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Dec 15 2023
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable H. Steven DeBerry IV, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TRONAHZ J.S. WHITTINGTON,

APPELLANT

APPELLATE CASE NO. 2023-000535

ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by failing to suppress Appellant's post-Miranda[1] statement in violation of his Due Process rights where Appellant indicated he wanted help regarding his case, and the response by the lead investigator impliedly promised to help keep Appellant out of jail if he provided a statement?

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[1] Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966).

STATEMENT OF THE CASE

Appellant Tronaz Whittington was indicted by the Horry County grand jury on December 8, 2021 for murder. The charge arose from a shooting incident occurring in Conway, South Carolina on September 12, 2020. R. 763-764.

Appellant's case proceeded to a jury trial before the Honorable Steven DeBerry from February 28th through March 3rd, 2023. Ralph Wilson, Sr., (Counsel) represented Appellant, while the State was represented by Nancy Livesay and Christopher Helms. R. 1. The jury found Appellant guilty as charged. R. 752, ll. 3-17. The trial court sentenced Appellant to 45 years imprisonment, and credit was given for time served. R. 761, ll. 14-19.

STATEMENT OF THE FACTS

On the evening of September 12, 2020, in Conway, South Carolina, Appellant Tronahz "Nahz" Whittington was riding in the front passenger seat of his friend's Chevrolet Caprice,[2] along with five others—Don Brown, Shamontae "Ray" Graham, Che Ransom, Travontae "Tip" Mitchell (Mitchell), and Mickie McCleod—in the car with him. R. 349, ln. 17—R. 351, ln. 6; R. 579, ln. 6—R. 582, ln. 6; R. 648, ln. 24—R. 649, ln. 12. All occupants other than the driver were armed. R. 351, ln. 18—R. 352, ln. 19; R. 650, ln. 24—R. 651, ln. 5. Jamie Johnson (Johnson) was also out driving his "squatted" Chevrolet Tahoe[3] with several of his friends riding along with him.

At some point, the Caprice occupied by Appellant came upon and followed Johnson's Tahoe. When the "squatted" Tahoe stopped at the intersection of D Street and Rose Moss, the Caprice came around in front of the Tahoe and cut it off in the road with the intent to rob Johnson. R. 107, ll. 9-17; R. 160, ll. 13-19; R. 164, ll. 11-18; R. 175, ll. 1-17; R. 1 R. 354, ln. 4, ln. 4—R. 355, ln. 10; R. 582, ll. 7-18; R. 649, ll. 21-25. Appellant and three other occupants of the Caprice got out of the car, and shots were fired, including two shots from an AR-15 in Appellant's possession. According to Appellant, he only fired because he heard gunshots and did not know if he was being shot at. Further, he indicated he fired at least one shot by accident as he was getting back into the Caprice. As Johnson tried to back-up his Tahoe, a bullet passed through the windshield and struck him in the back of the head, killing him. R. 164, ln. 14—R. 165, ln. 2; R. 349, ll. 3-10; R. 582, ln. 11—R. 583, ln. 588, ln. 18; R. 651, ln. 4—R. 652, ln. 4; R.

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[2] The car belonged to Mr. De'Shon Samuel, who allowed Appellant to borrow the vehicle at approximately 6:30 pm. R. 508. Ln. 20—R. 509, ln. 14; R. 523, ln. 14—R. 528, ln. 19.

[3] The term "squatted" as used in this context indicates that "[t]he back end [of the vehicle] was dropped." R. 167, ll. 7-11.

670, ll. 11-14; R. 676, ll. 20-25. However, it was unclear who fired the fatal shot. R. 349, ll. 6-8; R. 587, ln. 24—R. 588, ln. 12. Appellant and the three others got back into the Caprice and left the intersection. R. 359, ln. 25—R. 360, ln. 2; R. 588, ll. 13-16; R. 652, ll. 3-8.

911 was called at 7:16 pm, and police arrived shortly after. R. 122, ll. 14-18; R. 124, ll. 13-22. Nine shell casings were recovered from the area of the intersection—seven (7) 9mm, and two (2) .223 caliber. R. 445, ll. 3-23. Examination of the spent shell casings by the South Carolina State Law Enforcement Division (SLED) revealed that six (6) of the 9mm shells were fired by one gun, one (1) 9mm shell was fired by another gun, and both .223 shell casings were fired by yet a third firearm. R. 480, ln. 2—R. 481, ln. 19. Also, examination of Johnson's single gunshot wound to the head revealed that the bullet entered, but did not exit. However, no bullet was recovered from his head. R. 449, ln. 18—R. 451, ln. 5; R. 676, ll. 10-25.

