STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LINDA LYN MONETTE,

APPELLANT

APPELLATE CASE NO. 2021-001276

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err by admitting a statement given by Appellant to law enforcement during custodial interrogation where the statement was the product of coercion?

STATEMENT OF THE CASE

On December 7, 2020, a Lexington County grand jury indicted Appellant for murder, attempted armed robbery, conspiracy, and burglary in the first degree. R. 1295. On September 17, 2021, the Honorable Walter J. McLeod, IV, presided over a hearing to determine the admissibility of numerous statements given by Appellant to the police. R. 1. Laura Suzanne Mayes and Samuel R. Hubbard represented the state. R. 1. Robert T. Williams represented Appellant. R. 1. At the conclusion of the hearing, Judge McLeod found the statements were admissible. R. 213, ll. 6-15.

On September 20-24, 2021, the state, represented by Mayes, Hubbard, and LeAnna S. McMenamin. R. 368. Williams and Anna M. Williams represented Appellant. R. 368. Judge McLeod presided. R. 368. Ultimately, the jury found Appellant guilty as charged. R.1260, ll. 9-23. Judge McLeod sentenced Appellant to forty years for murder, thirty years for attempted armed robbery, to thirty years for burglary in the first degree, and to five years for conspiracy. R. 1261, ll. 4-19; R. 1297.

Appellant filed a motion for new trial on September 29, 2021. R. 1288. Judge McLeod denied the request by an order filed on October 22, 2021. R. 1293. Appellant served her notice of appeal on October 29, 2021. This brief follows.

STANDARD OF REVIEW

"On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); see also State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute an abuse of discretion." State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

ARGUMENT

The trial court erred by admitting a statement given by Appellant to law enforcement during custodial interrogation where the statement was the product of coercion.

Relevant facts

Austin Hanahan was married to Tyler Hanahan for approximately ten years. R. 969, l. 24 – R. 970, l. 6. The two had three children, including a son named Mason. R. 969, ll. 18-23. At the time of his death, Mason was eight-years old. R. 969, ll. 14-15. Eventually, Austin and Tyler separated and began divorce proceedings. R. 970, ll. 9-15. When the two separated, Austin "lost [his] mind" and he "went completely crazy." R. 972, ll. 3-6. Austin was "[d]rinking lots alcohol, going to the bar, going to clubs, acting like an idiot." R. 972, ll. 7-10. His life also involved marijuana and other drugs. R. 972, ll. 13-14. In fact, Austin would get five pounds of marijuana at a time to sell. R. 980, ll. 11-21.

Austin's good friend, Chris "Frontline" Fuller, was a member of the Insane Gangster Disciples. R. 974, ll. 22-25. However, there was another gang called the Gangster Disciples who were in Red Bank. R. 974, ll. 22-24. Frontline introduced Austin to Appellant. R. 973, ll. 18-19. The two began a relationship that included Appellant living with Austin at various times. R. 979, ll. 3-12. Austin recruited Appellant to sell marijuana for him. R. 980, l. 22 – R. 981, l. 1.

Austin tended to keep his "drug money" "on[his] person in [his] pocket." R. 981, ll. 2-5. On May 14, 2019, Austin had "[j]ust south of two grand" in his pocket from selling drugs. R. 981, ll. 6-12. He also had over $10,000 in cash hidden throughout his house. Austin explained that he had withdrawn $10,000 from the bank on May 7 because he anticipated needing the money for a commercial painting job in Charleston in the coming weeks. R. 981, l. 13 – R. 982, l. 25. Austin

hid money all over his house because he had "to take precautions" as he had "worked hard for that money" and he "didn't want nobody to take it." R. 985, ll. 2-5.

On May 13, 2019, Austin sent a text message to Appellant excitedly explaining that his divorce was finalized that day. R. 986, ll. 3-7. Thereafter, Austin picked up his son, Mason, from school due to early dismissal. R. 987, l. 21 – R. 988, l. 5. Later, Appellant asked Austin if he wanted to "hang out" at his home. R. 988, ll. 19-22. After using some racially charged language, Austin agreed to hang out with Appellant. R. 988, l. 23 – R. 989, l. 7. When Appellant arrived at Austin's house, she ate Chinese food with Austin and Mason. R. 995, ll. 13-16. Then, while watching Fortnite videos, Mason fell asleep on the couch. R. 996, ll. 11-15.

