The Supreme Court of South Carolina

In the Matter of Amy J. Stevens, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 18, 1992, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the South Carolina Supreme Court dated August 22, 2007, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Amy J. Stevens shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina

October 19, 2007

The Supreme Court of South Carolina

In the Matter of Mamie Sue Dickerson White, Petitioner.

ORDER

The records in the office of the Clerk of the Supreme Court show that on November 15, 1984, Petitioner was admitted and enrolled as a member of the Bar of this State.

By way of a letter addressed to the Clerk of the Supreme Court of South Carolina, dated September 27, 2007, Petitioner submitted her resignation from the South Carolina Bar. We accept Petitioner's resignation.

Petitioner shall, within fifteen (15) days of the issuance of this order, deliver to the Clerk of the Supreme Court her certificate to practice law in this State.

In addition, Petitioner shall promptly notify, or cause to be notified, by certified mail, return receipt requested, all clients currently being represented in pending matters in this State, of her resignation.

Petitioner shall file an affidavit with the Clerk of the Supreme Court, within fifteen (15) days of the issuance of this order, showing that she has fully complied with the provisions of this order. The resignation of Mamie Sue Dickerson White shall be effective upon full compliance with this order. Her name shall be removed from the roll of attorneys.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

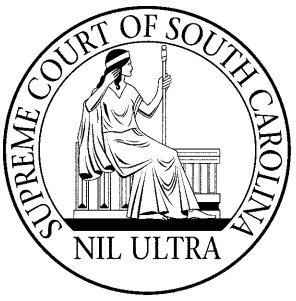
s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina

October 19, 2007



OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

ADVANCE SHEET NO. 38

October 22, 2007
Daniel E. Shearouse, Clerk
Columbia, South Carolina
www.sccourts.org

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THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, Respondent,

v.

Charles Jordan Tillinghast, Appellant.

Appeal From Cherokee County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 26384
Heard September 19, 2007 – Filed October 22, 2007

REVERSED

Trent N. Pruett, of Pruett Law Firm, of Gaffney, for appellant.

General Counsel Charles H. Sheppard and Assistant General Counsel Rachel D. Erwin, both of the S.C. Department of Public Safety, of Blythewood, for respondent.

PER CURIAM: Appellant was charged with possession of alcohol by a minor in violation of S.C. Code Ann. § 20-7-8920 (Supp. 2006).[1] The case was heard in magistrate's court. After the State's presentation of its case, the magistrate granted appellant's motion for a directed verdict on the ground § 20-7-8920 was unconstitutional as applied to appellant.

Thereafter, the State appealed to the circuit court and argued that the magistrate erred by directing a verdict of not guilty. At a hearing to determine whether the circuit court had jurisdiction to hear the State's appeal, the State indicated it was not seeking to reinstate the charge against appellant, but was seeking review of the magistrate's finding that the statute was unconstitutional. The court found that it had jurisdiction to hear the appeal and subsequently found the magistrate had erred by ruling § 20-7-8920 was unconstitutional. Appellant now appeals.

ISSUE

Did the circuit court have jurisdiction to hear the appeal?

DISCUSSION

Appellant argues the State does not have a right to appeal from a judgment in favor of a defendant in a criminal case. The State counters that it has the right to appeal on purely legal grounds.

We have recognized there are limited situations where the State may appeal. State v. McKnight, 353 S.C. 238, 577 S.E.2d 456 (2003). In State v. Holliday, 255 S.C. 142, 177 S.E.2d 541 (1970), we stated that,

> While a limited right of appeal in criminal cases has been conferred upon the State by statute in a number of jurisdictions, the extent of the right of

[1]Section 20-7-8920 was amended in June 2007. The amendment does not affect the instant case.

> the prosecution to appeal in this jurisdiction has been defined by our judicial decisions.
>
> Based primarily upon the double jeopardy provisions of the Constitution, we have long recognized that the State has no right of appeal from a judgment of acquittal in a criminal case, unless the verdict of acquittal was procured by the accused through fraud or collusion.

State v. Holliday, 255 S.C. at 144-145, 177 S.E.2d at 542 (internal citations omitted).

The Holliday court noted that "no writ of error, appeal, or other proceeding lies on behalf of the state to review or to set aside a verdict or a judgment of acquittal in a criminal case, although there may have been error committed by the court, or a perverse finding by the jury." *Id.* at 145, 177 S.E.2d at 542-543 (citation omitted). These cases refusing the State's right of appeal are premised upon the basic double jeopardy principle that a defendant in a criminal prosecution is in legal jeopardy when he has been placed on trial under a valid indictment and a competent jury has been sworn. State v. McKnight, *supra*.

As noted in State v. McKnight, 353 S.C. at 239, n.2, 577 S.E.2d at 457, n.2, the State may appeal an order quashing an indictment or the grant of a new trial after conviction if based on an error of law. However, these situations involve either a dismissal prior to the jury being sworn or the grant of a new trial following conviction, not an acquittal.

Whether or not the magistrate erred in his ruling of law, appellant was acquitted and is now out of court. The circuit court erred by finding the State may appeal the magistrate's ruling. Accordingly, the decision of the circuit court is

REVERSED.

TOAL, C.J., MOORE, WALLER, PLEICONES and BEATTY, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Bobby J. Long, Respondent.

Opinion No. 26385
Submitted September 10, 2007 – Filed October 22, 2007

DEFINITE SUSPENSION

Lesley M. Coggiola, Disciplinary Counsel, Henry B. Richardson, Jr., Senior Counsel, Barbara M. Seymour, Assistant Deputy Disciplinary Counsel, and Michael J. Virzi, Assistant Disciplinary Counsel, all of Columbia, for the Office of Disciplinary Counsel.

Bobby J. Long, of Prosperity, respondent, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent (Agreement) and an Addendum to Agreement (Addendum) pursuant to Rule 21, RLDE, Rule 413, SCACR. In the Agreement and Addendum respondent admits misconduct and consents to a public reprimand or a definite suspension not to exceed sixty (60) days. See Rule 7(b), RLDE, Rule 413, SCACR. We accept the Agreement and Addendum and definitely suspend respondent from the practice of law in this state for a thirty (30) day period.

FACTS

The facts, as set forth in the Agreement, are as follows. During 2003, respondent was an owner of Palmetto Law Group, LLC, doing business as Jacobsen & Long and, later, as Jacobsen Pincus & Long (the Firm). Although Karl Jacobsen, Monet Pincus, and respondent were all signatories on the Firm's trust account, respondent was the primary person responsible for overseeing the Firm's trust account and maintaining the Firm's financial records. During 2003, the Firm failed to maintain journals, ledgers, checkbook registers, and reconciliation reports as required by Rule 417, SCACR, and failed to maintain adequate bookkeeping or accounting procedures to accurately account for client funds.

During 2003, the Firm's trust account was out of balance. In July 2003, respondent noticed an accounting discrepancy indicating the Firm's trust account was out of balance. He hired an accountant to audit the trust account and discovered the account was short approximately $15,000. Upon learning this, respondent brought the trust account back into balance over a period of several months by leaving earned fees in the trust account until the balance was restored.

In September 2003, respondent suffered personal problems which, at times, affected his ability to competently and diligently represent clients. During this time, respondent occasionally ignored client files that needed attention. On one occasion, respondent failed to timely correct inaccurate information on a document filed with the Bankruptcy Court.

During 2003, Jacobsen undertook representation of more bankruptcy clients than he could competently and diligently handle and was repeatedly sanctioned by the Columbia Division of the Bankruptcy Court. These sanctions included reprimands and orders to disgorge fees. In November 2003, Jacobsen was suspended by consent from practicing before the Bankruptcy Court. Respondent was aware of these problems and failed to take action to correct them.

Pincus' October 2003 departure from the Firm, Jacobsen's suspension from the Bankruptcy Court, and respondent's December 2003 relocation to Greenville left the Firm with no attorney admitted before the Bankruptcy Court in the Columbia area although the Firm had approximately 2000 pending bankruptcy cases. Problems in the Firm's Columbia office were not replicated in the Greenville office.

On or about March 15, 2004, in anticipation of Jacobsen's interim suspension and the appointment of an attorney to protect clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR, respondent entered into an agreement to transfer approximately 144 of the Firm's files to a Greenville bankruptcy attorney.[1] Respondent then submitted an Interim Consent Order Substituting Counsel to United States Bankruptcy Judge John E. Waites. Within days, the other attorney withdrew his consent to transfer and did not acquire any client files. Respondent now recognizes that this effort, while intended to benefit clients, would have violated the Rules of Professional Conduct if consummated. See Rule 1.6 (confidentiality of client information) and Rule 1.16(d) (lawyer shall give client reasonable notice of termination of representation) of Rule 407, SCACR.

