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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY W. WILBANKS,

APPELLANT

APPELLATE CASE NO. 2023-001027

ANDERS BRIEF OF APPELLANT

JESSICA M. SAXON
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in finding Appellant's statements to law enforcement were voluntarily made where the statements were taken while Appellant was in the hospital after being involved in a major car wreck and was suffering from a concussion?

STATEMENT OF THE CASE

Appellant was indicted during the March 2022 term of the Spartanburg County grand jury for armed robbery, possession of a weapon during the commission of a violent crime, failure to stop for law enforcement, resisting arrest, possession with intent to distribute clonazepam, and possession with intent to distribute methamphetamine. R. 294-303. The State, represented by Barry Barnette, called the case to trial on June 12, 2023, before the Honorable J. Derham Cole and a jury. Appellant was represented by Charles Snyder, III. R. 1. Prior to trial the State served Appellant and Counsel Snyder with notice of intent to seek a sentence of life without parole. R. 281-293.

Appellant was ultimately found guilty as indicted on all charges¹ with the exception of possession with intent to distribute clonazepam for which he was found guilty of simple possession of clonazepam. Pursuant to the S.C. Code Ann. § 17-25-45, Judge Cole sentence Appellant to life imprisonment without parole for the armed robbery conviction. Appellant was additionally sentenced to terms of imprisonment of five years for failure to stop, one year for resisting arrest, fifteen years for possession with intent to distribute methamphetamine, and six months for the simple possession of clonazepam, all sentences to run concurrently. R. 278-279; R. 304-313.

¹ The State did not move forward on the possession of a weapon during the commission of a violent crime count.

STANDARD OF REVIEW

The question of the voluntariness of a statement presents a mixed question of law and fact. The appellate court reviews 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. State v. Miller, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023).

ARGUMENT

The trial court erred in finding Appellant's statements to law enforcement were voluntarily made where the statements were taken while Appellant was in the hospital after being involved in a major car wreck and was suffering from a concussion.

Relevant Facts

On November 9, 2021, a masked man entered the Scotsman Four convenience store located on Asheville Highway in Spartanburg, South Carolina, and asked to use the restroom. The cashier, Mayuriben Patel, informed the man the restroom was out of order at which point the man pulled a handgun from his waist band and demanded the money in the cash register. After Patel gave the man the money from the register, he demanded her jewelry and weapon. Patel informed the man that her necklace was not real and that she did not have a weapon. After repeatedly telling Patel not to call the police or he would shoot her, the man left the store on foot. R. 117, l. 11-R. 119, l. 6; R. 125, ll. 6-15.

The robber was a white male wearing a blue mask, a black baseball cap, a greenish-blue t-shirt and sweatshirt, and red and black gloves. The man also had a pair of reading glasses stuck in the collar of his shirt and a black sleeve covering one of his legs. Patel stated the man had taken approximately \$300 during the robbery and that the incident had been captured on the store's video surveillance system. R. 119, l. 13-R. 120, l. 7; R. 122, l. 1-R. 125, l. 2.

A description of the armed robbery suspect was broadcast over the police radio channel. A deputy with the Spartanburg County Sheriff's Office radioed that he was out with a red Durango containing an individual matching the suspect description. During the encounter the man driving the red Durango fled from the deputy and managed to briefly evade law enforcement. A short time later Deputy Marcus Miller encountered the red Durango and

attempted to perform a felony stop on the vehicle. The driver sped through a red light and began leading officers on a high-speed chase through Spartanburg County. The chase came to an end when the driver of the Durango lost control of the vehicle. The vehicle crossed four lanes of traffic, ripped through the cable barrier, and rolled multiple times before coming to a stop on the northbound side of Business Interstate 85. Police ordered the driver to exit the vehicle and lay down on the ground. When the driver did not comply, police physically engaged him, taking him to the ground and deploying a taser. After a brief physical altercation, the driver, identified as Appellant, was taken into custody. R. 128, l. 1-R. 134, l. 7; R. 148, l. 3-R. 150, l. 16.

The red Durango was towed to an impound lot and a search warrant was secured for the vehicle. Inside the Durango officers recovered a pellet pistol designed to look like a Smith and Weston handgun, a blue face mask, red and black gloves, and Appellant's wallet containing \$319. A black ball cap with white writing was recovered from the interstate where police took Appellant into custody. Police also found 6.44 grams of methamphetamine and five blue pills that were determined to be clonazepam in the Durango. R. 161, l. 24-R. 164, l. 17; R. 169, l. 9-R. 174, l. 25; R. 184, l. 1-R. 185, l. 16.