Appellant and Austin smoked marijuana in Austin's bedroom later that evening. R. 998, ll. 6-11. Appellant got up from the bed and went to the kitchen to get a snack – a typical routine for her in the evenings. R. 999, ll. 5-6. Austin "heard a loud - - a loud thud." R. 999, ll. 8-10. He jumped out of bed and ran to his doorway. R. 999, ll. 14-16. From there, he could see "a masked man with [Appellant] yanked up with a gun to her head." R. 999, ll. 15-19. The man was wearing dark clothing and a bandana over his face. R. 1000, ll. 2-3. Upon seeing this, Austin "turned around, went back to [his] room, grabbed a rifle, put one in the head, cocked it back, and went down the hallway, got as close as [he] could get to him and fired a shot." R. 1000, ll. 6-10. Specifically, Austin used an AR-15 Blackout. R. 1001, ll. 8-11. The masked man shot back, and it turned into "an all-out gunfight." R. 1001, ll. 20-24. One of the masked man's bullets struck Austin. R. 1001, l. 25 – R. 1002, l. 5. The masked man ran out of the door. R. 1002, ll. 8-14. At this point, the AR-15 jammed forcing Austin to grab another rifle, a Draco. R. 1002, ll. 15-24. Austin then ran out of the door, but the man was gone. R. 1003, ll. 2-13. Upon returning inside

the house, Austin discovered Mason had been shot. R. 1004, ll. 9-11. Appellant called 911. R. 1005, ll. 8-9.

The police immediately charged Appellant with possession with intent to distribute marijuana because they found marijuana in Austin's house and among her things. R. 13, ll. 15-19. Detective Michael Joe Hart and Detective Shannon Dykes interrogated Appellant on May 14, 2019, just hours after the home invasion. R. 21, ll. 1-6; Court's Exhibit #1. After being advised of her rights, Appellant waived those rights and agreed to a lengthy interrogation by the two experienced investigators concerning the home invasion. R. 22, l. 9 – R. 24, l. 2; Court's Exhibit #1. Appellant detailed what happened during the home invasion for the detectives and denied any involvement. R. 30, l. 8 – R. 67, l. 3; Court's Exhibit #1. While Hart and Dykes used the restroom, a third officer, Sergeant Brian Anderson entered the room to keep an eye on Appellant. R. 49, ll. 10-18. Anderson and Appellant also discussed the home invasion. R. 49, ll. 19 – R. 50, l. 1. The interrogation became confrontational as the officers accused Appellant of withholding information. R. 67, l. 20 – R. 68, l. 6.

During the interrogation on May 14, 2019, Detective Hayli Livingston escorted Appellant to the bathroom. R. 49, ll. 7-9. According to Livingston, Appellant indicated a desire to speak with her. R. 109, ll. 11-16.

At 10:30 a.m. on May 15, Dykes and Hart continued the interrogation. R. 72, ll. 16-24; Court's Exhibit #2. Appellant continued to cooperate with the police and provide them with information about the home invasion R. 76, l. 15 – R. 108, l. 21. During this interrogation, Appellant amended her prior statements in response to direct confrontation from the investigators, including the use of Appellant's phone records. R. 76, l. 15 – R. 108, l. 21. Appellant agreed to participate in a polygraph examination. R. 111, ll. 8-12.

Based upon Appellant's earlier indication that she would like to speak to Livingston, arrangements were made for Livingston and Anderson to interrogate Appellant on May 15 at 4:16 p.m. R. 110, ll. 3-9; R. 138, ll. 20-23. During this interrogation, Appellant continued to deny any involvement in the home invasion, but she did supply with the police with more information. R. 143, l. 20 – R. 154, l. 12. Additionally, at some point on May 15, the police charged Appellant with obstruction of justice because the police claimed Appellant had been deceitful in prior interrogations. R. 124, l. 20 – R. 125, l. 25.

On May 17, 2019, Hart and Marlo McCann took Appellant to SLED for a polygraph examination. R. 112, ll. 14-23. After returning from SLED, Hart and McCann escorted Appellant toward the detention center. This was caught on camera. Hart was aggressive toward Appellant during this exchange. Defendant's Exhibit #1. He raised his voice and used aggressive hand gestures. Defendant's Exhibit #1. McCann followed Hart's lead in this regard. Both repeatedly accused Appellant of lying about her involvement and refusing to help the investigation. Defendant's Exhibit #1. Despite their protestations that the encounter in the hallway was not an interrogation, both detectives aggressively questioned Appellant. Defendant's Exhibit #1. Hart repeatedly and violently warned Appellant, "Don't play me." Defendant's Exhibit #1. Hart and McCann confronted Appellant in the hallway with the claim that deception was detected during her polygraph. R. 128, ll. 15-16.

Hart insisted he knew what had happened and that Appellant better tell him what he already knew. R. 121, ll. 2-4; Defendant's Exhibit #1. Hart described this as a "common interview technique which tries to lessen a suspect's involvement in a crime but still admit some culpability in a crime." R. 121, ll. 7-10. He insisted he was trying to "help her" and put her "at ease in admitting to her involvement in the home invasion." R. 121, ll. 10-13.

Hart and McCann interrogated Appellant yet again. R. 113, ll. 13-14. Appellant's interrogation was audio and video recorded; Appellant also provided a written statement. R.220; Court's Exhibit #7; R. 231. During this interrogation, Appellant admitted to being involved in setting up the home invasion. R. 220; Court's Exhibit #7; R. 231. Prior to this interrogation, the police had no evidence to prove Appellant was involved in a conspiracy. R. 123, ll. 19-22.

