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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Honorable Walton J. McLeod, IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

REBECCA A. MAXWELL,

APPELLANT

APPELLATE CASE NO. 2022-000474

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

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Division of Appellate Defense
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STATEMENT OF ISSUE ON APPEAL

The trial judge erred in denying a motion by the defense to suppress appellant's statement given to police because the inducements offered during the interrogation rendered the statement involuntary in nature and inadmissible as evidence in the case.

STATEMENT OF THE CASE

Appellant Rebecca A. Maxwell was convicted of first degree burglary per jury trial held during the March, 2022 term of the Barnwell County General Sessions Court before Judge Walton J. McLeod, IV. On April 7, 2022, Judge McLeod sentenced appellant to imprisonment for a period of seventeen years. Assistant Solicitor Leigh B. Staggs prosecuted the case, and Ola A. Johnson, Esquire, represented appellant at trial.

Appellant appealed her conviction and sentence. 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. Ashbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

ARGUMENT

The trial judge erred in denying a motion by the defense to suppress appellant's statement given to police because the inducements offered during the interrogation rendered the statement involuntary in nature and inadmissible as evidence in the case.

The state alleged that appellant entered the residence of Jane Carroll on October 7, 2020, and took guns and jewelry from inside the home. The state presented testimony from three witnesses during its case-in-chief: 1.) Jane Carroll (homeowner); 2.) Investigator Matt Davis, who obtained appellant's statement; and 3.) Andrew Creech, who stated he drove appellant near the home in question on the date the burglary occurred.

At trial, Jane Carroll testified that appellant was her daughter's friend, and that she (appellant) lived in her home briefly prior to the alleged burglary of her home. R. 107, l.5–p. 108, l.3. Carroll stated that she found broken glass from the rear of her residence when she arrived at her home October 7, 2020, which indicated that there had been an illegal entry, and then realized thereafter that her jewelry pieces and guns were missing from her home. R. 109, l.4-p. 109, l.8.

Investigator Matt Davis testified that he interviewed appellant in connection with the burglary investigation. Investigator Davis stated that appellant told him that Andrew Creech drove her to a particular road on the date in question, and that she then went into the residence, took jewelry and firearms, and that afterwards Andrew Creech transported her away from that same area. Also, appellant stated that James Creech and Falcon Joyner were with her at the time this event occurred. R. 135, l.2-22.

Andrew Creech testified that he drove appellant to a designated area per her directions on the date in question, and that after some time had passed he returned there to collect her and saw that she possessed an armful of guns. R. 114, l.3 - p. 115, l.1.

Prior to trial, defense counsel moved to suppress the statement appellant gave to police on the ground that the statement was involuntarily given. A pre-trial hearing was held after the motion to suppress was entered. Investigator Matt Davis and appellant testified at the pre-trial Jackson v. Denno[1] hearing.

During the pre-trial hearing, Investigator Davis testified that he interviewed appellant on April 19, 2021, regarding the burglary at issue, and that appellant admitted entering the Carroll residence and taking "multiple firearms along with other items." R. 39, lines 19-25. Investigator Davis stated that he did not make any threats or promises to help appellant if she cooperated with police during the investigation into the case. R. 42, lines 12-13. Note that defense counsel directed attention to a voice on the video that it sounded as if Investigator Davis voiced a word that enunciated like "coop," or rather cooperation, during the interrogation, which in effect would have been interpreted as a proposal or a benefit to appellant if she cooperated with police in the case. R. 43, l.12 - p. 44, l.25.

Appellant testified during the pre-trial hearing and explained that Investigator Davis threatened her in reference to taking away her newborn baby, and warned that she would lose her child also if she did not do (or in effect say) what he wanted, and that the charge against her would be dropped if she cooperated with police. Appellant stated that she was forced to admit her involvement in the burglary despite the fact that she was living in Tennessee at the time the

[1] 378 U.S. 368 (1964).

burglary was committed. Appellant added that she was also fighting for custody of her daughter at the time the interrogation occurred. R. 47, l.1 – p. 51, l.10; R. 56, lines 6-17.

Defense counsel argued that appellant's statement was involuntarily given because it was given under the promise of multiple benefits (inducements) if she cooperated and told the police what they wanted to hear about the case. This in effect meant that appellant's statement was given in order for her to take advantage of the inducements offered, which included avoiding criminal charges the loss of her daughter and newborn baby. R. 57, l.3 - p. 59, l.21. Ultimately, the trial judge ruled that appellant's statement was given voluntarily by a preponderance of the evidence. R. 87, l.17 - p. 88, l.1.

In State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987), the Court held that the defendant's statement was involuntarily given because it was the result of an offer of leniency regarding a promise not to seek the death penalty in the case. The Peake Court held that a statement induced by a promise of leniency is involuntary in nature if it is so connected with the inducement as to be a consequence of the promise. The test for determining admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980).

A statement is not admissible unless it is voluntarily made. State v. Miller, 375 S.C. 370 652 S.E.2d 444 (2008). The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the given statement that would include the characteristics of the accused and the details of the interrogation. State v. Miller, supra. In Miller, defense counsel argued that the defendant's statements were involuntarily given on a drug charge, but the defendant was not present at trial to testify to the same.

In the case at bar, the circumstances of the case and appellant's testimony all pointed to the obvious fact that her statement was not given voluntarily to police. Clearly, the possibility of the loss of custody of appellant's children as a threat to gain a guilty admission by appellant, and the promise that an admission would be the equivalent of cooperation, which would benefit appellant by way of the dismissal of a burglary charge, constituted the type of inducement that rendered appellant's statement involuntarily given to police. The admission of appellant's involuntarily given statement into evidence violated the Fifth Amendment to the United States Constitution and article 1, section 12 of the South Carolina State Constitution. See Mallon v. Hogan, 378 U.S. (1964). The trial judge erred in denying appellant's motion to suppress her involuntarily given statement in the case.

CONCLUSION

Based on the foregoing argument, counsel for appellant would request that this case be reversed and remanded to the lower court for a new proceeding.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Rebecca A. Maxwell states that:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Walton J. McLeod, IV, which was held on March 28-30, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Rebecca A. Maxwell.

Respectfully Submitted,

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of June, 2023.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) January 31, 2022 Transcript
(2) March 29-30, 2022 Trial Transcript
(3) Ex Parte Hearing Transcript dated March 28, 2022
(4) Ex Parte Hearing Transcript dated March 29, 2022
(5) Indictment
(6) April 7, 2022 Sentencing Transcript
(7) State's Exhibit #3 (CD of [appellant's] Interview

I certify that this designation contains no matter which is irrelevant to this appeal.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders 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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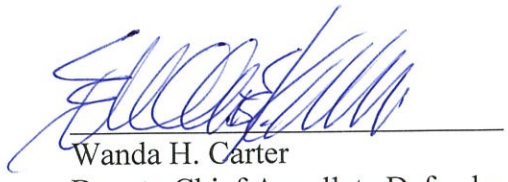
CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Rebecca A. Maxwell, #366917, at Camille Griffin Graham Correctional Center, 4450 Broad River Road, Columbia, SC 29210, this 14th day of June, 2023.



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Deputy Chief Appellate Defender

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