

v
South Carolina

Appellate Case # 2021-000541

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MAY 28 2024

Questions Presented

SC Court of Appeals

- 1) Was trial counsel ineffective in giving client advice to plead guilty because trial counsel felt that client would lose trial?
- 2) Was suspect's third and second statement admissible to put in evidence?
- 3) Was suspect's statement's voluntary?
- 4) Was suspect guilty plea voluntary?

Table of Authorities

Cases:

- State v. Collins 2024 WL 1425226 S.C.
 State v. Mack GA 244; 765 S.E. 2d 896
 Dickerson v. United States, 530 U.S. 428, 433, 120 S. Ct. 2326
 Jackson v. Denno, 378 U.S. 368, 84 S. Ct. 1774, 12 L. Ed. 2d 908 (1964);
 State v. Moses, 390 S.C. 502, 513, 702 S.E. 2d, 395, 401
 State v. Fortner, 266 S.C. 223, 226, 222 S.E. 2d 508, 510

Statement

I, Theophilus Xavier Berry, would like to appeal my pro se explanation. On May 11, 2021 I appealed my sentence of 30 years. Lauren K. Anderson of Ralph Wilson Law Firm in Conway, South Carolina filed a notice of intent

to Appeal with the South Carolina Court of Appeals for my behalf to protect my rights to appeal. My trial counsel also told me that they would not represent me in my appeal and I had no experience with appeals at all so that's why it took this long to explain my case. Before my trial I spoke with my attorney (Lauren Anderson), telling her that I was innocent and ~~that~~ that the only evidence the state had was an involuntary confession induced from an unlawful interrogation. A suspect who had previously invoked his right to remain silent will be considered to have ~~initiated~~ initiated renewed contact with law ~~en~~ enforcement authorities so as to permit further interrogation, only if the renewed contact by the suspect was not the product of past police interrogation conducted in violation of the suspect's ~~previously~~ previously invoked rights. In determining the causal connection between the prior unlawful interrogation, the entire sequence of events leading up to suspect's renewal of contact must be considered, including, but not limited to, the lapse of time between the unlawful interrogation and the renewed contact, any change in location or in the identity of the officers involved from one interview to the next, and any break in custody between interviews. The state bears the burden of proving that a suspect initiated renewed contact under the circumstances. (Mack v. State 2014WL6090705, Georgia.

There was a total of three statements used as evidence. The first statement was a statement of me saying I'm innocent and I provided an alibi as ~~well~~ as an alibi witness who also told the investigator, Melvin Garrett of Georgetown County Sheriff Office, that I was with her the whole night of the alleged incident. That statement was made on May 23, 2019. I signed a miranda waiver and after I made my statement the investigator asked to search my phone and if I would take a polygraph test and I replied yes. The polygraph test was performed May 24, 2019 and I answered no to all questions. After the polygraph test, the investigator told me that the results said that I wasn't telling the truth, so I was interrogated again with any miranda warnings or waiver and still said I was innocent and that I had no knowledge of the victims disappearance. After I said that, I told the investigator that I didn't want to talk or answer any more questions, which is me invoking my right to remain silent, and after I said that the interview was ended. After the interview (2nd interview), they followed me and my mom home and searched our house, which nothing was found, and they left. About a hour later they returned and knocked on the door. When I looked out the window I saw two police cars, so I opened the door and it was investigator Garrett and another officer. They told me I had a warrant and that I had to go with them. They put me in handcuffs and took me back to the

some location I was questioned at which was Georgetown County Sheriff Office. Investigator Garrett told me that they found the victim in a ditch and that it was time for me to talk. Another investigator entered the room aggressively and said that ("if you don't tell me what happened or who did it you will get eighty years in prison"). After he said that I didn't know what to do because to me he was basically saying if I didn't tell them what they wanted to hear I would get eighty years in prison so I gave them a false confession without any miranda warnings, and said that I acted in self defense and shot victim six or seven times. After I said that, they took me into an interrogation room and read me my rights and I told them the same self defense statement. (3rd interview)

Then I was transferred to the jail with three charges (Murder, Armed Robbery, poss. of deadly weapon, with that being explained, anybody could see that it was unlawful police activity conducted. I explained to my lawyer that the false confession was not true and that it was also involuntary. My trial lawyer said that she could not do anything about it and that the State was going to use my confession in trial. She also told me that the confession did not make sense because I said I shot the victim six or seven times but the pathologist said victim was shot eighteen (18) times. My trial counsel also told me that it was a very high chance I lose trial and that I should plea, so that's why I

pled guilty because I didnt want to be sentenced to life, and trial counsel also said if I took a plea I would only have to do 85 percent and I would be eligible for parole when in all actuality my sentence is 30 years day for day with no parole. Also Ralph Wilson Jr was my lawyer but lost his license due to a domestic violence charge with his wife, so Lauren Anderson, his assistant, took over case which ~~was~~ would be her first time ever going to trial. I want to file a motion to withdraw my guilty plea on grounds of ineffective counsel, proof of innocence, and violation of constitutional rights. I also want to file a motion to suppress my ~~se~~ second and third statements on grounds of violation of miranda rights. Whoever reads this please help me or point me in the right direction because I am really innocent and would hate to have to spend 30 years of my life in prison. I had a bright future ahead of me, like plans to become a mechanic and attend Universal Technical Institute in Mooresville, NC. All I ever wanted to do was ~~be~~ be an example to my little brother and take care of my family. I regret even putting myself in this situation by falsely confessing to something I didnt do but hopefully I can get some kind of relief. Please do whatever you can do to help me. I am currently at McCormick Correctional Institute.

Theophilus Berry
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Court of Appeals

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