

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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On Writ of Certiorari to the Court of Appeals
Appeal from Spartanburg County
Roger L. Couch, Circuit Court Judge
Appellate Case No. 2013-000397

S.C. Supreme Court

THE STATE,

Respondent,

vs.

MARION STEWART,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I.

The Court of Appeals properly determined that Petitioner's statement to the investigators was admissible because Petitioner was not subject to a custodial interrogation when he made the statement.

II.

The Court of Appeals correctly determined that Petitioner's statement was voluntary and admissible. Regardless, any error in admitting the statement was harmless due to the overwhelming evidence of guilt against Petitioner.

STATEMENT OF THE CASE

Procedural History

On January 15, 2010, a Spartanburg County Grand Jury indicted Petitioner for armed robbery. On April 11, 2011, Petitioner proceeded to trial. Solicitor Barry Barnette and Assistant Solicitor Wes Boyd represented the State. Assistant Public Defender Kathy Hodges represented Petitioner. The jury found Petitioner guilty of armed robbery. Pursuant to section §17-25-45 of the South Carolina Code, the Honorable Roger L. Couch sentenced Petitioner to life without parole. Petitioner filed a notice of intent to appeal on April 14, 2011.

On December 12, 2012, the Court of Appeals issued an unpublished opinion in which it affirmed Petitioner's conviction and sentence. State v. Stewart, Op. No. 2012-UP-654 (S.C. Ct. App. filed Dec. 12, 2012). On January 25, 2013, the Court of Appeals denied Petitioner's petition for rehearing. Petitioner served a petition for writ of certiorari on March 27, 2013. This return follows.

Factual History

On October 14, 2009, Petitioner robbed the RX Care Pharmacy in Boiling Springs at gun point and took over \$30,000 worth of prescription medications. (R. pp. 104-106; p. 112.) Petitioner forced the pharmacy employees to put the prescription medications in a black trash bag. (R. p. 106.) After Petitioner stole the prescription medications, he ordered the pharmacy employees into a bathroom. (R. p. 107.) Petitioner told the pharmacy employees that if they left the bathroom, his accomplice outside would come inside with his AK47 and "spray" the place. (R. p. 107; p. 229.)

At trial, the victims testified the armed assailant was a white male, approximately six feet tall and 200 pounds. (R. p. 107; p. 230.) The armed assailant wore an orange

sweatshirt, blue jeans, white tennis shoes, a mask, and gloves. (R. p. 108; p. 229.) One of the victims testified that Petitioner was the same height and weight as the armed assailant; however, Petitioner's co-defendant, Grady Taylor, was too short to be the armed assailant. (R. pp. 111-112.)

Taylor testified against Petitioner at trial. According to Taylor, Petitioner, Petitioner's sister (Lee Ann Nichols), and Taylor discussed robbing the pharmacy the night before the robbery. (R. pp. 126-127.) Petitioner was the one that went inside and robbed the pharmacy while Taylor and Nichols waited in the car. (R. pp. 128-129.) Taylor testified Petitioner wore an orange sweatshirt, blue jeans, and white tennis shoes during the robbery. (R. p. 128.) After they robbed the pharmacy, they went to Petitioner's girlfriend's house. Thereafter, Petitioner and Taylor hid the stolen pills at Ghost Valley. (R. p. 129; p. 141.) A couple of days later, Petitioner and Taylor went back to Ghost Valley to get rid of some of the evidence. (R. pp. 141-143.) Petitioner threw his white tennis shoe and plastic gun into Rainbow Lake.¹ (R. p. 143.) However, Petitioner did not throw the other tennis shoe into the lake because he realized the shoe he threw in the lake did not sink. Soon thereafter, Taylor led the police to the pills hidden at Ghost Valley and informed the investigators of the shoe in Rainbow Lake. (R. p. 130.) A few days later, the dive team recovered the tennis shoe from the lake. (R. p. 221.)

