STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
The Honorable George M. McFaddin, Jr., Circuit Court Judge
Court of Appeals Appellate Case No. 2019-000124
S.C. Ct. App. Op. No. 2021-UP-437
Supreme Court Appellate Case No. 2022-000216

The State,

Respondent,

v.

Malik Jabree Singleton,

Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF QUESTION PRESENTED

Did the Court of Appeals properly find there is ample evidence supporting the circuit court's determination that based on the totality of the circumstances, Petitioner's statement was voluntary and not the result of any implied or expressed promises of leniency such that his will was overborne?

STATEMENT OF THE CASE

In 2017, the Sumter County Grand Jury indicted Petitioner Malik Jabree Singleton on one count of attempted murder and one count of possession of a weapon during the commission of a violent crime, arising from the early morning shooting of Petitioner's cousin, Travis Dow ("TJ"), on December 14, 2016. The matter was called for a jury trial on January 14, 2019, before the Honorable George McFaddin, Jr., Circuit Court Judge.

Prior to trial, Petitioner moved to exclude the video of his interrogation on December 14, 2016, and the written statement he gave at the conclusion of the interrogation. The court conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), regarding the voluntariness of Petitioner's statements.

During the hearing, Investigator Chris Bonner of the Sumter County Sheriff's Department testified he responded to a call regarding a shooting incident. At the scene, he interviewed and obtained written statements from various witnesses, and then went to the hospital to interview the victim. TJ was being treated for a bullet wound to his head, and told Inv. Bonner he was at his sister's house when Petitioner entered the house and shot him. (Record on Appeal [R.], pp. 8-12).

After TJ identified Petitioner as the shooter, Sheriff Department deputies picked Petitioner up and transported him to the Sheriff's Department while Inv. Bonner obtained TJ's written statement. Petitioner entered the interview room at approximately 4:50 a.m., and Inv. Bonner entered the room at approximately 5:23 a.m. (State's Exhibit 2 [Video/Audio Recording of Interrogation]).[1] After acknowledging and waiving his rights under Miranda v. Arizona, 384 U.S. 436 (1966), Petitioner denied being present at the time of the shooting, even after Inv. Bonner told

[1]State's Exhibit 2 was provided to the Court of Appeals for consideration. Review of the entire video is required to obtain an accurate understanding of what occurred during the interrogation.

him the police already knew he was the shooter.[2] At one point, Petitioner stated his grandmother told him TJ was not dead, and Inv. Bonner asked Petitioner what he would say if they told him TJ had taken a turn for the worse and "he's no longer with us." Inv. Bonner then stated the charge would be murder if TJ was dead. (State's Exhibit 2 – 5:27-5:30).

After listening to Petitioner for approximately ten minutes, Inv. Bonner left the room for several minutes and returned with a gun residue kit. When he returned, Inv. Bonner told Petitioner he was going to be charged that day, there was no doubt Petitioner shot TJ, and the only question was why he did it. (State's Exhibit 2 – 5:30-5:38). Inv. Bonner told Petitioner witnesses had identified him as the shooter, but Petitioner continued to vehemently deny any involvement in the shooting, stating he could give Inv. Bonner the names of the people who did it. (State's Exhibit 2 – 5:38-6:00).

Inv. Bonner left the room after completing the gun residue kit collection, and re-entered it at 6:02 a.m., accompanied by Lieutenant Rodney Ragin, who essentially took over the interrogation. Lt. Ragin was very soft spoken through-out the remainder of the interrogation, and never threatened Petitioner. He began by asking Petitioner if anything, like a "tussle" with TJ, had happened that night, and stated TJ said it was an accident. Petitioner continued to vehemently deny being present or having any part in the shooting, even after Lt. Ragin told him other witnesses, including Petitioner's brother and sister, said Petitioner was there and tussled with TJ. (State's Exhibit 2 – 6:01-6:07).

After continuously denying he was even present during the shooting, Petitioner stated Quani (sp) shot TJ, then stated Quani and Trayvon did it. (State's Exhibit 2 – 6:08-6:31). Lt.