At the conclusion of the pre-trial hearing pursuant to Jackson v. Denno, defense counsel objected to the introduction of statements made by Appellant on May 17, 2019, when she was interrogated by McCann and Hart. R. 206, ll. 14-19. During the course of this interrogation, Appellant provided oral statements, which were captured by audio and video recording, as well as a written statement. R. 206, ll. 7-17; R. 220; Court's Exhibit #7; R. 231. Defense counsel argued that in addition to the police instructing Appellant to tell the truth, the totality of the circumstances also included "yelling, withholding of counsel, the inability to eat food, the length of the time involved, ... the comments about the parents don't trust them and that's why they're not out on bond." R. 212, ll. 16-23.

The state argued that pursuant to United States v. Braxton, 112 F.3d 777 (4th Cir. 1997), there is no "coercion when someone is admonished to tell the truth." R. 209, ll. 15-25. According to the state, "the mere existence of threats, implied promises, improper influence or other coercive police activity does not automatically render a confession involuntary." R. 210, ll. 1-5. The state argued that Appellant "initiated the desire to continue with this interview with law enforcement and to provide a written statement." R. 210, ll. 10-13. The state argued that pursuant to State v. Ballington, 346 S.C. 262, 551 S.E.2d 280 (2001), a police officer advising a defendant that "he should be honest" did not render a statement involuntary. R. 210, l. 20 – R. 211, l. 12. Thereafter, the state argued the totality of the circumstances, including that Appellant had "completed 12 years

in school," was "gainfully employed," and was "able to freely express her emotions, her opinions, her recollections of events" due to no mental impairment, demonstrated the statement was voluntarily given. R. 211, ll. 13-22.

Judge McLeod agreed that he could "see [the] points" made by defense counsel, but he determined the statements were voluntary based upon the "totality of everything under a preponderance standard." R. 213, ll. 6-15. He offered no details into his reasoning or the circumstances he considered.

When the state offered the statements made by Appellant during the custodial interrogation on May 17, 2017, defense counsel renewed his pre-trial objections. R. 798, ll. 20-21; R. 815, l. 24 – R. 816, l. 6.

Discussion

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held 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 confession, without regard for the truth or falsity of the confession." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 436 (1966). State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002).

It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis

v. Thompkins, 560 U.S. 370, 384 (2010) (citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)). Thus, "[t]he waiver inquiry 'has two distinct dimensions': waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,' and 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" Id. at 382-383 (quoting Moran v. Burbine, 475 U.S. 421, 421 (1986)).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

> Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted). The test requires consideration of "'totality of all the surrounding – both the characteristics of the accused and the details of the interrogation.'" Dickerson v. United States, 530 U.S. 428, 434 (2000) (citations omitted).

"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.'" State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007)(quoting State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)). In State v. Osborne, 301 S.C. 363, 365-367, 392 S.E.2d 178, 179 (1990), the South Carolina Supreme Court held a defendant's statements were

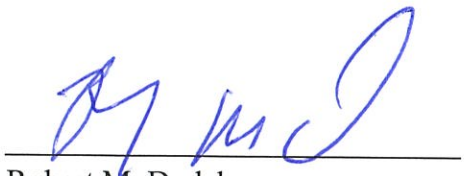
inadmissible where the police repeatedly told the defendant that if she withheld evidence, she could be charged with a crime.

This Court held a defendant's statements were not admissible when the police, "at the very least," coerced his conviction "by means of veiled threats against his family." State v. Corns, 310 S.C. 546, 552, 426 S.E.2d 324, 327 (Ct. App. 1992). The police conceded they informed the defendant "his wife could be arrested, that she could be 'involved in the marijuana,' and that their children could be taken from them amounted to an exertion of improper influence rendering [the defendant]'s statement involuntary." Id.

The totality of the circumstances surrounding Appellant's interrogation require reversal of the trial court's finding that Appellant knowingly, intelligently, and voluntarily waived her right against self-incrimination and right to counsel. The exchange between the police officers and Appellant in the hallway immediately prior to her final interrogation showed coercive conduct on the part of law enforcement. Not only had the police charged Appellant with PWID marijuana, but they had charged her with obstruction of justice based upon alleged misrepresentations she made to law enforcement in the days immediately proceeding the hallway incident. Hart and McCann were aggressive – both verbally and physically. They yelled, cursed, and threatened Appellant with additional criminal charges if she did not tell the police what they wanted to hear, which they claimed was "the truth." Appellant's final statement to police was the direct product of coercion on the part of the police.

CONCLUSION

Appellant respectfully requests this Court reverse her convictions and remand for a new trial where the trial judge erred by admitting a statement she provided to the police during custodial interrogation that was the product of coercion.



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This 28th day of March, 2023.

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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 28th day of March, 2023.