Furthermore, Petitioner's girlfriend, Shirley Gilbert, testified she overheard Petitioner's plan to rob the pharmacy. (R. p. 167.) After Petitioner robbed the pharmacy, he went back to Gilbert's house and went into her room. (R. p. 168.) According to Gilbert, Petitioner was sweaty and nervous. Petitioner dumped the stolen pills out of a

¹ According to Taylor, Petitioner used a plastic gun during the robbery; however, the plastic gun looked real. (R. p. 128.)

black trash bag onto Gilbert's bed. Petitioner gave some of the pills to Taylor and Nichols and told them that was their payment. When Gilbert asked Petitioner where he got the pills from, Petitioner told her that she did not need to know. While Petitioner was in jail, Petitioner called Gilbert and asked her to tell the police that he was at work during the time of the robbery. (R. p. 171; pp. 186-187.)) However, Petitioner was not employed at the time of the robbery.

On October 20, 2009, Investigators William Gary, Matt Hutchins, David Taylor, and Dwight Garcia went to Petitioner and Gilbert's house to follow up on the tip they received from Taylor. (R. pp. 12-13.) When the investigators arrived at the house, they spoke with Petitioner on the front porch. (R. p. 12.) According to Investigator Gary, Investigator Hutchins told Petitioner that they found DNA evidence linking Petitioner to the robbery. (R. p. 26.)²

Because it was cold outside and Petitioner was shaking, the investigators asked Petitioner whether or not he wanted to talk inside the house or inside Investigator Hutchins' SUV. (R. p. 13.) Petitioner asked to sit in the SUV. Petitioner sat in the front passenger seat of the SUV. (R. p. 13.) The investigators informed Petitioner that his name came up in the investigation of the robbery. (R. p. 14.)

Approximately ten to fifteen minutes after they got into the SUV, Investigator Hutchins got out of the SUV to take a phone call from Investigator Lorin Williams. (R. p. 14; p. 40; p. 239.) Investigator Williams advised Investigator Hutchins that there was a warrant for Petitioner's arrest. (R. p. 44.)³

² There was no DNA evidence linking Petitioner to the robbery. (R. p. 26.)

³ This was the first time any of the investigators were aware that there was a warrant for Petitioner's arrest.

While Investigator Hutchins was on the phone with Investigator Williams, Petitioner made a statement to Investigator Gary regarding the location of the stolen drugs. (R. p. 14.) Thereafter, Petitioner asked Investigator Hutchins to come back to the SUV. When Investigator Hutchins came back to the vehicle, Petitioner asked him if he had a set of handcuffs in the SUV. (R. p. 15; p. 40.) Investigator Hutchins told Petitioner he was sure he could find a pair. Petitioner put his hands out and said, “[L]et’s go . . . I’m your man . . . I robbed the pharmacy.” Both Investigator Hutchins and Investigator Gary heard Petitioner confess to the robbery. After Petitioner confessed, Investigator Hutchins informed Petitioner of the warrant for his arrest. At that point, Petitioner invoked his right to remain silent and right to counsel. The investigators ceased questioning. (R. pp. 15-16; p. 45.)

Thereafter, Petitioner asked the investigators for a cigarette. (R. p. 15.) After Investigator Gary gave Petitioner a cigarette, Petitioner asked the investigators if he could talk to Gilbert. The investigators allowed Gilbert to come to the vehicle. When Gilbert asked Petitioner what was going on, Petitioner told her that “[H]e made a mistake and that he would see her in 30 years.” According to the investigators, he then admitted to the robbery. (R. p. 15; p. 47.) The investigators never advised Petitioner of his rights pursuant to Miranda.⁴

⁴ Miranda v. Arizona, 384 U.S. 436 (1996); see State v. Lynch, 375 S.C. 628, 633 n. 5, 654 S.E.2d 292, 295 n. 5 (Ct. App. 2007) (“The well-known Miranda rights are that the accused must be informed of: the right to remain silent; any statement made may be used as evidence against him or her; and the right to the presence of an attorney.”) (citations omitted).