Appellant was arrested in Greenville, South Carolina, by the United States Marshall Service on September 16, 2020. He was taken to an interrogation room at the Sheriff's Office there. While in custody and after being read his rights, Appellant was questioned by Investigator Ken Marcus (Inv. Marcus) and Detective Drew Edwards (Det. Edwards) of the Horry County Police Department. R. 40, ln. 23; R. 62, ln. 11-R. 63, ln. 16; R. 628, ll. 11-21; R. 630, ln. 20—R. 631, ln. 12; R. 640, ll. 3-12. Appellant was interrogated for approximately two and a half hours, and ultimately made a statement against his interest. R. 68, ll. 7-9; State's Ex. #2, Interrogation Video 2.

Appellant's case proceeded to trial from February 28th through March 3rd, 2023, before the Honorable Steven DeBerry and a jury. R. 1. During pre-trial motions, a suppression hearing was held regarding the voluntariness of Appellant's statement to police. R. 59, ll. 19-23. Inv. Marcus testified at the hearing and confirmed that, during the interrogation, Appellant indicated

he was looking for help on his charges, and that the officers needed to help him. R. 71, ll. 1-12. Inv. Marcus stated he responded "[t]hat telling the truth about what occurred during the shooting would help him." R. 71, ll. 15-16. When pressed about whether he promised to say something to the solicitor or judge about the matter, Inv. Marcus responded as follows:

> I told [Appellant] that he would—if [Appellant] told us what occurred during this incident, that because we're investigators and we investigate crimes and other things, that we would ultimately report our findings to the solicitor and let them know what was said.

R. 71, ll. 17-24. At the end of the hearing, Counsel argued for suppression as follows:

> My concern is that the really damaging testimony comes from him, at least in my opinion, after he requests help from them. They don't say we're not going to help you, that is not what I recall from listening to the video. I don't think they specifically said the words "we're going to help you," I don't remember that either, but I think that it's reasonable, in his mind, that after he made the plea to them, that he was under the belief that they were going to help him and that they would somehow going to do something favorable to him, which obviously did not happen. But that is my concern.
>
> I would ask hour Honor to look at the video, to hear that part especially where there is that discussion about, "you guys helping me," "if you will help me," or, "I need help"; that he is clearly saying that to them. . . . . [H]e clearly does ask for help, and I clearly believe that they don't say enough to make him think that he's not going to get some kind of favorable help.

R. 77, ln. 9—R. 78, ln. 6.

On the video of Appellant's interrogation, he indeed asked police for help regarding his case.[4] First, Det. Edwards acknowledged as much, saying, "When you said how can you help yourself; honesty." State's Ex. #2, video starting at 18:27:13. Appellant can be heard asking for

[4] No certified transcript of the video was made an exhibit in the case. Accordingly, quotes from the video are based upon good faith efforts to accurately reflect what is believed to have been said. R. 5; R. 643, ll. 12-24.

help again immediately after Det. Edwards' statement: "I need y'all to help me, if I'm gonna help y'all, I'm gonna need y'all to help me." State's Ex. #2, video starting at 18:27:15. Finally, Inv. Marcus ultimately responds to Appellant's plea for help as follows:

> If you were there, and this weren't you and this was somebody else then you need to say so 'cause that's the only way that I can do that. The last thing I ever want to do is hurt anybody in my job. Now I can do that in a couple of different ways, you know. But the way right here, I don't want to put someone in jail that doesn't need to be there, so tell me.

After withholding its ruling until after the trial began, the court ultimately determined Appellant's statement was voluntarily given. Thus, it was deemed admissible. R. 298, ln. 24—R. 299, ln. 12; R. 641, ln. 18—R. 643, ln. 9; State's Ex. #2, video starting at 18:27:20.

During Inv. Marcus' trial testimony,[5] the State introduced Appellant's multiple admissions to facts of the incident, and his involvement therein. Appellant's admissions to which Inv. Marcus testified included: borrowing the car from De'Shon Samuel; being in the car with his five other codefendants; cutting-off Johnson's Tahoe at the intersection; getting out of the car with three others; shooting his firearm twice; and getting back into the car and leaving. R. 648, ln. 18—R. 657, ln. 13.