Appellant was transferred from the scene to the hospital for evaluation and treatment. Detective Jon Guest went to the hospital to speak with Appellant. Appellant was read his Miranda rights and agreed to speak with Detective Guest. The interview was audio recorded. During the interview, Appellant admitted to the armed robbery of the gas station and to fleeing from police. R. 186, l. 22-187, l. 24; R. 199, ll. 11-23; Court's Exhibit 1.

Prior to trial the parties held a hearing pursuant to Jackson v. Denno² to determine whether Appellant's statement was voluntarily given. Detective Guest testified that Appellant

² 378 U.S. 368 (1964)

was read and understood Miranda, waived his rights, did not appear to be under the influence of anything, and did not appear to have any injuries that would prevent Appellant from speaking with him. R. 25, l. 5-R. 30, l. 8. Appellant testified that he had no memory of Detective Guest and no memory of speaking to him because he was being treated for a concussion after the car wreck. He testified that he would have said anything to avoid another beating from law enforcement and had no recollection of confessing to the armed robbery. Appellant also denied that the voice on the audio recording was his. R. 33, l. 9-R. 45, l. 25.

Prior to ruling the court enquired whether Counsel Snyder had any medical records or documentation to support that Appellant could not comprehend and respond properly to Detective Guest's questioning. Counsel Snyder stated that he did not have any medical information to support Appellant's claim that he was suffering from a concussion. The court ultimately ruled that the statement was voluntary, that Appellant had been administered Miranda, that there was no evidence that Appellant was not fully in control of his faculties, and that there was no evidence of coercion or pressure or promises of any kind. An unredacted copy of the interview was entered as Court's Exhibit 1.³ R. 53, l. 11-R. 55, l. 20.

Discussion

In deciding Jackson v. Denno, the United States Supreme Court wrote,

It is now axiomatic 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, and even though there is ample evidence aside from the confession to support the conviction. Equally clear is the defendant's constitutional right at some stage in the proceedings to object to the use of the confession and to have a fair hearing and a reliable determination on the issue of voluntariness, a determination uninfluenced by the truth or falsity of the confession.

³ Appellant's unredacted interview, Court's Exhibit 1, is on file with this Court.

Denno, 378 U.S. 368, 376–77 (1964) (internal citations omitted). The Court went on to state that “[e]xpanded concepts of fairness in obtaining confessions have been accompanied by a correspondingly greater complexity in determining whether an accused’s will has been overborne—facts are frequently disputed, questions of credibility are often crucial, and inferences to be drawn from established facts are often determinative.” Id. at 390.

“In analyzing whether a defendant’s will was overborne and the resulting confession was offensive to due process, courts must consider the totality of the circumstances, including the details of the interrogation and the characteristics of the defendant.” State v. Miller, 441 S.C. 106, 120, 893 S.E.2d 306, 313-314 (internal citations omitted). In determining the voluntariness of a statement court’s may consider many factors including: the youth and maturity of the accused; the accused lack of education or low intelligence; the failure to advise the accused of his constitutional rights; the presence of a written waiver signed by the accused regarding his constitutional rights; the physical condition of the accused, including whether the accused was intoxicated at the time of the interrogation; the mental health of the accuse; the length, location, and continuity of the interrogation; the repeated or prolonged nature of the interrogation; the use of physical punishments or specific promises of leniency by law enforcement; and whether law enforcement mad deliberate misrepresentations of the evidence against the accused. Id. at 120-121. 893 S.E.2d at 314. “None of the factors are dispositive in and of themselves; rather they must be considered in their totality to determine whether the defendant’s will was overborne.” Id. (internal citations omitted).

At the time of his interview, Appellant was in the hospital following a serious car wreck during which the vehicle rolled multiple times. He was then involved in a physical confrontation with the police where he was struck multiple times in the head and tased. He testified that he had

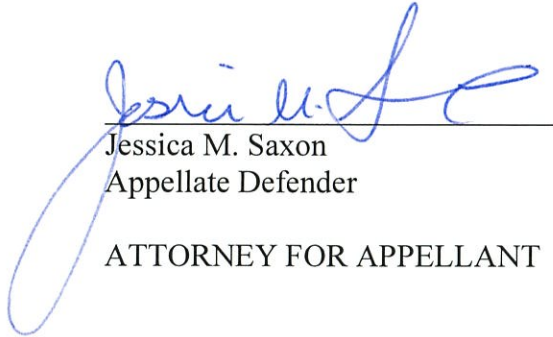
no recollection of speaking with Guest because he had a concussion. While there was no medical evidence presented to support Appellant's contention that he was concussed, the audio of the interview lends credibility to his assertion.