Prior to trial, the judge conducted a Jackson v. Denno⁵ hearing to determine the voluntariness and admissibility of the three separate statements made by Petitioner. (R. pp. 2-87.) Petitioner testified on his behalf during the hearing. (R. pp. 49-71.) Petitioner denied making any statements linking him to the robbery of the pharmacy store. (R. pp. 97-98.) However, Petitioner admitted he bought approximately 1,300 pills from Taylor and eventually sold the pills. (R. p. 62.) Petitioner testified that the investigators told him he was not under arrest. (R. p. 52.) Furthermore, Petitioner claimed that when he asked the investigators if he was free to leave, the investigators told him “we need to talk to you.” However, Petitioner later admitted he never asked the investigators if he was free to leave. (R. p. 54.) Additionally, Petitioner claimed that once the interview moved from the front door of the house to the SUV, he did not feel free to leave. (R. pp. 53-54.)

After hearing all arguments, the trial judge denied Petitioner’s suppression motion and admitted all three statements.

⁵ Jackson v. Denno, 378 U.S. 368, 376 (1964).

ARGUMENT

I.

The Court of Appeals properly determined that Petitioner's statement to the investigators was admissible because Petitioner was not subject to a custodial interrogation when he made the statement.

Petitioner contends the trial judge erred in admitting Petitioner's second statement because Petitioner was subject to a custodial interrogation and was not advised of his rights under Miranda. However, Petitioner was not subject to a custodial interrogation when he made the first two statements; therefore, the police did not have to advise Petitioner of his rights under Miranda.⁶ Furthermore, Petitioner's third statement was spontaneous and not a product of an interrogation.⁷

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The reviewing court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Quattlebaum, 338 S.C. 441, 452, 527 S.E.2d 105, 111 (2000). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but instead, simply determines whether the trial judge's ruling is supported by any evidence. State v. Wilson, 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001).

The admission or exclusion of evidence rests on the sound discretion of the trial judge and will not be reversed absent an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "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). Moreover,

⁶ Petitioner does not challenge the first statement on appeal.

⁷ Petitioner does not challenge the third statement on appeal.

“[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.” State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995); see also State v. Navy, 386 S.C. 294, 301, 688 S.E.2d 838, 841 (2010) (stating appellate courts must uphold the trial court’s findings regarding whether a defendant was in custody when statements were made if the trial judge’s ruling is supported by the record).

The Fifth Amendment

The Fifth Amendment of the United States Constitution provides the following: “No person shall be . . . compelled in any criminal case to be a witness against himself . . .” U.S. Const. amend. V. Because of this Fifth Amendment right, the Supreme Court announced, “the 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, 384 U.S. 436, 444 (1966). Thus, in order for a trial court to admit a statement by a defendant, the State must show that the statement was both voluntary and taken in compliance with the procedural safeguards announced in Miranda. See State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986).

Under Miranda, 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, and he has a right to an attorney. Miranda, 384 U.S. at 444. However, “Miranda warnings are required for official interrogations **only when** a suspect ‘has been taken into custody or otherwise deprived of his freedom of action in any significant way.’” State v. Easler, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997) (quoting Miranda, 384 U.S. at 444) (emphasis added). Thus, custodial interrogations are made up of two key components – custody **and**

interrogation. State v. Whitner, 380 S.C. 513, 518, 670 S.E.2d 655, 658 (Ct. App. 2008) (emphasis added).

The Three Statements

A. Petitioner was not in custody when he made the first incriminating statement to Investigator Gary.

The trial judge properly admitted the statement because Petitioner was not in custody when he made the statement.

“To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of interrogation, as well as whether the suspect was free to leave the place of questioning.” State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). The appropriate inquiry involves objectively viewing the circumstances to determine whether a reasonable person in the suspect’s position would have understood himself to be in custody. Easler, 327 S.C. at 128, 489 S.E.2d at 621.

First, the interrogation took place in Investigator Hutchins’ SUV, not a patrol car, in Petitioner’s driveway. The investigators went to Petitioner’s house and spoke with him on the front porch. Petitioner was the one that wanted to move the interrogation to Investigator Hutchins’ SUV because it was cold outside and Petitioner felt sick. (R. pp. 39-40.) Thus, the place factor weighs in favor of admissibility.