On March 17, 2004, respondent permanently closed the Firm's Greenville office.[2] As of that date, the office door was locked and the answering machine for the Greenville office advised that the office was closed and someone would be contacting current clients to make arrangements. At that time, the Firm had approximately 400 cases pending before the Spartanburg Division of the Bankruptcy Court, including the 144 active cases respondent had attempted to transfer to another attorney. Respondent also had several court appearances scheduled for the week in which he closed the office.

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[1] Respondent had now moved to Atlanta, Georgia.

[2] Respondent continued to represent his non-bankruptcy clients and has now concluded those matters.

On March 18, 2004, Jacobsen was placed on interim suspension and attorneys were appointed to protect his clients' interests (APCI). See In the Matter of Jacobsen, 357 S.C. 630, 595 S.E.2d 241 (2004). Respondent represents, and ODC does not dispute, that he believed he was not entitled to access his own files and that he was cooperating with the Court by leaving his files for the APCI. Respondent now recognizes that he should not have closed his office in response to speculative statements about an impending suspension, but should have continued to represent all of his clients and keep all office resources available to them until being specifically ordered to do otherwise by the Court or its APCI. Once the APCI took possession of the files, respondent fully cooperated and resumed active representation on those files that the APCI determined should be returned to him. Respondent has since handled those matters without complaint and has fully cooperated with ODC in these matters.

The facts, as set forth in the Addendum, are as follows. On or about March 18, 2004, respondent issued an electronic check from a personal account in the amount of $2,724.00 payable to the Firm's trust account. The check was not negotiated at the time it was written. The original, non-negotiated check was later discovered by an APCI. The APCI attempted to deposit the check, but by that time, respondent's personal account had been closed and the check was no longer negotiable.

At the time the March 18, 2004 check was written, it had been respondent's practice to deposit checks received from clients into the Firm's operating account and then transfer the funds by check from the operating account into the trust account. When the Firm began experiencing difficulties, respondent felt it would be prudent to deposit the client checks into his personal account, rather than the Firm's operating account, and then transfer those funds to the Firm's trust account. Respondent's purpose in processing client funds through the operating account was to avoid depositing checks into the trust account that might be returned for insufficient funds.

The March 18, 2004 check at issue was written as part of this method of dealing with client checks. Respondent now recognizes that it was improper to deposit client funds into any account other than a trust account, regardless of his purpose.

Neither respondent nor ODC are able to identify to which client or clients the $2,724.00 belongs. Respondent has paid $2,724.00 to the Lawyers' Fund for Client Protection. These funds shall be applied toward any claims made against respondent, Jacobsen, or the Firm.

LAW

Respondent admits that by his misconduct he has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (lawyer shall provide competent representation to client); Rule 1.3 (lawyer shall lawyer shall act with reasonable diligence and promptness in representing a client); Rule 1.15 (lawyer shall hold client property separate from lawyer's own property); Rule 5.1(a) (partner in firm shall make reasonable efforts to ensure firm has in effect measures giving reasonable assurance that all lawyers in firm conform to Rules of Professional Conduct); Rule 5.1(c)(2) (lawyer shall be responsible for another lawyer's violation of Rules of Professional Conduct if lawyer is partner in firm in which other lawyer practices and knows of conduct at time when its consequences can be avoided or mitigated but fails to take reasonable remedial action); Rule 8.4(d) (lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (lawyer shall not engage in conduct that is prejudicial to administration of justice). Respondent further admits his misconduct constitutes a violation of the financial recordkeeping provisions of Rule 417, SCACR. Finally, respondent admits his misconduct constitutes grounds for discipline pursuant to Rule 7, RLDE, of Rule 413, SCACR, specifically Rule 7(a)(1) (it shall be ground for discipline for lawyer to violate Rules of Professional Conduct or any other rules of this jurisdiction regarding professional conduct of lawyers) and Rule 7(a)(5) (it shall be ground for discipline for lawyer to engage in conduct tending to pollute the administration of

justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law).

CONCLUSION

We accept the Agreement and Addendum and definitely suspend respondent from the practice of law for a thirty (30) day period. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER and BEATTY, JJ., concur. PLEICONES, J., not participating.

The Supreme Court of South Carolina

In the Matter of
David B. Greene, Petitioner.

ORDER

On December 4, 2006, the Court definitely suspended petitioner from the practice of law for nine months.[1] In the Matter of Greene, 371 S.C. 207, 638 S.E.2d 677 (2006). In January 2007, he filed a Petition for Reinstatement and the matter was referred to the Committee on Character and Fitness (CCF). The CCF has filed a Report and Recommendation recommending the Court grant the Petition for Reinstatement. Neither petitioner nor the Office of Disciplinary Counsel (ODC) filed any exceptions to the CCF's Report and Recommendation.

[1] In addition, the Court required petitioner to "take CLE courses regarding the proper use of trust accounts" and pay the costs of the disciplinary proceedings. Id. S.C. at 217, S.E.2d at 682. Petitioner submitted proof he attended two CLEs which addressed the proper handling of trust accounts and paid the costs of the disciplinary proceedings.

The Court grants the Petition for Reinstatement on the condition that petitioner promptly reimburse the Lawyers' Fund for Client Protection (the Fund) should the Fund determine any claims adversely to petitioner. Petitioner is hereby reinstated to the practice of law.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina

October 17, 2007

The Supreme Court of South Carolina

In the Matter of William J. LaLima, Petitioner.

ORDER

On April 21, 2006, petitioner was placed on interim suspension. In the Matter of LaLima, 368 S.C. 500, 629 S.E.2d 367 (2006). Petitioner has now filed a Petition for Reinstatement.

The Petition for Reinstatement is granted.

IT IS SO ORDERED.

s/ Jean H. Toal C.J.

s/ James E. Moore J.

s/ John H. Waller, Jr. J.

s/ Costa M. Pleicones J.

s/ Donald W. Beatty J.

Columbia, South Carolina

October 17, 2007

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, **Respondent,**

v.

Tim Wayne Arrowood, **Appellant.**

Appeal From Spartanburg County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 4304
Heard October 10, 2007 – Filed October 17, 2007

AFFIRMED

Appellate Defender Robert M. Dudek, South Carolina Commission of Indigent Defense, Division of Appellate Defense, of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliott, and Assistant Attorney

General Shawn L. Reeves, all of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

ANDERSON, J.: Tim Wayne Arrowood appeals his convictions for first-degree burglary and larceny, arguing the trial judge erred by refusing to suppress Arrowood's statements to police. Specifically, Arrowood contends his statements to police were involuntary and inadmissible because they were induced by promises of leniency. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

On January 28, 2004, Dayle Walker reported a toolbox missing from his residence in Campobello, South Carolina. Walker explained he always kept the toolbox in an enclosed porch at the back of his home, and, upon returning from work, he noticed it was missing.

Officer Tim Tucker of the Spartanburg County Sheriff's Department was assigned to investigate the burglary of Walker's toolbox. On February 16, 2004, Tucker met with Arrowood in Rutherford County, North Carolina, where Arrowood was in police custody on unrelated charges. Tucker questioned Arrowood concerning several "trailer thefts and the theft of a Corvette" in Spartanburg County.

A few days later, Tucker and Officer David Oglesby met with Arrowood, who had been transported to the Spartanburg County Jail.[1] Oglesby, an investigator for Cherokee County Sheriff's Department, became involved because Arrowood was under investigation for charges in Cherokee County. On February 18, 2004, Arrowood agreed to accompany Tucker and Oglesby to the scenes in Spartanburg County where Arrowood committed various criminal acts. Tucker had previously advised Arrowood of his

[1] The record on appeal does not fully explain the circumstances of Arrowood's transfer from Rutherford County, North Carolina to Spartanburg County or the disposition of the charges in North Carolina.

Miranda rights and Arrowood understood, waived those rights, and signed a pre-interrogation waiver form.

While riding with the officers, Arrowood dictated the following statement to Oglesby:

> A few weeks ago me and Curtis Mason were riding around in Curtis Mason's truck. He pulled into a drive off highway – just drive off highway just across I-26. Curtis pulled up to the side of the house and we got out and got a big red toolbox off the back porch and we put it in Curtis' truck and left. Curtis took me back home. Curtis left the toolbox at my house on Sandy Clay Road. Curtis came back and later got the toolbox.

In addition, Arrowood read and signed the following statement:

> I have read this statement consisting of one page and I swear or affirm the statement that I [have] just given is the truth and nothing but the truth, so help me God. I also swear this statement was given freely and voluntarily, and I have received a copy of this statement.

A grand jury indicted Arrowood for burglary in the first degree and larceny.