During closing arguments, the State referred extensively to Appellant's statement to police. R. 703, ll. 22-24; R. 704, ln. 10—R. 705, ln. 18; R. 709, ll. 14-18; R. 710, ll. 4-7. The jury ultimately convicted Appellant on the sole count of murder, and the trial court imposed a sentence of 45 years with credit given for time served. R. 752, ll. 3-17; R. 761, ll. 14-19.

This appeal follows.

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[5] The State chose to admit Appellant's statement through Inv. Marcus' testimony only, rather than through the video or certified transcript of the video. R. 5; R. 643, ll. 12-24.

STANDARD OF REVIEW

"The decision to admit evidence remains in the sound discretion of the trial court, and an appellate court will not disturb such a ruling absent an abuse of that discretion." State v. Anderson, 440 S.C. 124, 136, 889 S.E.2d 615, 621 (Ct. App. 2023) (citing State v. Barnes, 421 S.C. 47, 53-54, 804 S.E.2d 301, 305 (Ct. App. 2017)). "An abuse of discretion standard is applied to a trial [court's] ruling on the issue of whether a statement is admissible as a declaration against penal interest." Id. (quoting State v. Kinloch, 338 S.C. 385, 388, 526 S.E.2d 705, 706 (2000)).

ARGUMENT

The trial court reversibly erred by failing to suppress Appellant's post-Miranda statement in violation of his Due Process rights where Appellant indicated he wanted help regarding his case, and the response by the lead investigator impliedly promised to help keep Appellant out of jail if he provided a statement.

When Appellant was interrogated by Inv. Marcus and Det. Edwards, he was in police custody, and was confronted with incriminating evidence. At that time, Appellant asked for help in exchange for him helping police with his statement. Based upon the response given by Inv. Marcus, a reasonable person in Appellant's perspective would have believed the only way he could avoid being put in jail was to provide a statement. Accordingly, Appellant's statement to Inv. Marcus and Det. Edwards was induced by the implied promise of leniency regarding his charge.

"[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." Jackson v. Denno, 378 U.S. 368, 378, 84 S.Ct. 1774, 1781, 12 L.Ed.2d 908 (1964). This fundamental principle applies "even though there is ample evidence aside from the confession to support the conviction." Id. Additionally, "[e]ven absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused in fact knowingly and voluntarily waived [Miranda] rights when making the statement." State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 400 (Ct. App. 2010). Therefore, "[i]n order to introduce a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona." Id. 390 S.C. at 512, 702 S.E.2d at 400; see also Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 627, 30 L.Ed.2d 618 (1972) ("[T]he prosecution must prove at least by a preponderance of the evidence that the confession was voluntary.").

"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." State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) (internal quotation marks omitted)). The potential circumstances to consider include, "the crucial element of police coercion," location and length of interrogation, its continuity, as well as the defendant's maturity, education, physical condition, and mental health. Id. 375 S.C. at 385, 652 S.E.2d at 452 (quoting Withrow v. Williams, 507 U.S. 680, 693-94, 113 S.Ct. 1745, 123 L.Ed.2d 407 (1993)).

Although "[c]oercive police activity is a necessary predicate to finding a statement is not voluntary," it is "*determined from the perspective of the suspect.*" Miller, 375 S.C. at 386, 652 S.E.2d at 452 (emphasis added). Moreover, "the blood of the accused is not the only hallmark of an unconstitutional inquisition." Mincey v. Arizona, 437 U.S. 385, 401, 98 S.Ct. 2408, 2418, 57 L.Ed.2d 290 (1978) (internal quotations and citations omitted). Rather, "[d]etermination of whether a statement is involuntary requires more than a mere color-matching of cases. It requires a careful evaluation of all the circumstances of the interrogation." Id. (internal quotations and citations omitted). For example, "[a] statement may not be extracted by any sort of threats or violence, *or obtained by any direct or indirect promises, however slight*, or obtained by the exertion of improper influence." Miller, 375 S.C. at 386, 652 S.E.2d at 452 (internal quotations omitted) (emphasis added). Further, "[a] statement induced by a promise of leniency is involuntary only if it is so connected with the inducement as to be a consequence of the promise." State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) (citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977)).

Given the totality of the circumstances in the case at bar, Appellant's confession was obtained under circumstances of direct or indirect promises. First and foremost, Appellant was unquestionably in custody. He was arrested by the United States Marshal's Service in Greenville, South Carolina, and brought to a small interrogation room at the Greenville County Sheriff's Office. Once Inv. Marcus and Det. Edwards arrived, Appellant was Mirandized and interrogated for approximately two and a half hours. R. 40, ln. 23; R. 62, ln. 11-R. 63, ln. 16; R. 628, ll. 11-21; R. 630, ln. 20—R. 631, ln. 12; R. 640, ll. 3-12.