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[2] The Miranda warnings occurred between 5:23 a.m. and 5:27 a.m., and the questioning began thereafter. The interview room door remained open while Petitioner was interrogated. (State's Exhibit 2).

Ragin again confronted Petitioner with the statements given by Petitioner's sister and brother. At that point, Petitioner admitted he was present, but concocted a scenario where he walked over to the house around 1:00 a.m., and he was outside hiding by the porch when he heard a gunshot and saw Quani, Trayvon and a third person (subsequently identified as TQ) run out of the house.

The investigators continued trying to pin down Petitioner's version of events in light of the witnesses' statements, and Petitioner's story continued to change as he attempted to explain the facts already known to the investigators. Petitioner then claimed Quani, Trayvon and TQ told him earlier that evening they were going to rob someone, but he did not know they were talking about TJ, and he was "just at the wrong place at the wrong time" when the shooting occurred. Finally, Petitioner admitted he tussled with TJ, but TJ had the gun (which belonged to Quani) in his hand, and it went off. (State's Exhibit 2 – 6:31- 8:20).

At 8:21 a.m., the investigators left Petitioner in the room by himself to write whatever he wanted to write in his statement. Approximately six minutes later, Petitioner called the investigators back into the room to ask them about checking the surveillance video from a neighbor's camera to show he was not there at the house by himself. Petitioner then again changed his story and concocted a scenario in which he was in the house, but Quani had the gun and he just tried to pull Quani and Trayvon off TJ. (State's Exhibit 2 – 8:21-8:37).

At 8:37 a.m., investigators again left the room and Petitioner continued writing his statement. At 8:43 a.m., an unidentified officer gave Petitioner another piece of paper to continue his written statement. Inv. Bonner returned to the room at approximately 8:53 a.m., and informed Petitioner he was being charged with attempted murder, which might change depending on future developments. He further stated all the information would be forwarded to the solicitor's office, which would take into account the level of Petitioner's cooperation and make any decisions

regarding prosecution of the charges. Petitioner signed his written statement at 8:57 a.m., and he was escorted out of the room at 9:01 a.m. (State's Exhibit 2 – 8:37-9:01).

The circuit court watched the entire interrogation video, heard testimony from Inv. Bonner, and heard arguments from Petitioner and the State regarding the voluntariness of Petitioner's statements. Based on the totality of the circumstances, the court found the statements were voluntary because Petitioner was properly advised of his Miranda rights, which he waived; the investigators and Petitioner were all seated or standing together during the interrogation; Petitioner was "very responsive and alert to the questioning;" there were no indications of intimidation or confusion; even though Petitioner was in the room for approximately four hours, the door was open during that time; he never asked to go to the restroom or to step outside; and there were no threats made by law enforcement. As to Petitioner's claim there was an implied promise of leniency, the court found there was no such promise, and noted Petitioner's written statement did not even admit he shot TJ. In light of those findings, the court ruled the video and Petitioner's written statement were admissible.[3] (R., pp. 53-59).

TJ testified Petitioner was his second cousin and they essentially grew up together. He stated he received a settlement related to an automobile accident, of which he kept $200 and put the rest in the bank. On December 13, 2016, TJ was standing on the back porch of his house and saw Petitioner come toward him holding a gun and saying "give it up," which he believed referred to his settlement money. TJ told Petitioner he would not give it up, and then went back inside the house. (R., pp. 74-81).

[3] Certain portions of the video, including Petitioner's statements about being on probation, were redacted by consent of the parties.

TJ further testified he was watching television at his sister's house in the early morning hours of December 14, 2016, when Petitioner and one of his friends came in through the back door. Petitioner was holding a gun, which TJ tried to grab, but when he could not get the gun, TJ ran through the front door and heard Petitioner's friend tell Petitioner to shoot TJ.[4] As TJ attempted to run out the door, he looked back briefly and saw Petitioner pointing the gun at him, then a bullet grazed his head. TJ ran to his parents' nearby home, and his father called 911. (R., pp. 81-124).

TJ's niece testified she saw Petitioner on December 13, 2016, and he asked her if she wanted to earn $100 in exchange for letting Petitioner know when TJ was in the house. That evening, Petitioner texted her asking if TJ was in the house, but she did not respond. She was asleep later that night when she heard loud noises and a gunshot. When she went to the front room, she saw broken glass, blood, and TJ's phone on the floor. (R., pp. 112-125).