Despite attesting that his first statement "was given freely and voluntarily," Arrowood contends his statements were induced by promises of leniency made by Officer Tucker. The trial judge conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), to determine the voluntariness of Arrowood's statements. Arrowood testified that in Rutherford County, Tucker "said I got you for the Corvette but if you'll give me the Corvette up, I will get these charges up here dropped and have you brought back to South Carolina." Arrowood alleged that in Spartanburg County, "[Officer Tucker] told [Arrowood] if [Arrowood] would help him, he would help [Arrowood]" by getting "all of [Arrowood's] charges [to] run concurrent" and having "the charges in North Carolina [dropped]." Arrowood claimed Oglesby told him the officers would "put all of

[Arrowood's] bonds together and put it in one cap" if Arrowood "helped" in the investigation. Purportedly, Oglesby related this same information to Arrowood's sister a day or two later.

Contrary to Arrowood's contentions, Tucker and Oglesby professed neither officer promised Arrowood anything for his statements. Indeed, in the Denno hearing Tucker indicated:

> Q: Now, during this time at jail, did y'all make promises to [Arrowood]?
>
> A: No, sir.
>
> Q: Did you threaten [Arrowood] in any way?
>
> A: No, sir.

On direct examination Oglesby averred:

> Q: Were any promises made to [Arrowood]?
>
> A: No, sir.
>
> Q: Either about Spartanburg charges or Cherokee charges?
>
> A: No, sir. I can assure you not from Cherokee County.
>
> Q: Okay. Did you hear Detective Tucker make any promises?
>
> A: No, Sir.

Additionally, Tucker declared neither he nor Oglesby coerced Arrowood into giving a statement. Oglesby's testimony corroborated Tucker's:

Q: Did either one of you coerce [Arrowood] in any way?

A: No, Sir.

Q: Did [Arrowood] ultimately give a written statement?

A: Yes, sir, [Arrowood] did.

Tucker explained he may have made the following statement to Arrowood during a portion of the interrogation and prior to the challenged statements:

> If I told him I could help him that would mean that I told him it would be in the courtroom if he cooperated. That would be the only thing, that if I ever told him anything that that would be what I would tell him that I would say Timothy Wayne Arrowood cooperated with police in his cases.

On cross-examination, Oglesby maintained he did not discuss bonds with Arrowood:

> Q: Do you remember any discussion with Mr. Arrowood about a bond?
>
> A: I don't discuss bonds.
>
> Q: Never?
>
> A: That's up to the magistrate's office and the solicitor's office.

Under cross-examination before the jury, both Tucker and Oglesby avowed they did not promise Arrowood leniency. The officers acknowledged they only offered to speak on Arrowood's behalf to confirm that Arrowood cooperated with their investigation.

Arrowood moved to have his statements to police suppressed, alleging they were induced by promises of leniency. The trial judge denied Arrowood's motion, leaving the determination of the statements' voluntariness to the jury. Specifically, the trial judge ruled:

> Based on everything that I heard, the totality of the manner in which the statements were made and they were given, I'm going to find that the statements were freely and voluntarily made. I'm going to allow the statements to be admitted. Now, whether or not, you know, the jury can still consider the statements and find that they do not - - and give them very little weight, but I will allow it to be admitted.

The jury returned a verdict of guilty, and the trial judge sentenced Arrowood to life imprisonment for burglary and five years of imprisonment for larceny.[2]

STANDARD OF REVIEW

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977). If admitted, the jury determines whether the statement was freely and voluntarily given beyond a reasonable doubt. Washington, 296 S.C. at 55-56, 370 S.E.2d at 612.

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. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006); State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996); Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). An abuse of discretion occurs when the ruling is based on an error of law or a factual

[2] Prior to trial, the State served a notice of a life sentence pursuant to section 17-25-45 of the South Carolina Code (1976) because of Arrowood's prior burglary convictions.

conclusion that is without evidentiary support. Id.; State v. Douglas, 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2006) cert. granted June 7, 2007; State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct. App. 2005). Accordingly, the appellate courts are "bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." Reed, 333 S.C. at 685, 511 S.E.2d at 401 (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)). When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

LAW/ANALYSIS

Arrowood argues the trial judge erred in refusing to suppress his statements to police because the statements were induced by promises of leniency, rendering them involuntary and inadmissible. We disagree.

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was made voluntarily by a preponderance of the evidence. Jackson v. Denno, 378 U.S. 368, 376 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his or her rights under Miranda v. Arizona, 384 U.S. 436, 498-99 (1966). See also State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). If a suspect is advised of his Miranda rights, but chooses to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived. Saltz, 346 S.C. at 136, 551 S.E.2d at 252; State v.

Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); Washington, 296 S.C. at 54, 370 S.E.2d at 611.

Where "the evidence conflicts as to whether a defendant's statement is voluntary, it is, in the first instance, the province of the trial court to determine this factual issue by the preponderance of the evidence." State v. Howard, 296 S.C. 481, 492-93, 374 S.E.2d 284, 290 (1988); Washington, 296 S.C. at 54, 370 S.E.2d at 611; State v. Adams, 279 S.C. 228, 235, 306 S.E.2d 208, 212 (1983). The trial judge's determination of the voluntariness of the statement must be made on the totality of the circumstances, including the background, experience, and conduct of the accused. Saltz, 346 S.C. at 136, 551 S.E.2d at 252; Rochester, 301 S.C. at 200, 391 S.E.2d at 247; Howard, 296 S.C. at 488, 374 S.E.2d at 288; State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851, 853-54 (1982); State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980). "In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda." State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986).

Once the trial judge determines the statement is admissible, it is up to the jury to ultimately find, beyond a reasonable doubt, that the statement was voluntarily made. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996); State v. Callahan, 263 S.C. 35, 41, 208 S.E.2d 284, 286 (1974).

A statement "may not be extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] by the exertion of improper influence." Rochester, 301 S.C. at 200, 391 S.E.2d at 247 (citing Hutto v. Ross, 429 U.S. 28, 30 (1976) (brackets in original)). Moreover, "a statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." Saltz, 346 S.C. at 136, 551 S.E.2d at 252. See also State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987); State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977). The pertinent inquiry is, as always, whether the defendant's will was "overborne." Von Dohlen, 322 S.C. at 244, 471 S.E.2d at 695.

In State v. Peake, the defendant was convicted of murder and sentenced to life imprisonment. 291 S.C. at 138, 352 S.E.2d at 488. Peake appealed, arguing the trial judge erred in admitting a statement Peake made while in police custody. The Court found an investigating officer induced Peake's statement by promising the State would not seek the death penalty. Id. At the suppression hearing, the investigating officer admitted that he did, in fact, guarantee the State would not seek the death penalty if Peake surrendered his statement. Id. The Court ruled the promise of leniency, tendered by an officer in a position of apparent authority, rendered Peake's statement involuntary and inadmissible. Id.

Contrastively, in Rochester, the defendant argued his confession was improperly induced by a polygraph examiner's comment that it would be in Rochester's best interest to tell the truth. 301 S.C. at 199, 391 S.E.2d at 246. The Court found the examiner's statement "[s]tanding alone . . . did not constitute the kind of hope of reward or benefit condemned by this Court in Peake." 301 S.C. at 200-01, 391 S.E.2d at 247.").

Arrowood asserts his statements were not freely and voluntarily given because they were induced by the officers' promises to "help" as long as he cooperated with the investigation. Arrowood claims the "help" promised was to have the North Carolina charges dropped, secure a low bond, and have other charges run concurrently. Tucker and Oglesby categorically denied making those promises. Instead, the officers insist the only "help" they offered Arrowood was to testify in court that he cooperated with the investigation. Under precedent emanating from South Carolina jurisprudence, the officers' offer to attest to Arrowood's cooperation did not constitute promises of leniency. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252; Von Dohlen, 322 S.C. at 244, 471 S.E.2d at 695; Rochester, 301 S.C. at 200-01, 391 S.E.2d at 247; Howard, 296 S.C. at 492-93, 374 S.E.2d at 290; Peake, 291 S.C. at 139, 352 S.E.2d at 488; Broome, 268 S.C. at 99, 232 S.E.2d at 325. Consequently, Arrowood produced his statements in the mere "hope" of leniency based on his cooperation, rather than as the consequence of promises.

Unlike the uncontroverted evidence in Peake, at the Denno hearing Arrowood's testimony challenged the officers' denial that they promised him

leniency. The Court encountered similarly conflicting testimony in State v. Howard. 296 S.C. at 492, 374 S.E.2d at 289. Howard asserted his statement was involuntary because it was induced by a promise to consolidate all his offenses into one life sentence. 296 S.C. at 492, 374 S.E.2d at 289. At the suppression hearing, the agent allegedly promising consolidation testified he discussed with Howard the possibility of "wrapping up all the charges, but never made any promises." Id. at 492, 374 S.E.2d at 290. The agent insisted he told Howard he would explore the possibility of consolidation, "but [could] not promise one thing." Id. In holding Howard's statement was properly admitted, the Court emphasized that when evidence of voluntariness is conflicting, the trial judge determines the factual issue by the preponderance of evidence. Id.

