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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
The Honorable Daniel D. Hall, Circuit Court Judge

Appellate Case No. 2022-001214

THE STATE, Respondent,

v.

ISRAEL MENDOZA CERVANTES, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

On February 13, 2015, a Newberry County Grand Jury indicted Appellant for trafficking heroin, 28 grams or more, possession of a weapon during a violent crime, and possession with intent to distribute cocaine. On August 22, 2022, Appellant proceeded to trial before the Honorable Daniel D. Hall. Robert T. Williams, Esquire and Anna Williams, Esquire represented Appellant. The jury found Appellant guilty as indicted. The trial court sentenced Appellant to twenty-five years imprisonment for the heroin charge, fifteen years for the cocaine charge to be served concurrently, and five years for the weapons charge to be served consecutively to the twenty-five year sentence. This appeal follows.

STATEMENT OF FACTS

On October 24, 2018, law enforcement arrested Israel Mendoza Cervantes (Appellant) at a house on Leica Lane in West Columbia. (Tr. 167). The Richland County narcotics unit had been investigating a drug operation involving Appellant and another man named Angel Ibarra (Ibarra). When the targets moved into Lexington County, Richland County narcotics investigator David Colwell contacted the Lexington County narcotics unit. (Tr. 177). Lexington County law enforcement subsequently opened a drug investigation concentrating on both men. (Tr. 177-178). They began to conduct surveillance on the house on Leica Lane, which they determined to be the main location of the drug operation. (Tr. 178). Law enforcement learned that Leica Lane was Ibarra's mom's house and that Ibarra lived there. (Tr. 179). Appellant did not live there; however he was observed going to and from that location, specifically the shed on the property. (Tr. 179).

After several weeks of surveillance, a search warrant was executed on the Leica Lane property, looking for items related to a drug operation. (Tr. 182). After SWAT secured the property, a fifteen-year-old juvenile was found inside the residence and Appellant was found in the shed. (Tr. 186, 199). Inside the shed, law enforcement found items near Appellant, including multiple guns, ammunition, digital scales, a cutting agent, packaged and unpackaged balloons, $3000 cash, a television hooked up to outside cameras, and four plastic bags containing a brown rock substance. (Tr. 190-198, 231). Ultimately over 100 grams of heroin and at least 7.58 grams of cocaine were determined to have been found amongst the items in the shed. (Tr. 335-336). No items were found near the juvenile in the residence. (Tr. 187).

A pretrial suppression hearing concerning Appellant's unrecorded statement to law enforcement was held on August 22, 2022. (Tr. 38-72). According to testimony presented, Officer Brian Smith met with Appellant and the juvenile when they were brought to him from their respective locations following the execution of the search warrant. (Tr. 40-41). Smith read

Appellant and the juvenile their Miranda warnings simultaneously, while they were handcuffed standing side by side. (Tr. 45-46). Regarding Appellant, Smith testified that he did not threaten Appellant, that Appellant indicated he understood his rights, and that Appellant indicated he wished to speak with law enforcement. (Tr. 42-43). Regarding the juvenile, Smith testified that law enforcement tried to contact his parents once they realized he was a juvenile, and he was taken out of handcuffs. (Tr. 46). Smith testified that Appellant began speaking with investigators within a matter of 10-15 minutes, but he could not remember if Appellant was already talking with investigators when the juvenile was released from handcuffs. (Tr. 46).

Investigators Colwell and Dabkowski then spoke with Appellant, interviewing him in the front yard of Leica Lane. (Tr. 55). Colwell stated that he knew Smith had given Appellant his Miranda warnings and that Appellant indicated that he wanted to speak with law enforcement. (Tr. 49). He further testified that Appellant did not ask for an attorney, and he was not threatened or promised anything. (Tr. 49-50). Colwell described Appellant's statement to law enforcement as "He had claimed possession over the items and the drugs within the shed. He stated that him and his partner that we knew as Ace who had been identified as Angel were drug trafficking, making sales from that location." (Tr. 50). Colwell was unable to determine whether this conversation happened while the juvenile was still in handcuffs. (Tr. 50).