Inv. Bonner and Lt. Ragin testified about the circumstances surrounding the interrogation and Petitioner's statements as shown on the video. They testified about the strategies used during Petitioner's interrogation, which included talking about the potential charges Petitioner was facing if TJ died, as well as suggesting the shooting might have been an accident. (R., pp. 127-197).

The jury acquitted Petitioner of attempted murder, but convicted him of the lesser included offense of assault and battery of a high and aggravated nature (ABHAN), and convicted him on the possession of a weapon during the commission of a violent crime charge. The court sentenced him to twenty years incarceration, suspended to fifteen years incarceration on the ABHAN

[4]Petitioner's sister gave a written statement the morning of the shooting in which she stated Petitioner offered her money to let him know when TJ was in the house, she was present in the house that night, she saw TJ and Petitioner fighting and Petitioner pulled out a gun. (R., pp. 307). At trial, she admitted the statement was in her handwriting, but claimed she did not remember saying the things in the statement. (R., pp. 218-227).

conviction, and a consecutive term of five years incarceration on the possession conviction. This appeal followed.

By unpublished opinion filed December 8, 2021, the Court of Appeals affirmed, finding "[b]ecause the evidence supports the trial court's findings regarding the voluntariness of Petitioner's statements to law enforcement, the trial court did not abuse its discretion by admitting the statements into evidence." State v. Singleton, Op. No. 2021-UP-437 (S.C. Ct. App., filed December 8, 2021). By Order filed January 26, 2022, the Court of Appeals denied Petitioner's Petition for Rehearing. On February 25, 2022, Petitioner filed a Petition for Writ of Certiorari to the Court of Appeals, seeking review of the Court of Appeals decision.

ARGUMENT

The Court of Appeals properly found there is evidence supporting the circuit court's determination that based on the totality of the circumstances, Petitioner's statement was voluntary and not the result of any implied or expressed promises of leniency such that his will was overborne.

Petitioner contends the Court of Appeals erred in finding there was evidence supporting the circuit court's admission of Petitioner's statements to law enforcement, arguing they were the result of implied promises of leniency, threats and deception, such that his will was overborne. This contention is readily belied by the evidence showing the totality of the circumstances surrounding Petitioner's interrogation.

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. 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, and 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. Johnson, 422 S.C. 439, 812 S.E.2d 739, 747 (Ct. App. 2018); State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500, 507 (Ct. App. 2009) (same).

The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession. Goodwin, 683 S.E.2d at 507 (*citing* Dickerson v. U.S., 530 U.S. 428, 434 [2000]). In determining the voluntariness of a defendant's statement, the court and jury should consider "'not only the crucial element of police coercion; the length of the interrogation; its location; its continuity; the defendant's maturity; education; physical condition; and mental health.'" *Id.* (*quoting* Withrow v. Williams, 507 U.S. 680, 693 [1993]). Although a

relevant factor, law enforcement's misrepresentations of evidence do **not** render an otherwise voluntary confession inadmissible. *Id.* (*citing* Frazier v. Cupp, 394 U.S. 731, 739 [1969]).

When the interrogation video and Petitioner's written statement are considered as a whole, it is clear Petitioner's statements were free and voluntary. As a threshold matter, Petitioner **never** really confessed to shooting TJ, even in his written "apology" to his family. (R., pp. 305). To the contrary, after first claiming he had no knowledge of what happened, Petitioner eventually stated Quani and Trayvon shot TJ, but he was not even there at time. Even in his written statement, Petitioner first said he was not around when Quani shot TJ, but then claimed he "was trying to get them off TJ." Thus, it is disingenuous to assert the statement was a result of coercion, threats or deception. Rather, it is clear Petitioner simply could not keep his lies straight.