Here, although Arrowood's testimony completely contradicted the officer's testimony, it was within the trial judge's province to determine the admissibility of the statements by a preponderance of the evidence. The trial judge's determination is not in error if there is any evidence in the record to support it.

CONCLUSION

We hold the record contains evidence sufficient to support the trial judge's conclusion that Arrowood's statements were freely and voluntarily given under the totality of the circumstances. Accordingly, the admission of Arrowood's statements was not an abuse of discretion. Arrowood's conviction and sentence are

AFFIRMED.

THOMAS, J., and CURETON, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Herbert Edward Gault, Appellant.

Appeal From Cherokee County
J. Mark Hayes, II, Circuit Court Judge

Opinion No. 4305
Heard September 9, 2007 – Filed October 19, 2007

AFFIRMED

J. Faulkner Wilkes, of Greenville, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Assistant Deputy Attorney General Salley W. Elliot, Senior Assistant Attorney General Harold M. Coombs, Jr., all of the Office of the Attorney General

of Columbia; and Solicitor Harold W. Gowdy, III, of Spartanburg, for Respondent.

HEARN, C.J.: Herbert Gault appeals the circuit court's decision to affirm his conviction of public disorderly conduct. Specifically, he argues the magistrate court erred in refusing to direct a verdict in his favor and in improperly excluding relevant evidence. We affirm.

FACTS

On April 14, 2005, Officer Albert B. Phillips of the Cherokee County Metro Narcotics Unit observed a car swerving repeatedly. Officer Phillips was prepared that day to work undercover, wearing a Fila tee-shirt, a black jacket, and a skull cap. After observing the swerving car, Officer Phillips initiated a traffic stop in his undercover vehicle, a black Pontiac Trans Am with tinted windows. He placed a flashing blue light on the front dash of his undercover vehicle to initiate the stop. The driver, Gault, an owner of an automotive repair store, drove several hundred yards and pulled over at his place of business. While Phillips remained in the car to call in the stop to the dispatcher, Gault exited his vehicle and approached the officer. Gault's demeanor was loud and belligerent according to Phillips, and he insisted that Phillips was not an officer even after seeing a badge. A uniformed officer arrived twelve minutes after Phillips made the initial stop. He testified to Gault's continued belligerence and yelling.

Gault was charged with reckless driving and public disorderly conduct. The jury found Gault not guilty of reckless driving and guilty of public disorderly conduct. He appealed to the circuit court arguing the same issues that he presents today. The circuit court affirmed the magistrate court. This appeal followed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an appellate court is bound by the trial court's factual findings unless they are clearly erroneous. Id.

LAW/ANALYSIS

Gault first argues the circuit court erred in affirming the magistrate court's decision to deny his motion for directed verdict. We disagree.

When ruling on a motion for directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight. State v. Weston, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). In reviewing a motion for directed verdict, the appellate court views the evidence and all reasonable inferences in the light most favorable to the State. Id.

In the present case, evidence exists to support a verdict of public disorderly conduct. The pertinent part of the public disorderly conduct statute provides that it is a misdemeanor for a person to "be found on any highway or at any public place or public gathering . . . otherwise conducting himself in a disorderly or boisterous manner," or to, "use obscene or profane language on any highway or at any public place or gathering . . . ." S.C. Code Ann. § 16-17-530 (2003). Officer Phillips testified that after Gault pulled into his place of business, Gault jumped out of his car and screamed, "I don't know you. Somebody is going to kill you for this." He testified that Gault was loudly using profanity and repeatedly saying that he looked like a hoodlum. Phillips further testified that upon identifying himself as an officer and showing Gault his badge, Gault grabbed his badge and pulled Phillips close, saying "I don't know you." An officer who arrived at the scene shortly thereafter also testified to Gault's continued belligerent, threatening, and disorderly behavior. Because evidence exists to support a charge against

Gault for public disorderly conduct, the magistrate court judge did not err in refusing to direct a verdict.

On appeal to the circuit court, Gault also argued that his speech when confronting the officers could not constitute public disorderly conduct because it did not rise to the level of "fighting words," and was therefore protected by the First Amendment pursuant to State v. Perkins, 306 S.C. 353, 355, 412 S.E.2d 385, 386 (1991) ("[A]ppellants cannot be punished under § 16-17-530(a) for voicing their objections to sheriff's officers where the record indicates no use of fighting words."). Gault also advances this argument in his appeal, however, because the issue was not raised before the magistrate, it is not preserved for our review.

In Gault's motion for a directed verdict, he made no mention of the First Amendment, Perkins, or the "fighting words" exception. Rather, he argued there was no evidence that Gault "threatened" Officer Phillips, and that Gault was rightfully agitated because he initially thought Phillips was not a policeman. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005) (holding an issue not preserved when one ground is raised to the trial court and another ground is raised on appeal); See In re Care and Treatment of Corley, 365 S.C. 252, 258, 616 S.E.2d 441, 444 (Ct. App. 2005) (explaining that constitutional issues, like most others, must be raised to and ruled upon by the trial court to be preserved for appeal).

Gault next argues the circuit court erred in affirming the magistrate court's denial of the admission of photographs illustrating the dark tint on Officer Phillips' windows. We disagree.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. Id. Furthermore, for an error of law to warrant reversal based on admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., that there is a reasonable probability the verdict was influenced by the challenged

evidence or the lack thereof. Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

First, it is unclear to this court how the tint on the officer's window is relevant. Gault elicited testimony regarding Officer Phillips' vehicle and attire to show that Gault was reasonable in not believing Phillips was a law enforcement officer. However, a belief that a person is or is not a police officer is not an element of the charge of public disorderly conduct. Therefore, we find the window-tint evidence was properly excluded.

Further, Gault had already testified that the windows were tinted, so the photographs would have only served as cumulative evidence. Because the jury was already informed of the tinted windows, the exclusion of the photographs showing the tint was not prejudicial to Gault. Accordingly, the circuit court was correct in affirming the magistrate court's exclusion of the evidence. See Rule 403, SCRE (allowing evidence to be excluded if its probative value is outweighed by considerations of needless presentation of cumulative evidence); State v. Hess, 279 S.C. 14, 18-19, 301 S.E.2d 547, 550 (1983) (finding no abuse of discretion where the excluded testimony is merely cumulative of other evidence proffered to the jury).

CONCLUSION

Based on the foregoing, the order of the circuit court is hereby

AFFIRMED.

ANDERSON and THOMAS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Bobby R. Walton, Appellant,

v.

Mazda of Rock Hill, Mazda USA, Lee Faile, Ken McManus, Eric Sigmon, and C.A.R.S., Defendants,

of whom:

Ken McManus and Eric Sigmon are the Respondents.

Appeal From York County
Lee S. Alford, Circuit Court Judge

Opinion No. 4306
Submitted September 1, 2007 – Filed October 19, 2007

AFFIRMED

Mitchell K. Byrd, Sr., of Hilton Head Island, for Appellant.

Lucy London McDow, of Rock Hill, for Respondent.

STILWELL, J.: Bobby Walton filed this action alleging, inter alia, breach of contract arising from his purchase of an automobile. The magistrate granted summary judgment to two of the defendants, Ken McManus and Eric Sigmon. On appeal, the circuit court affirmed and we affirm.[1]

FACTS

On August 31, 2002, Walton purchased a vehicle, and a warranty contract issued by C.A.R.S., from Mazda of Rock Hill, a.k.a. Faile Enterprises, Inc. On December 19, 2002, Faile Enterprises entered into an asset purchase agreement with McManus and Sigmon. In January 2003, Walton brought the vehicle to the dealership for repairs. At that time, Walton was informed of the sale, and McManus and Sigmon refused to honor Walton's contract or warranty. Walton contacted C.A.R.S. expecting it to honor the warranty contract. C.A.R.S. notified Walton it never received the paperwork or payment from Mazda of Rock Hill.

The sale and transfer of the dealership assets closed on March 27, 2003. On March 28, 2003, McManus and Sigmon assigned the asset purchase agreement to McManus-Sigmon, Inc., a.k.a. Team Mazda.

By complaint dated April 2, 2003, Walton sued Mazda of Rock Hill, Mazda USA, Lee Faile, McManus, Sigmon, and C.A.R.S., alleging breach of contract, unfair trade practices, and willful and malicious conduct. The magistrate granted McManus' and Sigmon's motion for summary judgment.