Investigator Dabkowski also testified that Smith administered Miranda, Appellant agreed to speak with law enforcement, and Appellant was not threatened. She further testified that Appellant informed them that he and Ibarra were running a drug operation out of the shed at the Leica Lane residence and the items located in the shed belonged to the two of them. (Tr. 54-56). Dabkowski explained that the juvenile and Appellant were mirandized together despite the juvenile being found in the house and not with the drugs because "[A]ny time we detain people

on a scene while we're sorting things out we do Mirandize them whether we need to – Its an automatic thing. If I'm gonna detain you and put you in handcuffs, I'm limiting your ability to now leave the scene, we're gonna Mirandize you just in case I do have questions for you. It doesn't mean I will, it doesn't mean you're going to jail. It's just automatic." (Tr. 59). Dabkowski testified that the juvenile was out of handcuffs when Appellant was interviewed. (Tr. 59-60).

Defense counsel called Appellant to the stand, who denied being given Miranda, described being pulled onto the neighboring property, where the officers interviewing him, specifically Colwell, stated that he was "about to do a lot of time. You're gonna do more than 25 to life, all these drugs, all these guns. Your life is over with. You know, we're gonna take [the juvenile.] We're gonna take his mother. Everybody's going to jail." (Tr. 62-63, 66). Appellant testified that he told Colwell "It has nothing to do with him. I told [Colwell] it was all me, that it was all between me and Angel, that we were the only ones that had anything to do with that." (Tr. 63). Appellant agreed that the juvenile was released to his mother but stated that it was only after he had been interviewed and was standing there handcuffed until he was released to his mom. (Tr. 63-64).

At the close of the testimony, defense counsel moved for suppression of Appellant's statement to law enforcement on the grounds that it was not voluntarily given due to the threats made about involving the juvenile and the treatment of the juvenile in front of Appellant. (Tr. 69-70). In response, the State argued that the juvenile was simply detained as a result of common practice, that Appellant was not threatened in any way, and that there was no connection between the juvenile and Appellant that would cause Appellant to want to protect him. (Tr. 70-71). The court denied the motion to suppress, finding that Appellant was administered his rights and

voluntarily waived them, and noting that "[i]t appears that the testimony of all officers involved [was] that there was no threats, no promises, no rewards." (Tr. 71-72).

STANDARD OF REVIEW

Issue 1

"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). "Historically in analyzing the voluntariness of a statement, South Carolina courts have employed a bifurcated process under which both the trial court and the jury separately evaluate the voluntariness of a statement." State v. Miller, S.C. Sup. Ct. Order dated September 13, 2023 (Howard Adv. Sh. No 36). "Then, on appeal, the appellate court reviews only the trial court's determination: without reevaluating the facts based on its on view of the preponderance of the evidence, an appellate court determined whether the trial court's ruling is supported by any evidence." Id. "Going forward, we will review the trial court's factual findings regarding voluntariness for any evidentiary support. However, the ultimate legal conclusion - whether, based on those facts, a statement was voluntarily made - is a question of law subject to de novo review." Id.

Issue 2

"The decision to grant or deny a motion for a mistrial is a matter within a trial court's discretion, and such a decision will not be disturbed on appeal absent an abuse of discretion amounting to an error of law." State v. Council, 335 S.C. 1, 12, 515 S.E.2d 508, 514 (1999). Whether a mistrial is necessary is decided on a case by case basis. "It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." State v. Rowlands, 343 S.C. 454, 457-458, 539 S.E.2d 717, 719 (Ct. App. 2000) (citations omitted). "A mistrial should only be granted when 'absolutely necessary,' and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial." State v. Stanley, 365 S.C. 24, 34, 615 S.E.2d 445, 460 (Ct. App. 2005). "Trial

judges in South Carolina, as elsewhere, are allowed a wide discretion in the trial of cases. This is as it should be because a trial judge experiences 'a feel of the case' which oftentimes may not be detected from a cold printed record." State v. Perry, 278 S.C. 490, 494, 299 S.E.2d 324, 326 (1983).

ARGUMENT

I.

The trial court properly denied Appellant's motion to suppress his statement made law enforcement because it was voluntarily given.