Further, Petitioner's argument hinges on his repeated assertion that the officers made "promises of leniency" to get Petitioner's confession that he was the person who shot TJ, and states "the promises of leniency made to [Petitioner] by law enforcement were video and audio recorded so that the officers could not deny having made such promises." (Pet., p. 12). The State also craves reference to the interrogation video which shows the entire interrogation, the context of statements made to Petitioner, and belies Petitioner's conclusory claim that his statements were the result of any "promises of leniency." (State's Exhibit 2).

Petitioner argues the Court of Appeals' reliance on State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009), was misplaced.[5] In support of this argument, Petitioner again

[5]Petitioner also argues the Court of Appeals' reliance on State v. Miller, 375 S.C. 370, 652, S.E.2d 444 (Ct. App. 2007), was misplaced because of factual distinctions between Miller and the instant case. The Court of Appeals cited Miller for the applicable standard of appellate review regarding the voluntariness issue, and the applicable totality of the circumstances analysis, not as a factual on-point case. There will always be factual distinctions when comparing cases, but the underlying legal principles do not change.

contends the officers in this case "repeatedly led [Petitioner] to believe that Travis was dead," which is absolutely refuted by the video. In Goodwin, the police conduct included lying about evidence, threats against family members, statements regarding influencing the prosecutor's decision to seek the death penalty, and emotional appeals related to family members. Petitioner asserts the officer conduct in Goodwin "paled in comparison to what the officers did in this case where the alleged victim was Petitioner's own family member, and the officers insinuated that Petitioner would not be allowed to attend the funeral."[6] (Pet., p. 14). As discussed above and below, the officers in this case did not lie about the evidence, make threats of any kind, and simply repeatedly implored Petitioner to tell the truth.

Petitioner asserts the investigators used a two-pronged approach "to overbear his will," which included falsely claiming Petitioner could be charged with murder and face life in prison, and then coercing him into claiming it was an accident and thereby admitting he was the shooter. Rather than false claims and coercion, however, the investigators did not make any false assertions, and merely tried well known interrogation techniques to get Petitioner to tell the truth.[7]

As a threshold matter, the investigators' comments regarding the possibility of a murder charge and life in prison sentence were absolutely true. Even though TJ was still alive, there was always the possibility of something unexpected happening as a result of his injury that would cause

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[6]Significantly, while the Court of Appeals disapproved of the statements regarding the evidence and the defendant's family, it found the statements did not overbear the defendant's will when viewing the totality of the circumstances surrounding the defendant's statements. 683 S.E.2d at 508.

[7]Petitioner cites isolated portions of the interrogation video as evidence Petitioner's will was overborne. Rather than addressing each and every allegation individually, the State again craves reference to the video itself for the content and context of the investigators' conduct and statements.

his death, *i.e.*, a blood clot or other medical event, which would elevate the possible charges to include murder.

Further, contrary to Petitioner's repeated assertions the investigators lied to Petitioner regarding TJ's condition, they never stated TJ was dead, but merely talked about what would happen **if** TJ died. *See* State v. Parker, 381 S.C. 68, 671 S.E.2d 619, 630 (Ct. App. 2008) (isolated incidents of police deception and discussions of realistic penalties are normally insufficient to overbear free will). In fact, the investigators stated multiple times they had already talked to TJ about what happened, which would not have been possible if TJ was dead. When Petitioner said his grandmother told him TJ was alive, the officers talked about what TJ would say if they told him Petitioner "had taken a turn for the worse."

The investigators did bring up the possibility of an accidental shooting, but as a whole it is clear they are simply trying to get Petitioner to tell the truth based on the facts already revealed by the investigation. They truthfully told Petitioner all the witnesses they interviewed stated he was the only one they saw fighting with TJ, and none of them mentioned the presence of any other person.

Even if the investigators had misrepresented the extent of the evidence against Petitioner, however, it would not render his statements involuntary. *See* State v. Register, 323 S.C. 471, 476 S.E.2d 153, 158 (1996) (defendant's will not overborne when police misrepresented evidence to convince him to confess). All the investigators said to Petitioner was he should say it was an accident **if** the shooting was accidental, and they repeatedly implored him to simply tell the truth. *See* State v. Rochester, 301 S.C. 196, 391 S.E.2d 244, 249-247 (1990) (polygraph examiner's statement that it would be in defendant's best interest to tell the truth did not constitute an improper hope of reward or benefit) (*citing* Tyler v. State, 247 Ga. 119, 274 S.E.2d 549 [1981] [advising

accused it is always best to tell the truth does not, without more, render subsequent confession inadmissible]).

