissible based on the totality of the circumstances.[6] (R. p. 82; pp. 85-86; p. 88). In making that finding, the trial judge noted: (1) Miller was advised of his rights prior to any custodial interrogation occurring; (2) Miller—despite being "somewhat limited on an educational basis"—was "pretty street smart;" (3) Miller attempted to establish an alibi for himself; (4) no undue coercion was used by the officers; (5) the interview was not unreasonably long; (6) there was nothing inappropriate about the location

[6] At defense counsel's request, the trial judge took the matter under advisement overnight. (R. pp. 79-81).

where the interview took place; (7) Miller's responses to the questions asked were appropriate despite his educational background; (8) nothing suggested Miller was not in good physical condition; (9) Miller had some pre-existing experience with law enforcement based on his prior limited record and his expressed knowledge of at least one of the officers involved in the investigation; (10) no misrepresentations, promises of leniency, or threats of violence were made; (11) Agent Johnson expressly made clear to Miller he could only alert the prosecutor of any cooperation provided but was not personally capable of telling him what sentence he would receive since he was not himself the judge or prosecutor; (12) Miller was expressly alerted he was going to be taken to jail; (13) a person Miller stated was like a mother to him was present with him prior to questioning; and (14) Miller expressly stated he was willing to speak to the officers and go forward with the interview. (R. pp. 84-88). As a result, the trial judge indicated it would be up to the jury to ultimately determine whether the voluntariness of Miller's statement had been established beyond a reasonable doubt.[7] (R. p. 88).

Following that ruling, the trial proceeded forward, and the law enforcement officers and other individuals involved in the discovery of and response to Johnson's killing offered testimony and evidence about what they observed and uncovered. (R. pp. 100-133; pp. 164-176; pp. 178-195; pp. 207-214; pp. 220-227). Through that evidence and testimony, the jurors

[7] Later on during the trial, the trial judge instructed the jurors: (1) they had to determine both whether Miller made a statement and whether he did so voluntarily; (2) voluntariness in that context meant the statement was not caused by pressure, force, fear, threats, coercion, intimidation, or promises of leniency or reward; (3) they should consider Miller's characteristics along with the characteristics of the questions asked; (4) in doing so, they must consider Miller's age, education or lack thereof, mental abilities, intelligence, and background; (5) they must consider the length of the detention, the place and nature of the questioning, and Miller's awareness of his rights; (6) the State had the burden of proving Miller's statement was voluntarily made beyond a reasonable doubt; (7) it was their duty to determine what weight, if any, to give to Miller's statement; and (8) Miller's statement could only be given consideration if they first determined it was voluntarily made. (R. pp. 353-355).

learned of the brutal nature of the elderly victim's death, which resulted from him being beaten, bound, and left to suffocate with a plastic bag tied over his head. (R. pp. 126-127; p. 131; pp. 167-168; pp. 170-174). Likewise, evidence and testimony was presented establishing someone who matched Miller's general physical description was observed locking Johnson's gate around the time Johnson's associates stopped being able to get in touch with him. (R. pp. 135-135; pp. 140-144; pp. 146-163; pp. 260-261). Additionally, Sabb and Capers discussed Miller's statements *to them* after the killing, and both confirmed Miller admitted he was involved in the home invasion, robbery, and fatal attack that caused Johnson's death. (R. pp. 238-245; pp. 248-257). Furthermore and critically, expert testimony was presented establishing Miller's print was recovered from inside Johnson's home after the killing and had been left on a wall *in Johnson's blood*. (R. pp. 188-191; p. 208; pp. 210-211; pp. 220-223; p. 227; p. 234).

In addition to that, Chief Williams testified about his interview of Miller, expressly noted he advised Miller of his rights prior to any questioning, confirmed Miller waived his rights, and recounted Miller's ensuing volunteered admissions about his involvement in Johnson's killing. (R. pp. 266-275). Similarly, Agent Johnson and Agent Merrell testified about their subsequent interview with Miller, they recounted the details of his incriminating admissions, and a recording of the interview was admitted into evidence and played for the jury. (R. pp. 282-310; pp. 313-335; State's Ex. # 34).

Once all the evidence and testimony was presented, Miller's case was submitted to the jury, and the jury unanimously convicted him of Johnson's murder after a little over an hour of deliberations. (R. pp. 397-398). Following that, the trial judge sentenced Miller to fifty-five years, and Miller promptly appealed. (R. pp. 442-443; p. 479; App'x pp. 1-2).