Second, when finally confronted about evidence already in possession of law enforcement, Appellant requested help from police in exchange for his help to them.

Specifically, on the video of Appellant's interrogation at the Greenville County Sheriff's Office, he indeed asked police for help regarding his case. Det. Edwards acknowledged as much, saying, "When you said how can you help yourself; honesty." State's Ex. #2, video starting at 18:27:13. Appellant can be heard asking for help again immediately after, saying: "I need y'all to help me, if I'm gonna help y'all, I'm gonna need y'all to help me." State's Ex. #2, video starting at 18:27:15. Inv. Marcus then ultimately responded to Appellant's plea for help as follows:

> If you were there, and this weren't you and this was somebody else then you need to say so 'cause that's the only way that I can do that. The last thing I ever want to do is hurt anybody in my job. Now *I can do that in a couple of different ways*, you know. *But the way right here, I don't want to put someone in jail that doesn't need to be there, so tell me.*

State's Ex. #2, video starting at 18:27:20 (emphasis added). Under the totality of such circumstances, a reasonable person viewing the matter from Appellant's perspective would believe that Inv. Marcus would help keep him out of jail if he provided a statement indicating someone else shot Johnson even though he was at the scene. In other words, Appellant provided

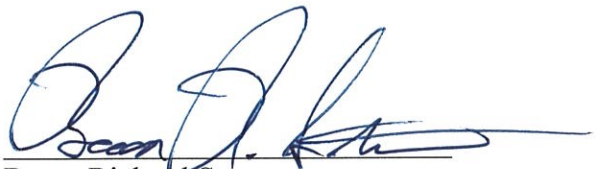
his statement to police only after police impliedly promised to help him in exchange for it. As such, Appellant's incriminating statement was involuntarily obtained in violation of his fundamental Due Process rights. See, e.g., Miller, 375 S.C. at 386, 652 S.E.2d at 452 ("A statement may not be extracted by any sort of threats or violence, or obtained by any direct or indirect promises, however slight, or obtained by the exertion of improper influence."); see also Peake, 291 S.C. at 139, 352 S.E.2d at 488 ("A statement induced by a promise of leniency is involuntary only if it is so connected with the inducement as to be a consequence of the promise.").

Finally, Appellant was prejudiced by the trial court's failure to suppress his statement. "[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." Denno, 378 U.S. at 378, 84 S.Ct. at 1781. This fundamental principle applies "even though there is ample evidence aside from the confession to support the conviction." Id.

As previously indicated, Appellant's statement was taken under circumstances rendering the confession involuntary. Additionally, the State effectively utilized Appellant's statement throughout its closing argument in order to gain Appellant's conviction. R. 703, ll. 22-24; R. 704, ln. 10—R. 705, ln. 18; R. 709, ll. 14-18; R. 710, ll. 4-7. Accordingly, Appellant was prejudiced by the trial court's failure to suppress his involuntary statement.

CONCLUSION

For the foregoing reasons, Appellant Tronahz Whittington respectfully requests reversal of his conviction, and remand for a new trial.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of December, 2023.

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APPELLANT

APPELLATE CASE NO. 2023-000535

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tronahz J.S. Whittington states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge H. Steven DeBerry IV, which was held on Feb. 27- March 3, 2023, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Tronahz J.S. Whittington.

Respectfully Submitted,

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

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APPELLATE CASE NO. 2023-000535

DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

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

(1) Indictment (2021-GS-26-5578);
(2) Sentence sheet;
(3) State's exhibit #2 (Disk);
(4) Trial transcript (February 28th through March 3rd, 2023), pp. 1-762.

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

Breen Richard Stevens
Appellate Defender

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ATTORNEY FOR APPELLANT

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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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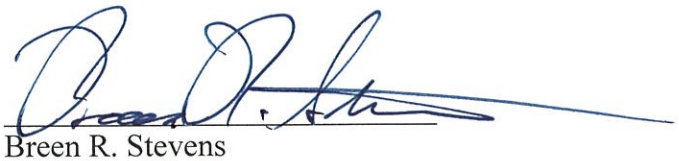
APPELLATE CASE NO. 2023-000535

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 Melody J. Brown, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Tronahz J.S. Whittington, #390410, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 15th day of December, 2023.



Breen R. Stevens
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ATTORNEY FOR APPELLANT