Appellant argues that the trial court erred in denying Appellant's motion to suppress his custodial statement to law enforcement when the statement was involuntarily given in response to improper influence from law enforcement, including threats against a juvenile and the juvenile's family. This argument lacks merit because Appellant's statement was freely and voluntarily given.

"When seeking to introduce a confession, the State must prove that the statement was voluntary and taken in compliance with Miranda." State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). Miranda warnings are designed to protect several constitutional rights of an accused, most importantly, the privilege against self-incrimination. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988). In order to assure that an accused's right to remain silent is not compromised during custodial interrogation, the United States Supreme Court ruled that "[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed." Miranda v. Arizona, 384 U.S. 436, 444 (1966). "A statement, whether exculpatory or inculpatory, obtained as a result of custodial interrogation is inadmissible unless the person was advised of and voluntarily waived his rights under Miranda . . . ." State v. Kennedy, 325 S.C. 295, 302, 479 S.E.2d 838, 842 (Ct. App. 1996) aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

"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." State v.

Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990). "In determining whether a confession was given 'voluntarily,' this court must consider the totality of the circumstances surrounding defendant's giving the confession." State v. Parker, 381 S.C. 68, 85, 671 S.C.2d 619, 627 (Ct. App. 2008). "As the United States Supreme Court has instructed, the totality of the circumstances includes 'the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.'" Id. In determining the voluntariness of a statement, the question is "whether the behavior of the State's law enforcement officials was such as to overbear [the defendant's] will to resist and bring about confessions not freely self-determined." State v. Collins, 435 S.C. 31, 45 864 S.E.2d 914, 921 (2021).

Here, Appellant testified that he was taken into the neighbor's yard and questioned while in handcuffs. During this questioning, Appellant claims that he was not given his Miranda warnings and that Colwell threatened to arrest the juvenile and the juvenile's mother for the items found in the shed. (Tr. 63). Conversely, three different officers offered a different account of the events that occurred that day. Dabkowski testified that the juvenile was placed in handcuffs and mirandized as common practice of SWAT executing a search warrant and that as soon as the juvenile told them he was 15 years old, he was released from handcuffs. (Tr. 54). Smith testified that he was the one who Mirandized both Appellant and the juvenile. (Tr. 41). Colwell testified that he was aware that Appellant had been mirandized by Smith. (Tr. 49). Dabowski testified that when she spoke with Appellant, he informed her that he had been provided with the Miranda warnings and that he understood them. (Tr. 54-55).

Moreover, contrary to Appellant's testimony, all three officers testified that they did not make any promises, rewards, or threats to Appellant and the trial judge credited the officers' testimony in that regard. (Tr. 43, 49-50, 56-57). Meanwhile, Smith nor Colwell could confirm that the questioning of Appellant occurred after the juvenile had been released from the handcuffs, Dabowski testified that he was out of handcuffs when Appellant was interviewed. (Tr. 59). Further, Smith testified that he only had Appellant in custody for roughly 10-15 minutes before he was taken to be interviewed by Dabkowski. (Tr. 46). Appellant was given his Miranda, he was not in a prolonged interview, and he was in the yard of the residence surrounded by people.

Looking to all the evidence and testimony presented there is evidence in the record to support the trial judge's factual findings regarding credibility and those factual findings must be affirmed. Likewise, considering the totality of the circumstances Appellant's statement was freely and voluntarily given and the product of an overborne will. Therefore, the trial judge's ruling should be affirmed.

Even if the statement should have been suppressed, admission of the statement was harmless. Generally, "[e]rror is harmless when it could not reasonably have affected the result of the trial." State v. Golson, 349 S.C. 421, 429, 562 S.E.2d 663, 667 (Ct. App. 2002) (internal citations omitted). "In determining whether error is harmless beyond a reasonable doubt, we often look to whether the 'defendant's guilt has been conclusively proven ... such that no other rational conclusion can be reached.'" State v. Ostrowski, 435 S.C. 364, 401, 867 S.E.2d 269, 288 (Ct. App. 2021) (quoting State v. Reyes, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020)) (citations omitted). "'[O]verwhelming evidence' of a defendant's guilt is a relevant consideration in the harmless error analysis." Id. (citations omitted). Here, Appellant was found in the shed,

within reach of all of the evidence submitted in this case and the jury could form no other rational conclusion. Therefore, the trial judge properly denied Appellant's motion to suppress his statement made to law enforcement.