On appeal, the Court of Appeals affirmed. (App'x pp. 1-17). In doing so, the Court thoroughly recounted the circumstances surrounding Miller's statements to law enforcement and noted the trial judge found significant the following facts when finding Miller's confession to be voluntary and admissible under the totality of the circumstances:

> (1) Miller received Miranda warnings before the interrogations, and the length and location of the interrogations was reasonable; (2) although Miller likely had limited learning abilities, he was street smart and attempted to create an alibi; (3) Miller was in good physical condition with no record of mental health issues, and his criminal record was fairly limited; (4) neither Chief Williams nor the SLED agents made misrepresentations, promises of leniency, or threats of violence against Miller; and (5) Miller's isolation from a parent or friend was minor, considering Agent Johnson asked Miller if he was willing to talk to them after Sabb left the room and he responded "yes."

(App'x pp. 2-10). The Court then analyzed the various circumstances Miller claimed demonstrated his statement was involuntary *along with* other circumstances that supported the trial judge's finding of voluntariness. (App'x pp. 15-17). Ultimately, upon conducting that analysis of *all* the circumstances, the Court found the trial judge did not abuse his discretion by finding Miller's statements to law enforcement to be admissible. (App'x pp. 13-17).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). When reviewing a trial judge's ruling concerning the voluntariness of a statement, 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) (emphasis added); see State v. Breeze, 379 S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) ("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."). Importantly, "[t]he trial judge's determination of the voluntariness [of a statement] will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law." State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998); see also State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010) ("The appellate court reviews a trial judge's ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court."); State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995) ("A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice."). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. McDonald, 343 S.C. 319, 325, 540 S.E.2d 464, 467 (2000); see also United States v. Summers, 666 F.3d 192, 197 (4th Cir. 2011) (instructing an appellate court will not find a trial judge's ruling constituted an abuse of discretion unless it was arbitrary and irrational).

ARGUMENT

The Court of Appeals committed no error by affirming the trial judge's ruling admitting Miller's incriminating admissions to law enforcement into evidence during trial because the record contains evidence and testimony that supports the trial judge's determination the admissions were voluntarily made under the totality of the circumstances following a valid waiver of rights.

Miller contends the Court of Appeals erred by affirming the trial judge's "erroneous" ruling admitting his incriminating confession to law enforcement. As support for that contention, Miller—while ignoring the applicable appellate standard of review and focusing exclusively on the circumstances he personally believes support a finding his statement was involuntary—maintains a proper examination of the totality of the circumstances "leads to a conclusion" his confession should have been excluded from evidence during trial. Miller further accuses the Court of Appeals of not conducting the appropriate analysis because it purportedly viewed the circumstances individually instead of collectively when it responded to and rejected the arguments he raised on appeal. To the contrary, both the trial judge and the Court of Appeals appropriately considered the totality of the circumstances surrounding Miller's confession, including the fact Miller was fifteen years old at the time it was made. And, upon considering and weighing *all* the circumstances, the trial judge found Miller's statement was voluntarily made after Miller was advised of and waived his rights, and the trial judge's ruling in that regard had evidentiary support based on what was presented to him during trial. Accordingly, pursuant to the deferential standard of review applicable to voluntariness determinations, the trial judge's ruling had to be affirmed on appeal, and the Court of Appeals correctly did so. Miller's petition for a writ of certiorari should be denied.[8]

[8] Beyond that, even assuming the trial judge somehow erred by ruling Miller's confession to law enforcement was admissible, any such error was nevertheless harmless beyond a reasonable doubt in light of the cumulative nature of Miller's confession to Miller's *other* out-of-court

In a criminal prosecution, the State "may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Prior to custodial interrogation, a suspect must be warned he has a right to remain silent, any of his statements may be used against him, he has a right to an attorney, and an attorney will be appointed to him prior to any questioning if he desires one and cannot afford one. Id. at 479. Once those warnings are given to a suspect and the suspect is afforded an opportunity to exercise his rights, the suspect may knowingly and intelligently waive those rights and make a statement. Id.

