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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CORREY TREMAYNE BROWN,

APPELLANT.

APPELLATE CASE NO. 2021-001231

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting appellant's interrogation with the police because the police denied appellant his right to the assistance of an attorney when they told him he could not give his evidence to a lawyer because only they possessed the ability to drop appellant's charges?

STATEMENT OF THE CASE

On September 10, 2019, a Richland County grand jury indicted appellant for murder. R. 913. On June 7, 2021, appellant was tried before the Honorable Deandrea G. Benjamin and a jury. R. 1. Kathryn Cavanaugh and Samuel C. McGlothin represented the State. R. 1. Jennifer S. Davis, Laura W. Young, and Haley A. Hubbard represented appellant. R. 1. The jury convicted appellant. R. 859, l. 9 – 24. Judge Benjamin sentenced appellant to forty-two years' imprisonment. R. 872, l. 15 – 19. On October 12, 2021, Judge Benjamin heard appellant's motion for a new trial. R. 875. Appellant's motion was denied from the bench. R. 896, l. 24 – 899, l. 6. This appeal follows.

STANDARD OF REVIEW

Review of the admission of appellant's statement is governed by the abuse of discretion standard. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

ARGUMENT

The trial court erred in admitting appellant's interrogation with the police because the police denied appellant his right to the assistance of an attorney when they told him he could not give his evidence to a lawyer because only they possessed the ability to drop appellant's charges.

The State's prosecution of appellant Correy T. Brown ("Brown") largely rested on the testimony of Benjamin Parker ("Parker") and his wife, Jessica Guyton ("Jessica"). Both Parker and his wife's credibility was called into great question by their incentive to give favorable testimony to the State because of Jessica's pending charge in Richland County for attempted murder in another incident. R. 319, l. 2 – 15. R. 611, l. 24 – 612, l. 9. But for the improperly admitted video of the police's interrogation of Brown, he likely would not have been convicted in this case with no clear motive. R. 831, l. 11 – 17.

Parker claimed that on the night of December 28, 2018, Brown, Anteyan Davis ("Davis"), and the decedent Donald "Don P" Young ("Young"), began calling him while he was still at work to get him to come hang out with them. R. 289, l. 5 – 290, l. 18. After stopping by his home, Parker then went to Davis's house. R. 291, l. 2 – 8. The four friends drank and smoked marijuana. R. 291, l. 12 – 17.

After an hour at Davis's house, Parker said he dropped Brown off in Hopkins at a woman's house. R. 292, l. 8 – 10. Young was in a car behind them. R. 292, l. 13 – 15. Parker went home and fell asleep. R. 295, l. 3 – 20.

A horn blowing outside his house awakened Parker. R. 295, l. 23 – 361, l. 1. Parker looked out the window and saw Brown walking towards his porch. R. 296, l. 2 – 5. Brown was with Young and they both told Parker to ride with them. R. 296, l. 10 – 22. Parker agreed. R. 296, l. 16 – 22.

Young drove, Parker sat in the passenger seat, and Brown sat in the backseat. R. 296, l. 23 – 297, l. 4. Young and Parker were talking and laughing. R. 297, l. 5 – 12. According to Parker, Brown said, "Y'all doing all the talking, why I'm here for. As a matter of fact, shut the fuck up," and Brown shot Young in the back of the neck while Young was driving them down the road. R. 297, l. 5 – 12. Brown shot Young "[n]ot even ten seconds down the road." R. 298, l. 10.

Young started shaking and floored the accelerator. R. 297, l. 13 – 18. Parker took the wheel and ran the car off the road and into a tree. R. 297, l. 13 – 21. Young was shaking as if he were having a seizure. R. 297, l. 22 – 363, l. 2. Parker jumped out of the car and ran to his house. R. 298, l. 13 – 19. When the police found the car, they treated it as a motor vehicle accident. R. 177, l. 18 – 178, l. 2. The bullet wound was found at autopsy and the police began investigating the shooting as a homicide. R. 459, l. 18 – 460, l. 15.

Parker claimed that when he got to his house, he told his wife, Jessica, about the shooting. R. 298, l. 13 – 19. Brown followed Parker to his house. R. 299, l. 2 – 4. Parker looked for his gun. R. 299, l. 11 – 14. Parker opened the door to the man he had just seen murder his friend for no discernable reason. R. 299, l. 15 – 24. R. 357, l. 15 – 358, l. 16. Brown pointed a gun at Parker and told him, "If you snake me, I'll kill you, too." R. 299, l. 17 – 24.

Parker then gave Brown a ride to a woman's house. R. 299, l. 17 – 300, l. 17. Parker said he noticed that Brown had a busted lip during this drive that had not been there before the shooting. R. 304, l. 18 – 24. On cross-examination, Parker confirmed that there was no tension in the car before the shooting and that "it just seemed to come out of nowhere." R. 357, l. 18 – 358, l. 16. Parker did not describe any argument or bad blood between Brown and Young while they were hanging out at Davis's house. R. 290, l. 21 – 292, l. 10. After confirming for the solicitor that she

was facing thirty years' imprisonment on a pending attempted murder charge, Jessica largely corroborated her husband's version of events. R. 611, l. 6 – 618, l. 19.