Second, the purpose of the interrogation was for the police to gather more information regarding the robbery of the pharmacy store. See State v. Kerr, 330 S.C. 132, 146, 498 S.E.2d 212, 219 (Ct. App. 1998) (“The fact the investigation has focused on the suspect does not trigger the need for Miranda warnings unless he is in custody.”) At that

point, the only evidence implicating Petitioner in the robbery was Taylor's statement to the police. The police were merely giving Petitioner a chance to explain why he thought Taylor would implicate him in the robbery. Thus, the purpose factor most likely weighs in favor of admissibility.

Third, Petitioner made the statement within ten to fifteen minutes of being inside Investigator Hutchins' SUV. (R. p. 239.) Therefore, the length factor also weighs in favor of admissibility.

Fourth, Petitioner was free to leave Investigator Hutchins' SUV at the time Petitioner made the first statement. Even though Petitioner testified he did not feel free to leave once he was in the SUV, Petitioner was the one that asked to go into the SUV. Moreover, the investigators told Petitioner he was not under arrest. (R. p. 52) Although Petitioner claimed that when he asked the investigators if he was free to leave the investigators responded, "well, we need to talk to you . . . [,]" Petitioner subsequently testified he never asked the investigators if he was free to leave. (R. p. 52; p. 54.) Thus, the free to leave factor weighs in favor of admissibility.

Finally, even if it is debatable whether a reasonable person would have believed himself to be in custody at the time Petitioner made the first statement, this Court should uphold the trial judge's finding that Petitioner was not in custody as it is supported by the record. See Navy, 386 S.C. at 301, 688 S.E.2d at 841 ("In our opinion, it is debatable whether a reasonable person would have believed himself to be in custody at the time the first statement was given, and thus the trial court's finding that respondent was not in custody should have been upheld as it is supported by the record.")

In summary, the trial judge's finding that Petitioner was not in custody is supported by the record; therefore, the first statement was properly admitted.

B. Petitioner was neither in custody nor subject to an interrogation when he made the second incriminating statement to Investigators Gary and Hutchins.

As to the only statement Petitioner challenges on appeal, Petitioner contends the trial judge improperly admitted the statement made by Petitioner to the investigators regarding the handcuffs and Petitioner's involvement in the robbery of the pharmacy because Petitioner was not advised of his rights under Miranda. However, because Petitioner was not subject to a custodial interrogation, the police were not required to advise Petitioner of his rights under Miranda. Therefore, the statement was properly admitted.

For the same reasons discussed above, Petitioner was not in custody when he made the second statement. Additionally, it was irrelevant to the custody determination that one of the investigators learned that there was an arrest warrant for Petitioner right before Petitioner made the second incriminating statement. The primary test for whether or not someone is in custody is whether a reasonable person in the suspect's position would believe he or she was in custody. See Evans, 354 S.C. at 583, 582 S.E.2d at 410. Thus, the subjective beliefs and intentions of the investigators are irrelevant. The investigators never communicated to Petitioner the fact that there was a warrant for Petitioner's arrest at the time Petitioner made the second incriminating statement. Accordingly, it was irrelevant that there was a warrant for Petitioner's arrest at the time Petitioner made the second incriminating statement

Moreover, Petitioner's second statement was not the product of an interrogation. Petitioner's statement was not a response to any questioning. See State v. Kennedy, 325

S.C. 295, 307, 479 S.E.2d 838, 844 (Ct. App. 1996) (“This oral admission was not in response to any interrogation by Thomley, but was voluntary on Kennedy’s part.”).

After Petitioner made the first incriminating statement, Petitioner initiated contact with Investigator Hutchins by asking Investigator Hutchins to return to the car. At that point, the questioning stopped. See State v. Howard, 296 S.C. 481, 489, 374 S.E.2d 284, 288 (1988) (citing Edwards v. Arizona, 451 U.S. 477,485 (1981) (“[A] criminal suspect's rights are not violated when the suspect, not the police, ‘initiates further communication, exchanges, or conversations with the police.’ ”)). Petitioner’s statement was a mere spontaneous and unsolicited statement. Thus, the trial court properly admitted the second statement.

C. Petitioner’s third incriminating statement to his girlfriend was spontaneous and not a result of an interrogation.

The trial judge properly admitted the third statement because Petitioner was not subject to an interrogation when he made the statement.