Significantly, if a defendant is advised of his constitutional rights and then chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence the

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statements coupled with the fact other overwhelming evidence of Miller's guilt was presented during trial, which included evidence establishing Miller's print was found on the wall of his elderly victim's home *in his victim's blood*. See State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); cf. State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-622 (1997) ("[A]ny error in the failure to suppress his statements was harmless beyond a reasonable doubt. . . . The overwhelming evidence of Easler's guilt renders any Miranda violation harmless."), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018); State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014) (finding any error in the trial judge's failure to suppress White's statement placing White at the scene of a murder as the product of impermissible "question first and warn later" questioning was harmless beyond a reasonable doubt because, "notwithstanding White's statement, cell phone evidence clearly placed [the victim] and White together at the time and place of the murder" and further finding any error to be harmless in light of the witness testimony linking White to the murder). Under such circumstances, Miller's conviction could not properly be reversed on appeal even if his appellate challenge to some—*but not all*—of his incriminating out-of-court admissions was a valid one, which constitutes an additional compelling reason for Miller's petition for a writ of certiorari to be denied. See Thomasko v. Poole, 349 S.C. 7, 17, 561 S.E.2d 597, 602 (2002) ("It is well established that an appellant seeking reversal of a decision by the trial court must show both error and prejudice.").

defendant knowingly, intelligently, and voluntarily waived his rights. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990); see Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (instructing the prosecution must establish the accused understood his rights in order for the accused's waiver of those rights to be valid). In determining whether a valid waiver of rights occurred, the particular facts and circumstances surrounding the case must be examined, including the background, experience, and conduct of the accused. North Carolina v. Butler, 441 U.S. 369, 374-375 (1979). Importantly, a valid waiver of rights can be established through proof of express written or oral statements or can be inferred from the actions and words of the person interrogated. Id. at 373; see Berghuis, 560 U.S. at 384 ("An 'implicit waiver' of the 'right to remain silent' is sufficient to admit a suspect's statement into evidence." (citation omitted)); State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998) ("An express waiver is unnecessary to support a finding that the defendant has waived the right to remain silent or the right to counsel guaranteed by Miranda.").

However, even if a defendant validly waives his rights and makes a statement, a confession or statement by a defendant is nonetheless inadmissible unless voluntarily made. State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). The reason for the prohibition against the use of an involuntary confession is that "coerced confessions" have been recognized to be "inherently untrustworthy." Dickerson v. United States, 530 U.S. 428, 433 (2000); see also Jackson v. Denno, 378 U.S. 368, 385-386 (1964) ("[T]he Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will,' and

because of 'the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.' " (citations omitted)).

Importantly, "[t]he process for ascertaining whether a statement is voluntary is bifurcated because the process involves determinations by both the trial judge and the jury." Breeze, 379 S.C. at 543, 665 S.E.2d at 250. Pursuant to the bifurcated process, the trial judge must first determine whether the State proved the statement was voluntarily made by a preponderance of the evidence, which is a standard that does *not* require proof to an absolute certainty or proof excluding all but one possible conclusion. Id.; see Black's Law Dictionary 1301 (9th ed. 2009) (defining "preponderance of the evidence" as "[t]he greater weight of the evidence, not necessarily established by the greatest number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other"). Then, if the trial judge finds the State met its burden, the statement is submitted to the jury to allow for a determination as to whether the statement's voluntariness was proven beyond a reasonable doubt. Breeze, 379 S.C. at 543, 665 S.E.2d at 250; see State v. Davis, 309 S.C. 326, 342, 422 S.E.2d 133, 143 (1992) ("Once the court determines that a defendant received and understood his rights, the court allows a confession into evidence. It then is for the jury ultimately to decide whether the confession was voluntary."), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

When considering the voluntariness and admissibility of a defendant's statements, the trial judge should examine the totality of the circumstances under which the statements were