II.

The trial judge did not abuse his discretion in denying Appellant's motion for a mistrial.

Appellant contends the trial court erred in denying Appellant's motion for a mistrial because the State based their closing argument on law that the trial court judge found to be inapplicable in this case. Appellant's argument lacks merit because the law referenced by the Solicitor was very briefly mentioned, and while it may not have been applicable, it wasn't prejudicial to Appellant.

"The relevant question is whether the solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." Vasquez v. State, 388 S.C. 447, 458, 698 S.E.2d 561, 566 (2010). "A denial of due process occurs when a defendant in a criminal trial is denied the fundamental fairness essential to the concept of justice." State v. Hornsby, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997). "The power of the trial court to declare a mistrial should be used with the greatest caution under urgent circumstances and for very plain and obvious reasons stated on the record by the trial court." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009). "A mistrial should only be granted when absolutely necessary, and a defendant must show both error and prejudice in order to be entitled to a mistrial." State v. Wilson, 389 S.C. 579, 585-586, 698 S.E.2d 862, 865 (Ct. App. 2010).

"Insubstantial errors that do not impact the result of the case do not warrant a mistrial when guilt is conclusively proven by competent evidence." State v. White, 371 S.C. 439, 447-448, 639 S.E.2d 160, 164 (Ct. App. 2006). "The granting of a motion for mistrial is an extreme

measure that should only be taken if an incident is so grievous that the prejudicial effect can be removed in no other way." State v. Harris, 382 S.C. 107, 117, 674 S.E.2d 532, 537 (Ct. App. 2009).

Appellant argues that the Solicitor's comment to the jury that "the hand of one hand of all" invited the jury to convict Appellant without the State proving that Appellant had committed the crimes he was accused of beyond a reasonable doubt. The State gave a rather lengthy argument that included **one** statement, "The hand of one is the hand of all. If a crime is committed by two or more people acting together in committing a crime the act of one is the act of all." (Tr. 432) (emphasis added). Defense counsel objected, but a ruling was not put on the record. (Tr. 432). After both closing arguments the State requested that the jury be charged with "hand of one hand of all." (Tr. 467). The judge ruled that he was not going to charge it because "generally accomplice liability is through the defendant's, co-defendants are physically present in the vicinity of a particular crime or in close proximity. In this particular case when the search warrant was served at the house Mr. Ibarra was not present." (Tr. 468).

Defense counsel then requested a mistrial based on the improper use of the hand of one hand of all. (Tr. 470). The trial judge denied the motion for mistrial stating, "the Court's instructed the jury right before their closing arguments that arguments are not evidence in the case." (Tr. 470). While the hand of one hand of all was found inapplicable in this case the statements made by the Solicitor regarding it was not prejudicial nor did it shift the burden. The Solicitor briefly mentioned it early in a very lengthy closing argument. Further, in the jury charge the trial judge stated "it is your duty as jurors to accept and apply the law as **I now state it to you.** If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are

sworn to accept the law and apply the law **exactly as I state it to you.**" (Tr. 472) (emphasis added). Defense counsel states in his closing argument "I'm not gonna go through all the charges with you because the Judge instructs the people what the charges are, not me, not the Solicitor...So listen to what the Judge tells you in regards to what the law is and you think for yourselves, not based on what somebody else tells you is going on." (Tr. 465).

Even if the statement was prejudicial, it was harmless. Appellant argues the statement was prejudicial because it invited the jury to convict Appellant without the State proving that Appellant had committed the crimes he was accused of. Appellant was accused of trafficking heroin, 28 grams or more, possession of a weapon during a violent crime, and possession with intent to distribute cocaine. Appellant was found in a shed within arms reach of multiple guns, over 100 grams of heroin and over 7 grams of cocaine. Further, Appellant confessed to law enforcement that all the items found belonged to him and Ibarra. Even without the hand of one hand of all statement, there is no other conclusion the jury could have come to, but to find Appellant guilty. Therefore, the trial judge did not err in denying Appellant's motion for mistrial.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgments and convictions of the lower court should be affirmed.

Respectfully submitted,

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