Once the investigators arrested Petitioner, Petitioner invoked his right to remain silent and his right to counsel. (R. p. 15.). At that point, the investigators ceased questioning. Thereafter, Petitioner asked to speak to his girlfriend, Gilbert. Petitioner told Gilbert he made a mistake and that he would see her in 30 years.

Thus, there was no evidence of interrogation by the investigators at the time Petitioner made the spontaneous statement. See State v. Owens, 293 S.C. 161, 169, 359 S.E.2d 275, 279 (1987) (“Volunteered inculpatory statements that are not in response to custodial interrogation are admissible without *Miranda* warnings. There is no evidence of interrogation by Strickland or anyone else at the time appellant made this spontaneous

statement . . . The trial judge properly allowed the statement into evidence for the jury's consideration of voluntariness.”) (internal citations omitted).

Accordingly, the trial judge and Court of Appeals correctly determined that Petitioner was not in custody at the time he made the incriminating statement; therefore, the investigators did not have to advise Petitioner of his rights under Miranda.

II.

The Court of Appeals correctly determined that Petitioner’s statement was voluntary and admissible. Regardless, any error in admitting the statement was harmless due to the overwhelming evidence of guilt against Petitioner.

Petitioner contends that the investigators coerced Petitioner into making the second statement because one of the investigators made a misrepresentation to Petitioner regarding DNA evidence. However, Petitioner’s will was not overborne by the circumstances surrounding the statement. Regardless, any error in admitting the statements was harmless due to the overwhelming of evidence of guilt against Petitioner. Accordingly, the Court of Appeals did not err in affirming Petitioner’s sentence and conviction.

Standard of Review

“When reviewing a trial [court]’s ruling concerning voluntariness, the appellate court does not re-evaluate 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. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009).

A. Petitioner’s statement was voluntary and admissible.

The Court of Appeals correctly found that Petitioner’s statement was voluntary and admissible because Petitioner’s will was not overborne by the circumstances surrounding the statement.

In State v. Miller, this Court noted, “[t]he test of voluntariness is ‘whether a defendant’s will was overborne’ by the circumstances surrounding the given [statement]. The due process test takes into consideration ‘the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the

interrogation.” 375 S.C. 370, 380, 652 S.E.2d 444, 449 (Ct. App. 2007) (citations omitted).

In addition, this Court in Miller noted the following:

The Supreme Court, in Withrow v. Williams, 507 U.S. 680, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993), set forth a non-exclusive list of factors which may be considered in the totality-of-the-circumstances analysis:

Under the due process approach ... courts look to the totality of circumstances to determine whether a statement was voluntary. Those potential circumstances include not only the crucial element of police coercion, Colorado v. Connelly, 479 U.S. 157, 167, 107 S.Ct. 515, 93 L.Ed.2d 473(1986); the length of the interrogation, Ashcraft v. Tennessee, 322 U.S. 143, 153–154, 64 S.Ct. 921, 88 L.Ed. 1192(1944); its location, see Reck v. Pate, 367 U.S. 433, 441, 81 S.Ct. 1541, 6 L.Ed.2d 948 (1961); its continuity, Leyra v. Denno, 347 U.S. 556, 561, 74 S.Ct. 716, 98 L.Ed. 948 (1954); the defendant's maturity, Haley v. Ohio, 332 U.S. 596, 599–601, 68 S.Ct. 302, 92 L.Ed. 224 (1948) (opinion of Douglas, J.); education, Clewis v. Texas, 386 U.S. 707, 712, 87 S.Ct. 1338, 18 L.Ed.2d 423 (1967); physical condition, Greenwald v. Wisconsin, 390 U.S. 519, 520–521, 88 S.Ct. 1152, 20 L.Ed.2d 77 (1968) (per curiam); and mental health, Fikes v. Alabama, 352 U.S. 191, 196, 77 S.Ct. 281, 1 L.Ed.2d 246 (1957). They also include the failure of police to advise the defendant of his rights to remain silent and to have counsel present during custodial interrogation. Haynes v. Washington, 373 U.S. 503, 516–517, 83 S.Ct. 1336, 10 L.Ed.2d 513 (1963)[.]