made, including the characteristics of the accused and the details of the interrogation, to determine whether the State has met its burden of proof. State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980). Factors to be considered in the totality of the circumstances analysis include: (1) the age of the accused and whether the accused was a juvenile; (2) the educational level and intelligence of the accused; (3) the accused's knowledge of his constitutional rights; (4) the length of the accused's detention; (5) the nature of the questioning and whether it was repeated and prolonged; and (6) the presence or absence of the use of punishment, including deprivation of food or sleep. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973). Significantly though, "no one factor is determinative," and "each case requires careful scrutiny of all the surrounding circumstances." State v. Pittman, 373 S.C. 527, 566, 647 S.E.2d 144, 164 (2007). In the end, the "ultimate test" of voluntariness involves determining whether the confession was "the product of an essentially free and unconstrained choice by its maker" or was the product of an overborne will and critically-impaired capacity for self-determination. Schneckloth, 412 U.S. at 225-226; see State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996) ("The question is whether the defendant's will was overborne when he confessed."); see also Miller v. Fenton, 796 F.2d 598, 604 (3rd Cir. 1986) ("We emphasize that the test for voluntariness is not a but-for test: we do not ask whether the confession would have been made in the absence of the interrogation. Few criminals feel impelled to confess to the police purely of their own accord, without any questioning at all.").

In the case sub judice, the trial judge was presented during trial with evidence and testimony establishing Miller—although fifteen years old and, thus, relatively young at the time of his interviews with law enforcement—was fully informed of his rights prior to being subjected to any questioning, personally confirmed he understood those rights, initialed and signed a

waiver form, and subsequently confirmed at various points he both wished to speak with the officers and understood doing so was solely his choice. Likewise, evidence and testimony was presented establishing Miller, who had some prior experience with law enforcement, appeared to understand his rights along with the questions he was asked. From that evidence and testimony, the trial judge concluded Miller understood and knowingly waived his rights, and his finding in that regard was fully supported by the record. See Berghuis, 560 U.S. at 388-389 ("[A] suspect who has received and understood Miranda warnings, and has not invoked his Miranda rights, waives the right to remain silent by making an uncoerced statement to the police."); see also Michigan v. Tucker, 417 U.S. 433, 439 (1974) ("At this point in our history virtually every schoolboy is familiar with the concept, if not the language, of the provision that reads: 'No person . . . shall be compelled in any criminal case to be a witness against himself . . . .' "); cf. United States v. Robinson, 404 F.3d 850, 860-861 (4th Cir. 2005) (affirming a district court judge's finding a troubled fifteen-year-old defendant with an I.Q. potentially as low as 70 validly waived his rights because the defendant "indicated he understood his rights as they were recited" and appeared to be "street smart").

In addition to that, the trial judge was presented with evidence and testimony establishing Miller made incriminating admissions to the officers after confirming he understood his rights and agreeing to speak with them with a full awareness it was his choice as to whether to do so. See Berkemer v. McCarty, 468 U.S. 420, 433, n. 20 (1984) ("[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare."); cf. State v. Smith, 259 S.C. 496, 499-500, 192 S.E.2d 870, 872 (1972) (reversing a trial judge's ruling suppressing the statement of a thirteen-year-old defendant and instructing "a confession is not

necessarily invalid because the Miranda warnings are not repeated at each stage of the interrogation process"). Similarly, evidence and testimony was presented establishing Miller had access to an adult he described as being like a mother to him prior to any questioning, Miller possessed sufficient intelligence to communicate in an appropriate and responsive fashion throughout the interviews, Miller demonstrated both savviness and an awareness of the situation he was in through his efforts to fabricate an alibi, and Miller did not appear to be under the influence of any substances that would impair his understanding of the circumstances. Cf. In re Tracy B., 391 S.C. 51, 68, 704 S.E.2d 71, 79-80 (Ct. App. 2010) (concluding a fourteen-year-old defendant's statement was voluntarily made where he was not subjected to lengthy interrogation, was informed of his rights, seemed to be capable of understanding his rights, was permitted access to his mother, did not appear to suffer from low intelligence, and did not seem to be confused or under the influence of anything). Additionally, the evidence and testimony presented established Miller was not subjected to prolonged questioning, was not deprived of bathroom opportunities or any other comforts, and was interviewed at a typical and non-unique location for a law enforcement interview.[9] Cf. Berghuis, 560 U.S. at 387 (finding no coercion where "[t]he interrogation was conducted in a standard-sized room in the middle of the afternoon"). In fact, the evidence and testimony established Miller was only at the police department for a few hours at most in total, and his interview with the SLED agents was only an hour or so long. Cf. id. (rejecting the suggestion three hours of interrogation was "inherently