During the interview Appellant would talk about a factual aspect of the case when directed there by Guest. However, he also discussed that he served the lord, that there was evil in the world that he wanted to do something about, that he hated abusive individuals, sex traffickers, and drugs, that his intent was to die by suicide by cop, and that he was a whoremonger. His speech was at times slowed and slurred, his responses varied wildly, he often sounded confused and responded slowly to questioning. All of those symptoms, along with forgetfulness and memory loss, were signs of a concussion.

Appellant's statement was not voluntary. Admittedly, he was read his rights. Nevertheless, he was interviewed in the hospital, shortly after a severe car wreck and physical altercation with the police. He was likely medicated and suffering from a brain injury at the time of the interview. There was no written waiver of his constitutional rights to remain silent or have counsel present. He admitted to being suicidal and went on tangents about matters entirely unrelated to his arrest. The pace and clarity of his speech changed throughout the interview. Those facts support that Appellant was not in control of his mental faculties at the time of the interview and that, under the totality of the circumstances, his statement was involuntarily. The trial court erred in finding the statement was voluntary.

CONCLUSION

Based on the forgoing argument, Appellant respectfully requests that this Court reverse his convictions and remand his case to the Court of General Sessions of Spartanburg County for a new trial.



Jessica M. Saxon
Appellate Defender
ATTORNEY FOR APPELLANT

This 1st day of February, 2024.

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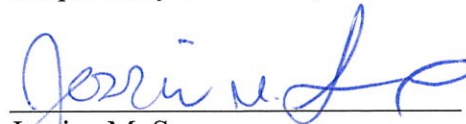
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy W Wilbanks states:

1. She is 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 J. Derham Cole, which was held on June 12-15, 2023, 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 Timothy W Wilbanks.

Respectfully Submitted,



Jessica M. Saxon
Appellate Defender

ATTORNEY FOR APPELLANT

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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) True-billed indictment(s): 2022-GS-42-0353, 2022-GS-42-0355, 2022-GS-42-0356, 2022-GS-42-0357, 2022-GS-42-0358
- (2) Trial Transcript dated June 8, 12, 13, 14, 2023
- (3) Court's Exhibit 1 (Unredacted interview of Appellant)
- (4) Court's Exhibit 2 (Notice of Life Sentence)
- (5) Court's Exhibit 3 (Affidavit of Service of Life Notice)
- (6) Court's Exhibit 4 (Affidavit of Service of Life Notice)

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



Jessica M. Saxon

Appellate Defender

South Carolina Commission on Indigent Defense

Division of Appellate Defense

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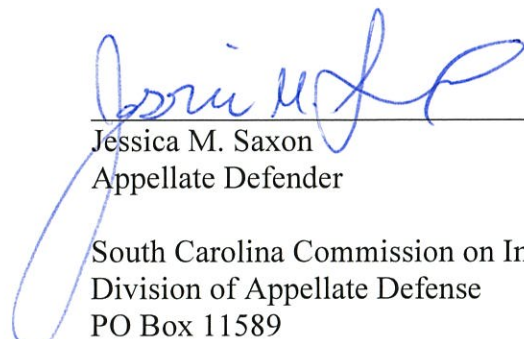
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CERTIFICATE OF COUNSEL

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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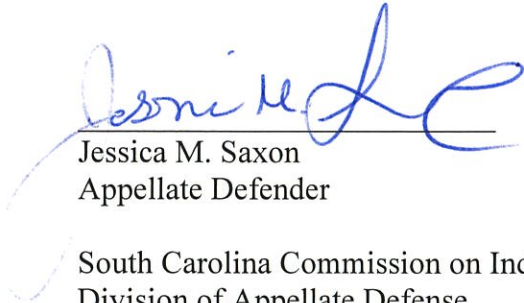
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APPELLANT

APPELLATE CASE NO. 2023-001027

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 Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Timothy W Wilbanks, #292513, at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 1st day of February, 2024.



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