Brown told the police about going to a gas station with Young. Court's Ex. 3. The police obtained video from a gas station of Young and Brown, who was the passenger in his car. State's Ex. 139. Young gets out of the car and goes into the station. State's Ex. 139. Young is smiling and having a good time. State's Ex. 139. R. 725, l. 21 – 727, l. 21.

The trial judge held an extensive pre-trial hearing on the admissibility of the police interrogation of Brown. R. 11, l. 22 – 68, l. 5. About nine minutes into the interrogation, the officer contradicts Brown and tells him that he was in the wreck and that was how he injured his lip. Court's Ex. 3. Brown denies their assertion. Court's Ex. 3. The officer tells Brown to explain why Parker said Brown and Young picked him up later that morning and that Brown shot Young. Court's Ex. 3.

Brown replied, "I got some evidence that's going to shoot that out the water." Court's Ex. 3. The police responded, "Let's hear it." Court's Ex. 3. Brown replies, "Can I get that to a lawyer? I don't mean to be...." when the officer interrupts him and says, "No, this is your chance if you want to clear your name." Court's Ex. 3. The other officer in the room tells Brown, "Your lawyer can't drop the charges. We can." Court's Ex. 3. Brown replies that the officers should go get his phone. Court's Ex. 3.

Appellant argued the interrogation was inadmissible after the officers unequivocally told Brown he could not give his information to a lawyer and that they could drop the charges. R. 62, l. 4 – 65, l. 7. Interrogation should have ceased at that point. R. 62, l. 4 – 65, l. 7. The State argued Brown made no unambiguous request for an attorney. R. 65, l. 10 – 23. The trial judge

agreed with the State and a redacted video of the interrogation was admitted at trial. R. 65, l. 24 – 68, l. 5.

The trial court erred in admitting the interrogation. When a defendant invokes his right to an attorney, questioning by the police must cease. Edwards v. Arizona, 451 U.S. 477, 484-85 (1981); see also Miranda v. Arizona, 384 U.S. 436, 500 (1966) (Clark, J., concurring). The defendant is not subject to further questioning until he is provided an attorney. Davis v. United States, 512 U.S. 452, 458 (1994).

The determination of whether an accused has invoked his right to counsel is an objective inquiry. Id. at 458-459. A suspect "must unambiguously request counsel." Id. at 459. Brown's request to get his evidence that would shoot the police's contentions out of the water was an unambiguous request for an attorney.

The phrase "Well, I think I need a lawyer" contains more ambiguity than Brown's request to give evidence to a lawyer, yet was held to be a proper invocation in State v. Kennedy, 333 S.C. 426, 429-30, 510 S.E.2d 714, 715-16 (1998). The police responded "No" to Brown's request to give his evidence to an attorney. This Court need only ask what would have happened had the police responded "Yes" to Brown's request. Brown would have received his constitutional right to a lawyer.

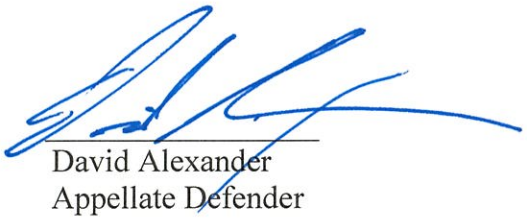
The police cannot undo Miranda warnings with improper information about a suspect's rights. State v. Collins, 435 S.C. 31, 864 S.E.2d 914 (Ct. App. 2021). In Collins, the police told the defendant that any statement he gave would not leave the room. Id. The Collins Court found, after examining similar cases from other jurisdictions, that the effect of the police's promise that his statement would not leave the room undid Miranda's warning that anything the defendant said could be used against him. Id.

The Collins' holding applies to Brown's case. Brown was read his rights—including that he had the right to an attorney. But when Brown asked to give his evidence to an attorney instead of to the police, the police told him "No." This refusal to allow Brown to first give his evidence to an attorney violated Brown's right to counsel and rendered his confession involuntary.

Compounding the problem, the police made a promise to Brown—that his attorney could not drop the charges, but the police could. The police are not allowed to procure statements with promises of leniency. See State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990) (stating that a "confession 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.") quoting Hutto v. Ross, 429 U.S. 28, 30 (1976). Admission of the interrogation was prejudicial despite appellant not admitting to the shooting. The solicitor used contradictions and changes in appellant's story against him in her closing argument, particularly with respect to why appellant contacted Parker and when appellant hurt his lip. R. 806, l. 16 – 813, l. 24. But for the improper admission of this interrogation, appellant would not have been convicted. This Court should reverse and remand for a new trial.

CONCLUSION

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.



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This 10th day of November, 2022.

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CERTIFICATE OF COUNSEL

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

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This 10th day of November, 2022.