[9] During the sentencing hearing conducted nearly a year *after* Miller's trial concluded, defense counsel advised the trial judge Miller purportedly had an I.Q. of 76. (R. p. 429; p. 436). Notably, assuming that information was accurate and even if the trial judge had been presented with it at the time he ruled on the admissibility of Miller's confession, such an I.Q. would not have precluded a finding Miller's confession was knowingly and voluntarily made. See Davis, 309 S.C. at 337, 422 S.E.2d at 141 (affirming the trial judge's determination Davis knowingly and intelligently waived his Miranda rights despite the fact Davis had an I.Q. of 66 because evidence and testimony was presented supporting such a conclusion).

coercive"). Moreover, nothing was presented suggesting Miller was ever threatened, touched, or promised anything during the course of any of the interviews, and Agent Johnson expressly made clear to Miller the only thing he was capable of doing was communicating any cooperation provided to the prosecutor. See Miller, 796 F.2d at 605 ("[I]t is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect. . . . These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." (citations and footnote omitted)); State v. Register, 323 S.C. 471, 479, 476 S.E.2d 153, 158 (1996) ("Although police tactics may influence the suspect's decision to confess, as long as the decision results from the suspect's balancing of competing interests, the confession is voluntary."); cf. Fare v. Michael C., 442 U.S. 707, 727 (1979) (concluding a sixteen-year-old defendant's incriminating statements were voluntary and admissible despite him weeping during the interrogation and being told his cooperation would be beneficial to him); State v. Miller, 375 S.C. 370, 387, 652 S.E.2d 444, 453 (Ct. App. 2007) ("Although the officers and Evans told Miller it was in his best interest to cooperate, no one made any direct or implied promise of leniency. As a result, Miller's statements were made in 'hope' of leniency rather than as a consequence of a 'promise.' "). Furthermore, the recording of the SLED interview demonstrated no loud or aggressive tones were used during the officers' questioning, and chuckling could even be heard at a few points during the interview. See Pittman, 373 S.C. at 165, 647 S.E.2d at 568 ("[C]ourts generally do not find a juvenile's confession involuntary where there is no evidence of extended, intimidating questioning or some other form of coercion." (footnote omitted)). Meanwhile, Miller did not personally testify during the trial proceedings and, as a result, did not offer any of his own testimony to support a conclusion his incriminating admissions were the

product of an overborne will. Cf. Breeze, 379 S.C. at 545, 665 S.E.2d at 251 ("Conversely, Breeze did not contradict [the officer]'s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]'s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]'s testimony, we cannot conclude the trial court's ruling is unsupported by any evidence."). From those circumstances taken together, the trial judge could and did properly find Miller's incriminating admissions were knowingly and voluntarily made after a valid waiver of his rights despite Miller's age, and the trial judge's ruling in that regard was certainly not lacking in any evidentiary support. See Colorado v. Connelly, 479 U.S. 157, 164 (1986) (explaining cases involving coerced and involuntary confessions have historically been based on the "crucial element of police *overreaching*" and have involved "a *substantial* element of coercive police conduct" (emphasis added)).

Critically, because the trial judge's voluntariness determination was supported by evidence and testimony appearing in the record, there were and are no proper grounds upon which that ruling could be overturned on appeal in light of the applicable—and highly deferential—standard of review. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 ("When reviewing a trial court's ruling concerning voluntariness, this 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." (emphasis added)); see also Smith, 259 S.C. at 500, 192 S.E.2d at 872 (explaining the question of the admissibility of a confession "was one of fact"); cf. State v. Moses, 390 S.C. 502, 515, 702 S.E.2d 395, 402 (Ct. App. 2010) ("Ultimately, upon review of the totality of the circumstances in this case, the record supports the trial judge's conclusion that Moses' statement was freely, knowingly, and voluntarily made, regardless of his

age, learning disability, and separation from his mother. Thus, we find no abuse of discretion by the trial court."). Accordingly, the Court of Appeals, which viewed the "surrounding circumstances" in totality and evaluated them in combination "with all the other facts" when analyzing the matter on appeal, did not err by affirming the trial judge's appropriate and logical ruling. State v. Miller, 433 S.C. 613, 861 S.E.2d 373, 382-383 (Ct. App. 2021); see State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998) ("The trial judge's determination of the voluntariness will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law."); State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007) ("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."); see also State v. Makins, 433 S.C. 494, __, 860 S.E.2d 666, 670 (2021) (stressing the "critical" nature of the standard of review applicable to an issue being challenged on appeal). Miller's petition for a writ of certiorari should be denied.

CONCLUSION

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

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