STANDARD OF REVIEW

This court's standard of review of a circuit court's decision on an appeal from magistrate's court is limited to the correction of errors of law and this court will affirm the circuit court if there are any facts supporting its

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

decision. See Bowers v. Thomas, 373 S.C. 240, 244-45, 644 S.E.2d 751, 753 (Ct. App. 2007).[2]

LAW/ANALYSIS

I. Summary Judgment

Walton first argues a magistrate does not have the authority to rule on a motion for summary judgment. We disagree.

Rule 81, SCRCP, provides:

> These rules [SCRCP], or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. They shall apply insofar as practicable in magistrate's courts, probate courts, and family courts to the extent they are not inconsistent with the statutes and rules governing those courts.

See Rule 1, SCRCP (defining the scope of the South Carolina Rules of Civil Procedure) and Rule 56, SCRCP (providing the authority to grant summary judgment).

Additionally, Rule 2, SCRMC, provides:

> (a) If no procedure is provided by these rules, the court shall proceed in a manner consistent with the statutory law applicable to magistrates and with

[2] The circuit court's standard of review of a magistrate's order is not at issue in this case. See S.C. Code Ann. §18-7-170 (1985) (prescribing the circuit court's standard of review of magistrates' orders).

> circuit court practice in like situations but not inconsistent with these rules.
>
> (b) Each magistrate may promulgate rules for the conduct of proceedings in his court which are not inconsistent with these rules and the South Carolina Code of Laws.

Although there is no law within the South Carolina Rules of Magistrate Court specifically addressing summary judgment, the South Carolina Bench Book for Magistrates and Municipal Court Judges discusses summary judgment, explaining:

> After the filing of a civil case and prior to the actual trial, you may occasionally receive a motion for summary judgment . . . . Rule 56, SCRCP, which is made applicable to magistrate's court by Rule 81, SCRCP, allows the plaintiff **or** defendant . . . [to] move with or without supporting affidavits for a summary judgment . . . . Summary judgment is proper when, after reviewing the motion, supporting affidavits, and the pleadings, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. . . . If, after a hearing, the court determines the summary judgment is appropriate, an order to that effect ending the case should be issued.

South Carolina Bench Book for Magistrates and Municipal Court Judges, II-19 to II-20 (2d ed. 1984), available at http://www.sccourts.org/trial/magistrate/benchbook/HTML/CivilC.htm#C15 (emphasis in original).

Therefore, we find Rule 56, SCRCP, applies to magistrates as members of the South Carolina court system. The circuit court did not err in affirming the magistrate's grant of summary judgment because the grant of summary judgment does not exceed the magistrate's authority.

II. Successor Liability

Walton next contends genuine issues of material fact exist as to successor liability and therefore the magistrate erred in granting summary judgment. We disagree.

In the absence of a statute, a successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability unless: (a) there was an agreement to assume such debts; (b) the circumstances surrounding the transaction indicate a consolidation of the two corporations; (c) the successor company was a mere continuation of the predecessor company; or (d) the transaction was fraudulently entered into for the purpose of wrongfully denying creditor claims. Simmons v. Mark Lift Indus., 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005) (citing Brown v. American Ry. Express Co., 128 S.C. 428, 123 S.E. 97 (1924)).

(a) Agreement to Assume Obligations Exception

Walton alleges an issue of material fact is present regarding whether McManus and Sigmon agreed to assume Mazda of Rock Hill's debts or obligations. We disagree.

"When a contract is unambiguous a court must construe its provisions according to the terms the parties used, understood in their plain, ordinary, and popular sense." S.C. Farm Bureau Mut. Ins. Co. v. Oates, 356 S.C. 378, 381, 588 S.E.2d 643, 645 (Ct. App. 2003).

The Asset Purchase Agreement states that McManus and Sigmon purchased the assets "free and clear of any liens, encumbrances, restrictions, charges, and equities of any kind whatsoever." Further, the Asset Purchase Agreement states: "Purchaser is not assuming any liabilities of Seller." Walton focuses on language in the Asset Purchase Agreement that obliges McManus and Sigmon to purchase, at cost, all repair work in progress. Under this provision, McManus and Sigmon were to finish customer repair work, and the proceeds were to be divided equally between the parties. We agree with the magistrate and circuit court that this provision, in light of the

other provisions in the contract, does not convert the agreement from solely an asset sale to a sale of assets and liabilities. Therefore, Walton's reliance on this provision is misplaced and the magistrate did not err in finding no genuine issues of material fact exist regarding this exception.

(b) Consolidation Exception

Walton argues there is a material issue of fact whether the sale between Mazda of Rock Hill and McManus and Sigmon was simply a consolidation. We disagree.

As the circuit court properly determined, there is no evidence in the record indicating the transaction between Mazda of Rock Hill and McManus and Sigmon amounted to a consolidation. Both McManus and Sigmon signed affidavits swearing they have never had any interest in Mazda of Rock Hill. The asset purchase agreement clearly establishes a sale between Faile Enterprises and McManus and Sigmon. The agreement was also subject to a consultant and non-compete agreement, in which Faile promised not to associate with any Mazda dealership within twenty miles of the sold dealership and to work as a consultant for McManus and Sigmon for almost two years. Accordingly, no factual issue prevents summary judgment based on this exception.

(c) Mere Continuation Exception

Walton asserts a material issue of fact exists as to whether McManus and Sigmon merely continued Mazda of Rock Hill. We disagree.

In Simmons v. Mark Lift Industries, Inc., the South Carolina Supreme Court declined to extend the mere continuation exception to situations where there is no commonality between officers, directors, and shareholders of the seller and purchaser. 366 S.C. 308, 312 n.1, 622 S.E.2d 213, 215 n.1 (2005). As discussed, McManus and Sigmon did not have any relationship with Mazda of Rock Hill except for the purchase of the assets of the dealership. Additionally, Faile only served McManus' and Sigmon's new organization, Team Mazda, as a consultant for a limited time period. Therefore, we find

evidence to support the circuit court's finding that there was no material issue of fact supporting Walton's claim of a mere continuation.

(d) Fraud Exception

Finally, Walton contends there is an issue of material fact regarding whether the asset sale was fraudulent. To meet the fraud exception to successor liability, the general rule is that a successor must knowingly participate in a fraudulent asset transfer. Richard L. Cupp, Jr., Redesigning Successor Liability, 1999 U.Ill.L.Rev. 845, 875-76 (1999). Proving such knowledge is difficult, and a few courts have advocated expanding the fraud section to include reviewing the successor's actual or constructive knowledge. Id. at 888-89 (generally discussing the fraud exception in product liability actions alleging successor liability). Under either interpretation of the fraud exception to successor liability, we find no genuine issue of material fact. Walton provides no theory supporting a claim of fraud. For instance, there is no evidence of inadequate consideration and no indication that McManus and Sigmon were not bona fide purchasers for value. A party opposing summary judgment must do more than rely on mere allegations. Dyer v. Moss, 284 S.C. 208, 211, 325 S.E.2d 69, 70 (Ct. App. 1985). We find no error by the trial court in affirming the magistrate's grant of summary judgment on the fraud exception.

Based on the foregoing, we find no error in the circuit court's order affirming the master's grant of summary judgment in favor of McManus and Sigmon.

AFFIRMED.

WILLIAMS, J., and GOOLSBY, A.J., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, **Respondent,**

v.

Marshall Miller, **Appellant.**

Appeal From Abbeville County
Wyatt T. Saunders, Jr, Circuit Court Judge

Opinion No. 4307
Heard October 10, 2007 – Filed October 19, 2007

AFFIRMED

Deputy Chief Attorney for Capital Appeals Robert M. Dudek, for Appellant.

Attorney General Henry Dargan McMaster, Chief Deputy Attorney General John W. McIntosh, Chief, State Grand Jury, Jennifer D. Evans, and Assistant Attorney General, State Grand Jury,

DeWayne Pearson, all of Columbia, for Respondent.

ANDERSON, J.: Marshall Miller ("Miller") appeals his conviction for conspiracy to traffic methamphetamine, arguing the trial judge erred by: (1) admitting incriminating oral and written statements, which he claims were given as the result of promises of leniency; and (2) denying his motion to enforce an alleged eight-to-twelve-year plea agreement. We affirm.

FACTUAL/PROCEDURAL BACKGROUND

In November 1999, local authorities began investigating a large methamphetamine conspiracy, referred to as "Crankdown." The State Law Enforcement Division ("SLED") began its investigation in 2002.