Miller, 375 S.C. at 385-386, 652 S.E.2d at 452 (quoting Withrow v. Williams, 507 U.S. 680, 693–94 (1993)).

In the case at hand, the police never coerced Petitioner into making the incriminating statement. See Miller, 375 S.C. at 386, 652 S.E.2d at 452 (“Coercive police activity is a necessary predicate to finding a statement is not voluntary.”); see also State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) (noting a statement may not

be “extracted by any sort of threats or violence, [or] obtained by any direct or implied promise, however slight, [or] obtained by the exertion of improper influence.”) The investigators never used physical force or threatened physical force. See Black’s Law Dictionary 294 (9th ed. 2009) (defining “coercion” as “[c]ompulsion by physical force or threat of physical force.”)

Moreover, Petitioner made the statement within ten to fifteen minutes of being inside Investigator Hutchins’ SUV. (R. p. 239.) Therefore, the length of the interrogation was very short. Furthermore, upon Petitioner’s request, the encounter took place in Investigator Hutchins’ SUV in Petitioner’s driveway. The police did not order Petitioner into the vehicle nor was Petitioner required to go to the vehicle. Thus, this was not a situation where the encounter took place in a police-dominated atmosphere. In addition, this was not a situation where the suspect was a juvenile and needed further protection.⁸

Although there is evidence in the record that Investigator Hutchins misrepresented DNA evidence to Petitioner, the misrepresentation did not render Petitioner’s statement inadmissible. See State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980) (“A misrepresentation, while relevant, may be insufficient to render inadmissible an otherwise valid confession.”); see also Goodwin, 384 S.C. at 601, 683 S.E.2d at 507 (Ct. App. 2009) (holding the police officers’ lie about DNA evidence did not render the defendant’s confession involuntary.)

In summary, when looking at the totality of the circumstances, Petitioner’s statement was voluntary.

B. Even if the trial judge erred in admitting the statements, any error was harmless.

⁸ Petitioner was 33 years old when he made the statement.

Regardless of any error in admitting Petitioner's statements, the record contained sufficient evidence to prove guilt beyond a reasonable doubt; therefore, any error was harmless. See Lynch, 375 S.C. at 636, 654 S.E.2d at 296 (citing Easler, 327 S.C. at 129, 489 S.E.2d at 621 ("The failure to suppress evidence for possible Miranda violations is harmless if the record contains sufficient evidence to prove guilt beyond a reasonable doubt."))

In this case, Taylor testified that Petitioner was the one who went inside and robbed the pharmacy. Additionally, the police found the white tennis shoe Taylor claimed Petitioner threw in the river.⁹ There was testimony that the shoe was the same size as Petitioner's foot. Furthermore, Gilbert testified she heard Petitioner discussing robbing the pharmacy the night before the robbery. According to the victims, the armed assailant placed the stolen pills in a black trash bag. After the robbery, Petitioner entered Gilbert's room with a black trash bag then proceeded to dump the pills from the trash bag onto the bed.

Finally, because the other two statements made by Petitioner were clearly admissible and unchallenged by Petitioner, the admission of the second statement was merely cumulative. See State v. Evans, 378 S.C. 296, 299, 662 S.E.2d 489, 491 (Ct. App. 2008) (holding the admission of testimony that was merely cumulative, insubstantial, and not affecting the result of the trial was harmless).

Thus, any error in admitting Petitioner's statement was harmless.

⁹ The victims testified the armed assailant was wearing white tennis shoes. (R. p. 108; p. 229.)

CONCLUSION

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

Respectfully submitted,

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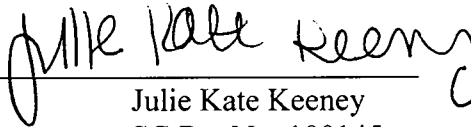
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On Writ of Certiorari to the Court of Appeals
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Roger L. Couch, Circuit Court Judge
Appellate Case No. 2013-000397

THE STATE,

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MARION STEWART,

Petitioner.

PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Return to Petition for Writ of Certiorari on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, 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 24th day of April, 2013.



ELLEN R. DuBOIS
Legal Assistant

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