Petitioner was properly advised of his Miranda rights, and freely waived them. The investigators truthfully advised Petitioner what could happen if TJ died, truthfully told him that all the witnesses at the house indicated he was the only one seen fighting with TJ at the time of the shooting, and gave Petitioner every possible opportunity to give his own truthful account of what happened. The interrogation lasted approximately four hours, the door to the room was always open, and Petitioner was left alone several times, including when he wrote his statement. Petitioner never asked to go to the restroom, and cannot contend he would have been denied the opportunity to go if he asked.

While making it clear they did not believe what Petitioner was saying, none of the investigators raised their voice or attempted to bully Petitioner. To the contrary, all the investigators spoke to Petitioner in a very reasonable tone of voice while pointing out the implausibility of his version of events and essentially begging him to just be honest. The investigators never promised Petitioner anything, including leniency, and they truthfully told him he was the only one who could help himself by telling the truth. In short, the investigators simply did their jobs in a lawful manner.[8]

Petitioner apparently believes simply repeating conclusory assertions of deception and coercion make them true and render his statements involuntary. Taken to its logical conclusion, Petitioner's contention would effectively require law enforcement to simply accept a suspect's

[8]Except for one statement that TJ had the gun and it went off when they were struggling, which he quickly refuted, Petitioner never really admitted guilt and continued to deny guilt in his written statement. Thus, it is unclear how his will was overborne as a result of anything the investigators did or said during the interrogation.

statements, no matter how implausible, and stop the interrogation, even when the suspect has voluntarily waived his Miranda rights and the officers know the suspect is blatantly lying. That is not, and never has been, the law regarding the voluntariness of statements.

Considering the interrogation video in this case in full and applying the totality of the circumstances standard, as the circuit court and Court of Appeals did, none of Petitioner's assertions are valid. The Court of Appeals applied the appropriate standard of appellate review, and properly found the evidence amply supports the circuit court's ruling that the interrogation video and Petitioner's written statement were admissible as evidence. Therefore, the Petition for Writ of Certiorari to the Court of Appeals is meritless, and should be denied.

CONCLUSION

Based on the foregoing, the State respectfully submits the Petition for a Writ of Certiorari to the Court of Appeals should be denied.

Respectfully submitted,

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March 28, 2022

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Sumter County
The Honorable George M. McFaddin, Jr., Circuit Court Judge
Court of Appeals Appellate Case No. 2019-000124
S.C. Ct. App. Op. No. 2021-UP-437
Supreme Court Appellate Case No. 2022-000216

The State, Respondent,

v.

Malik Jabree Singleton,

Petitioner.

PROOF OF SERVICE

I, Sally Ellison, certify I served the Return to the Petition for Writ of Certiorari to the Court of Appeals on Petitioner by depositing a copy in the United States mail, postage prepaid, addressed to:

Adam Sinclair Ruffin
Assistant Appellate Defender
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 28th day of March, 2022.

Sally Ellison

SALLY ELLISON
Legal Assistant

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Sally Ellison

From: Sally Ellison
Sent: Monday, March 28, 2022 11:36 AM
To: Ruffin, Adam; Leverett, Scott (sleverett@sccid.sc.gov)
Cc: Deborah Shupe; Sally Ellison; Victim Services
Subject: The State v. Malik Jabree Singleton Appellate Case No. 2022-000216
Attachments: Malik Jabree Singleton Appellate Case No. 2022-000216 Letter to Adam Ruffin serving Return to Petition for Writ of Certiorari to the (02935409xD2C78).PDF; Singleton Malik Jabree Return to Petition for Writ of Certiorari to the Court of Appeals Appellate Case No. 2022-000216 (02935296xD2C78).PDF

Good Morning:

Attached for service this date is the Respondent's Return to Petition for Writ of Certiorari to the Court of Appeals and cover letter in the above matter. A copy of the Return will also be served as indicated on the Proof of Service attached herewith.

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