On September 10, 2002, the statewide grand jury indicted Miller and fourteen other individuals for conspiracy to traffic more than 100 grams of methamphetamine. Miller was arrested on September 24, 2002. Subsequently, Frank O'Neil, a SLED agent, attempted to obtain a statement from Miller. O'Neil declared the attempt was not fruitful because Miller only informed the agent about other people involved, not Miller's own involvement.

O'Neil averred defense attorney Kim Varner said Miller was willing to cooperate fully. As a result, O'Neil arranged for Miller to be interviewed by SLED agents Chester Bragg and Constance Sonnefeld. Bragg and Sonnefeld conducted three interviews with Miller. The first debriefing occurred on February 13, 2003, at the Laurens City Police Department. Bragg established that Miller was advised of his rights. He was coherent and not threatened in any way. Both agents professed that no plea agreements or promises of leniency were made during the meeting.

The second and third interviews between Marshall and SLED officers were conducted on February 25, 2003, and March 4, 2003. During all three sessions, Miller orally provided information concerning the

methamphetamine conspiracy. At trial, Bragg confirmed Miller admitted using, "cooking," (making methamphetamine), and distributing methamphetamine. Additionally, Miller voluntarily provided Bragg with a handwritten, thirty-six page document prior to the second interview. This document listed names of various "cooks," locations where methamphetamine could be purchased, "cook" sites, people who assisted in "cooking" methamphetamine, charges of police misconduct, an illegal poker house, and various other related and non-related information.

Prior to trial, the court conducted a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), to determine the voluntariness and admissibility of Miller's oral and written statements. The following colloquy occurred during the cross-examination of agent O'Neil at the Denno hearing:

> Q: When you initially sat down with Mr. Miller, not saying there was an agreement or anything, but was there a general discussion with Mr. Miller that if he would admit his involvement and fully cooperate that it was a possibility, not an agreement, that he could get a sentence of approximately fifteen years?
>
> A: No.
>
> Q: Okay. Was there any discussion of fifteen years at that point in time? I'm not saying an agreement, but a general discussion?
>
> A: I told Mr. Miller that all he could do by cooperating was help himself, it was not going to hurt him. I did not refer to a particular time or to a sentence that he could possibly receive. I repeated several times, as I always do, that it's up to the judge that handles the case.

Varner testified on Miller's behalf during the Denno hearing and claimed Assistant Attorney General Jennifer Evans orally promised a plea deal of eight to twelve years in exchange for Miller's guilty plea and full cooperation with the investigation. However, Varner admitted he never memorialized the promise in writing. Varner contended Miller gave

statements to authorities in reliance on the alleged eight-to-twelve-year deal. Although Varner averred he communicated the details of the agreement to Miller in front of Bragg and Sonnefeld, neither agent recalled the number of years being mentioned. The following colloquy occurred during the cross-examination of Bragg at the Denno hearing:

> Q: And whether I misunderstood it or whether it was correct or not, do you recall me telling Marshall Miller, "Marshall, I just got off the phone with Jennifer [Evans]. If you testify or you give your cooperation," that, "you are in the eight to twelve range and expect twelve . . . you don't have to do this, this is your choice, you're freely and voluntarily entering into this, this is going to be your decision if you will take that range," whether I misunderstood my statement with [Evans] or whether that was correct or even if that was a lie, do you recall me making the statement to [Miller] to that effect?
>
> A: I do not recall any numbers being mentioned at all.

To the same line of questioning, Sonnefeld responded, "I don't remember numbers. I remember that if he cooperated it would be taken into consideration."

Evans explained the only offer she extended was a formal, written plea agreement with a fifteen-year sentence. She denied offering a plea with a sentence in the range of eight to twelve years. In contrariety, Varner asserted Miller would not have provided information for a fifteen-year deal. "[Miller] has been in jail a couple of times, this gentleman is very jailhouse smart, he does know how to handle himself in that respect, he's very familiar with the system, so to speak . . . ." The following colloquy occurred during the direct examination of Evans:

> A: The only time we ever make plea offers is when we send out formal written plea offers. What we do, we explain to them what we expect with cooperation, which is full cooperation, full debriefing, cooperation throughout the investigation, and at that

point there is nothing promised except for the fact that we will take that cooperation into account. Mr. Miller was indicted for a 25 year offense . . . we do explain to them there is really no way you can hurt yourself at this point, that we take the cooperation into account in determining a sentence, but I don't discuss sentencing and I don't discuss what they would be, because I don't know at that point what they know and if they are going to be fully honest with us.

Q: So, it would be safe to say, then, you have to get all the information from the defendant before you can even determine what offer you want to make them?

A: That is certainly the course of action that we do in all of our Grand Jury cases.

Q: And is this particular instance did you make a written plea offer?

A: Yes, I did.

The written plea offer was sent to Miller on April 29, 2003, in which the State offered a recommendation of fifteen years for him to plead guilty and fully cooperate. Miller had two opportunities to plead guilty but declined to do so.

Miller moved to enforce the purported eight-to-twelve-year plea agreement. The trial judge found Miller's statements were voluntary and denied his motion to enforce the plea agreement. Miller failed to appear for trial and was tried in his absence. The jury found him guilty and the trial judge imposed a twenty-five-year sentence.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). Thus, an

appellate court is bound by the trial judge's factual findings unless they are clearly erroneous. Id.; State v. Preslar, 364 S.C. 466, 472, 613 S.E.2d 381, 384 (Ct. App. 2005). The appellate courts are "bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999) (citing State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993)).

The trial judge determines the admissibility of a statement upon proof of its voluntariness by a preponderance of the evidence. State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977). The jury must determine whether the statement was freely and voluntarily given beyond a reasonable doubt. Washington, 296 S.C. at 55-56, 370 S.E.2d at 612. On appeal, the conclusion of the trial judge as to the voluntariness of a statement will not be reversed unless so erroneous as to show an abuse of discretion. State v. Von Dohlen, 322 S.C. 234, 242, 471 S.E.2d 689, 695 (1996). When reviewing a trial judge's ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

LAW/ANALYSIS

Miller argues his statements made to law enforcement were given in reliance upon the promise of leniency, and therefore, were involuntary and inadmissible. We disagree.

I. Voluntariness of Statements to SLED Agents

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. Jackson v. Denno, 378 U.S. 368, 376 (1964). If the statement is found to have been given voluntarily, it is

then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

a. Admissibility of Statements

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights. Miranda v. Arizona, 384 U.S. 436, 498-500 (1966); State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). If a suspect was advised of his Miranda rights but made a statement, the "burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." Saltz, 346 at 135, 551 S.E.2d at 252; State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988). A statement is not admissible unless it was voluntarily made. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); see also State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989) ("The test of admissibility of a statement is voluntariness."). This voluntariness requirement is in addition to the intelligent waiver mandate of Miranda. See State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986) ("In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda.") (citations omitted). "It is now axiomatic . . . that a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary [statement], without regard for the truth or falsity of the [statement] . . . even though there is ample evidence aside from the [statement] to support the conviction." Jackson v. Denno, 378 U.S. 368, 376 (1964).

The requirement that only voluntary statements be admitted is based on the Fifth Amendment's right against self-incrimination, and was incorporated and made applicable to the States through the Fourteenth Amendment. See Malloy v. Hogan, 378 U.S. 1, 6 (1964) ("We hold today that the Fifth Amendment's exception from compulsory self-incrimination is also protected

by the Fourteenth Amendment against abridgment by the States."). In State v. Hook, this Court explained:

> The Fifth Amendment to the United States Constitution provides, in relevant part, that no person "shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. This provision governs state as well as federal criminal proceedings. Malloy v. Hogan, 378 U.S. 1 (1964). Article 1, Section 12, of the South Carolina Constitution contains a similar provision. S.C. Const. Art. I, § 12 (". . . nor shall any person be compelled in any criminal case to be a witness against himself.").
>
> The Fifth Amendment does not, of course, operate as a blanket prohibition against the taking of any and all statements made by criminal defendants to law enforcement officials. Volunteered statements, whether exculpatory or inculpatory, stemming from custodial interrogation or spontaneously offered up, are not barred by the Fifth Amendment. State v. Kennedy, 325 S.C. 295, 307, 479 S.E.2d 838, 844 (Ct. App. 1996) (citing Miranda v. Arizona, 384 U.S. 436 (1966)).

State v. Hook, 348 S.C. 401, 409-10, 559 S.E.2d 856, 860 (Ct. App. 2001), aff'd as modified, 356 S.C. 421, 590 S.E.2d 25 (2003). We observed that the "concept that the privilege against self-incrimination encompasses the right to be free from being penalized for its exercise is well established." Id. at 411, 559 S.E.2d at 861 (quoting Lefkowitz v. Cunningham, 431 U.S. 801 (1977) ("[W]hen a State compels testimony by threatening to inflict potent sanctions unless the constitutional privilege is surrendered, that testimony is obtained in violation of the Fifth Amendment and cannot be used against the declarant in a subsequent criminal prosecution. . . . Similarly, our cases have established that a State may not impose substantial penalties because a witness elects to exercise his Fifth Amendment right not to give incriminating testimony against himself.")). The United States Supreme Court, in Jackson v. Denno, 378 U.S. 368 (1964), elucidated the rationales behind the prohibition against involuntary statements:

> It is now inescapably clear that the Fourteenth Amendment forbids the use of involuntary [statements] not only because of the probable unreliability of [statements] 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 [statement] 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.'

378 U.S. at 385-86 (citations omitted).

b. Voluntariness Determination

Under Jackson v. Denno, a defendant is entitled to a "reliable determination as to the voluntariness of his [statement] by a tribunal other than the jury charged with deciding his guilt or innocence." State v. Fortner, 266 S.C. 223, 226, 222 S.E.2d 508, 510 (1976). "In South Carolina, the judge makes this initial determination of voluntariness required by Jackson v. Denno[.]" Id.

"A defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to the submission of such statements to the jury." State v. Salisbury, 330 S.C. 250, 271, 498 S.E.2d 655, 666 (Ct. App. 1998), aff'd as modified, 343 S.C. 520, 541 S.E.2d 247 (2001); see also State v. Creech, 314 S.C. 76, 84, 441 S.E.2d 635, 639 (Ct. App. 1993) ("Whenever evidence is introduced that was allegedly obtained by conduct violative of a defendant's constitutional rights, the defendant is entitled to have the trial judge conduct an evidentiary hearing outside of the presence of the jury at the threshold point to establish circumstances under which it was gained."). The trial judge must determine if under the totality of the circumstances a statement was

knowingly, intelligibly, and voluntarily made. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); State v. Howard, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988); State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851, 853-54 (1982); State v. Rabon, 275 S.C. 459, 462, 272 S.E.2d 634, 636 (1980).

The State bears the burden of showing the statement was voluntary. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 695 (1996); State v. Washington, 296 S.C. 54, 55, 370 S.E.2d 611, 612 (1988); State v. Neeley, 271 S.C. 33, 244 S.E.2d 522 (1978); see also State v. Middleton, 288 S.C. 21, 24, 339 S.E.2d 692, 694 (1986) ("In order to secure the admission of a defendant's statement, the State must affirmatively show the statement was voluntary and taken in compliance with Miranda.").

In Washington, our supreme court addressed the standard of proof applicable to the Jackson v. Denno hearing:

> "[T]he burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." State v. Neeley, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978) (Emphasis supplied).
>
> "[T]he prosecution must prove . . . by a preponderance of the evidence that the [statement] was voluntary." Lego v. Twomey, 404 U.S. 477, 489 (1972) (Emphasis supplied).
>
> See also Colorado v. Connelly, 479 U.S. 157 (1986); State v. Middleton, 295 S.C. 318, 368 S.E.2d 457 (1988); In re Christopher W., 285 S.C. 329, 329 S.E.2d 769 (Ct. App. 1985).

296 S.C. at 55, 370 S.E.2d 612. Accord State v. Kennedy, 325 S.C. 295, 479 S.E.2d 838 (Ct. App. 1996).

During the Jackson v. Denno hearing, the trial judge must examine the totality of the circumstances surrounding the statement and determine whether the State has carried its burden of showing the statement was made

voluntarily. State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989); State v. Doby, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)). "Where there is conflicting evidence as to whether [a] defendant's statement is voluntary, it is, in the first instance the province of the trial court to determine this factual issue by the preponderance of the evidence." Howard, 296 S.C. at 493, 374 S.E.2d at 290; Washington, 296 S.C. at 56, 370 S.E.2d at 612;

Once the trial judge determines that the statement is admissible, it is up to the jury to ultimately determine, beyond a reasonable doubt, whether the statement was voluntarily made. Von Dohlen, 322 S.C. at 243, 471 S.E.2d at 695; State v. Callahan, 263 S.C. 35, 41, 208 S.E.2d 284, 286 (1974) ("A [statement] is not admissible unless voluntary, and it [is] for the jury to say in the last analysis whether the [statement] [is] or [is] not voluntary."); State v. Clinkscales, 231 S.C. 650, 653, 99 S.E.2d 663, 664 (1957) ("Although all the evidence may be to the effect that a [statement] made while under arrest was a voluntary one, the jury may not be so convinced; and it is the jury who, in the final analysis, must determine the factual issue of voluntariness."); State v. Brown, 212 S.C. 237, 246, 47 S.E.2d 521, 525 (1948).

> Nothing in [Jackson v. Denno] questioned the province or capacity of juries to assess the truthfulness of [statements]. Nothing in that opinion took from the jury any evidence relating to the accuracy or weight of [statements] admitted into evidence. A defendant has been as free since Jackson as he was before to familiarize a jury with circumstances that attend the taking of his [statement], including facts bearing upon its weight and voluntariness.

Lego v. Twomey, 404 U.S. 477, 485-86 (1972). Thus, the jury is entitled to consider the totality of the circumstances surrounding the statement to determine whether the statement was made voluntarily. State v. Vang, 353 S.C. 78, 84, 577 S.E.2d 225, 227-28 (Ct. App. 2003).

> [Statements], even those that have been found to be voluntary, are not conclusive of guilt. . . . Indeed, stripped of the power to

> describe to the jury the circumstances that prompted his [statement], the defendant is effectively disabled from answering the one question every rational juror needs answered: If the defendant is innocent, why did he previously admit his guilt? Accordingly, regardless of whether the defendant marshaled the same evidence earlier in support of an unsuccessful motion to suppress, and entirely independent of any question of voluntariness, a defendant's case may stand or fall on his ability to convince the jury that the manner in which the [statement] was obtained casts doubt on its credibility.

Crane v. Kentucky, 476 U.S. 683, 689 (1986) (citations omitted).

c. Totality of the Circumstances Test

The 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.'" Dickerson v. United States, 530 U.S. 428, 434 (2000) (citations omitted); State v. Aleksey, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000); State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851, 853 (1982); State v. Gillian, 360 S.C. 433, 558, 602 S.E.2d 62, 76 (Ct. App. 2004); see also State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004) ("A determination whether a statement was 'given voluntarily requires an examination of the totality of the circumstances.'") (citation omitted); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005) ("The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances.") (internal quotation marks and citation omitted). "'The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused.'" State v. Ledford, 351 S.C. 83, 87, 567 S.E.2d 904, 906 (Ct. App. 2002) (quoting State v. Franklin, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989)); accord State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989); State v. Corns, 310 S.C. 546, 552, 426 S.E.2d 324,

327 (Ct. App. 1992). "A jury must consider the totality of the circumstances under which a statement was given to determine whether it was voluntarily made." State v. Vang, 353 S.C. 78, 84, 577 S.E.2d 225, 227-28 (Ct. App. 2003) (citing State v. Torrence, 305 S.C. 45, 52, 406 S.E.2d 315, 319 (1991) ("[T]he jury should be instructed that they must find beyond reasonable doubt that the statement was freely and voluntarily given under the totality of the circumstances before the [statement] may be considered.")).

The Supreme Court, in Withrow v. Williams, 507 U.S. 680 (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(1986); the length of the interrogation, Ashcraft v. Tennessee, 322 U.S. 143, 153-154(1944); its location, see Reck v. Pate, 367 U.S. 433, 441 (1961); its continuity, Leyra v. Denno, 347 U.S. 556, 561 (1954); the defendant's maturity, Haley v. Ohio, 332 U.S. 596, 599-601 (1948) (opinion of Douglas, J.); education, Clewis v. Texas, 386 U.S. 707, 712 (1967); physical condition, Greenwald v. Wisconsin, 390 U.S. 519, 520-521 (1968) (per curiam); and mental health, Fikes v. Alabama, 352 U.S. 191, 196 (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 (1963)[.]

507 U.S. at 693-94.

Appellate entities in South Carolina have recognized that appropriate factors to consider in the totality-of-circumstances analysis include: background, experience, and conduct of the accused; age; length of custody; police misrepresentations; isolation of a minor from his or her parent; threats of violence; and promises of leniency. See Childs, 299 S.C. at 475, 385 S.E.2d at 842 (background, experience, and conduct of the accused); In re

Williams, 265 S.C. 295, 217 S.E.2d 719 (1975) (age); State v. Jennings, 280 S.C. 62, 309 S.E.2d 759 (1983) (length of custody); State v. Rabon, 275 S.C. 459, 461, 272 S.E.2d 634, 635 (1980) (police misrepresentations); State v. Smith, 268 S.C. 349, 355, 234 S.E.2d 19, 21 (1977) (isolation of minor); State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (threats of violence and promises of leniency).

Coercive police activity is a necessary predicate to finding a statement is not voluntary. Colorado v. Connelly, 479 U.S. 157 (1986); Linnen, 278 S.C. 175, 293 S.E.2d 851. Coercion is determined from the perspective of the suspect. Illinois v. Perkins, 496 U.S. 292 (1990).

A statement may not be "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence." Rochester, 301 S.C. at 200, 391 S.E.2d at 247 (citing Hutto v. Ross, 429 U.S. 28 (1976)). A statement "induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." Compton, 366 S.C. at 680, 623 S.E.2d at 679; see also State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); Rochester, 301 S.C. at 200, 391 S.E.2d at 247; State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987).

In Peake, our state supreme court held a defendant's statements made to an investigating officer were induced by a promise of leniency because the officer told the defendant the State would not seek the death penalty if he made a statement. 291 S.C. at 139, 352 S.E.2d at 488. However, in Rochester, the supreme court found a statement made by a polygraph examiner was not an inducement by the promise of leniency. The examiner's statement simply conveyed that it would be in the defendant's best interest to tell the truth. 301 S.C. at 201, 391 S.E.2d at 247. The Rochester court further noted, "[S]tanding alone, the polygraph examiner's comment did not constitute the kind of hope or reward or benefit condemned by this Court in Peake." Id.

In the case sub judice, Miller maintains his statements were not freely and voluntarily given because they were induced by a promise of an eight to

twelve year sentence. However, Miller was not present to testify, and the only person who testified at the Denno hearing that the promise existed was Varner, Miller's attorney. Unlike the circumstances in Peake, in this instance three officers and Assistant Attorney General Evans denied any promise of leniency in exchange for Miller's statements. 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 the "hope" of leniency rather than as a consequence of a "promise."

In ruling on the admissibility of Miller's statements, the trial judge had the opportunity in the Denno hearing to listen to the testimony, assess the demeanor and credibility of all witnesses, and weigh the evidence accordingly. In determining Miller knowingly, intelligently, and voluntarily made the statements the trial judge ruled:

> [T]he [c]ourt cannot conclude that the statements to Agents Bragg and Sonnefeld were not freely voluntarily given after Mr. Miller was afforded all of his rights, warning and safeguards pursuant to the case law in such cases made and provided, or that the handwritten statement was not freely and voluntarily given.
>
> Furthermore, the court instructed the jury to
>
> carefully scrutinize all the surrounding circumstances about and concerning such statement or statements before you give any weight to any alleged statement of statements. You must be satisfied beyond a reasonable doubt that the statement was made by the accused person uninfluenced by promise of reward, threats of injury or diminution of his rights.

The trial judge analyzed the voluntariness of Miller's statements in compliance with the due process requirements. Luculently, the admission of Miller's statements at trial was not an abuse of discretion.

II. Enforceability of Plea Offer

Miller next contends the promise of an eight-to-twelve-year sentence should have been enforced. Specifically, Miller claims the State's oral promise of eight-to-twelve years was binding because he detrimentally relied on it by disclosing the information the State wanted. We disagree.

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." Reed v. Becka, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999); see also State v. Armstrong, 263 S.C. 594, 597, 211 S.E.2d 889, 890 (1975). However, a defendant has no constitutional right to plea bargain. Reed, 333 S.C. at 685, 511 S.E.2d at 401. Furthermore, the trial judge is not required to accept a plea. Id.; see also Santabello v. New York, 404 U.S. 257, 262 (1971) (stating defendant has no absolute right to have a guilty plea accepted). However, once a defendant enters a guilty plea and the plea is accepted by the court, due process requires the plea bargain be honored. Reed, 333 S.C. at 686, 511 S.E.2d at 401.

While plea agreements are a matter of criminal jurisprudence, most courts have held they are subject to contract principles. See, eg, Reed v. Becka, 333 S.C. 676, 686, 511 S.E.2d 396, 401 (Ct. App. 1999); United States v. Ringling, 988 F.2d 504, 505 (4th Cir. 1993); United States v. Harvey, 791 F.2d 294, 300 (4th Cir. 1986) ("[I]n the process of determining whether disputed plea agreements have been formed or performed, courts have necessarily drawn on the most relevant body of developed rules and principles of private law, those pertaining to the formation and interpretation of commercial contracts."). Unless intended by both parties, terms or conditions should not be read into a plea agreement. State v. Compton, 366 S.C. 671, 678, 623 S.E.2d 661, 665 (Ct. App. 2005). Until performance occurs, parties are free to withdraw their offers. Reed, 333 S.C. at 687, 511 S.E.2d at 402.

A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. Id. at 688, 511 S.E.2d at 403. A defendant accepts the "offer" by pleading guilty. Id. Until formal acceptance has occurred, the

plea is not binding on the defendant, the State, or the court. Id. This general rule is subject to a detrimental reliance exception. Custodio v. State, 373 S.C. 4, 11, 644 S.E.2d 36, 39 (2007); Reed, 333 S.C. at 688, 511 S.E.2d at 403. The fact that an agreement was oral does not prevent possible enforcement. Id. Absent a plea of guilt, a defendant may enforce an oral plea agreement upon a showing of detrimental reliance. Id. Even if the agreement has not been finalized by the court, a defendant's detrimental reliance on a promise in plea-bargaining may make a plea binding. Id. A defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. Id.

State prosecutors are obligated to fulfill the promises they make to defendants when those promises serve as inducements to defendants to plead guilty. Santabello v. New York, 404 U.S. 257, 262 (1971). South Carolina has recognized the principles set forth in Santabello; when an accused pleads guilty upon the promise of a prosecutor, the agreement must be fulfilled. See Sprouse v. State, 355 S.C. 335, 338, 585 S.E.2d 278, 280 (2003); State v. Thrift, 312 S.C. 282, 292, 440 S.E.2d 341, 347 (1994); see also State v. Mathis, 287 S.C. 589, 592, 340 S.E.2d 538, 540 (1986) ("The public interest of encouraging settlement of criminal cases without necessity of trial favors permitting an accused to plead guilty to the offense charged without prejudicing his position if it is later withdrawn.") (quoting State v. Wright, 436 P.2d 601, 604-05 (1968)).

However, a defendant may not attempt to create a firm commitment out of plea negotiations. State v. Whipple, 324 S.C. 43, 49, 476 S.E.2d 683, 687 (2007). The State is not bound to accept a defendant's terms simply because a defendant reveals otherwise undiscoverable facts in the hope of securing a favorable plea agreement. Id.; State v. Thompson, 278 S.C. 1, 292 S.E.2d 581 (1982), cert. denied, 456 U.S. 938 (1982) (holding solicitor's plea negotiations to consider life sentence did not prevent State from seeking death penalty) overruled in part on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

In Whipple, the court concluded no plea agreement was reached when a solicitor told Whipple he would consider, not promise, a life sentence if

substantial mitigating evidence was demonstrated. 324 S.C. at 48, 476 S.E.2d at 686. Contrastively, in Custodio, all of the evidence presented conclusively showed that an agreement between the defendant and solicitor existed. 373 S.C. at 10, 644 S.E.2d at 38. The court ruled Custodio fully cooperated by providing helpful information in reliance on the solicitor's assurances of a fifteen-year sentence cap and was therefore entitled to have the agreement enforced. Id. at 12, 644 S.E.2d at 39.

In the present case, the evidence indicates the communications between Evans and Varner about an eight-to-twelve-year sentence never reached the level of a promise or agreement. Evans testified the protocol in grand jury cases was to formally, in writing, extend a plea offer after the defendant was debriefed and the desired information obtained. In accordance with that practice, the only offer Evans ever made Miller was a written plea agreement for fifteen years.

Discussions between Evans and Varner about a range of potential sentences prior to Miller's debriefing were plea negotiations and cannot be construed as an "offer." Nothing in the testimony indicates Evans ever intended to agree to an eight-to-twelve-year plea. Miller was not present at trial and never expressed his understanding of the terms of the alleged "deal." Furthermore, Miller never accepted a plea offer by entering a guilty plea. Admittedly, Miller revealed information in the hope of securing a favorable plea. Nevertheless, without an affirmative promise or plea offer from the State of eight to twelve years, Miller's cooperation did not bind the State to accept his terms.

Accordingly, we find the trial judge did not err in declining to enforce the alleged eight-to-twelve-year agreement.

CONCLUSION

We hold the trial court did not err in admitting Miller's oral and written statements at trial, because they were knowingly, intelligently, and voluntarily made. We rule the evidentiary record does **NOT** contain an enforceable plea agreement. The conviction and sentence of Miller are

AFFIRMED.

THOMAS, J. and CURETON, A.J., concur.