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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.

MARCUS DANTA BATSON,

APPELLANT

APPELLATE CASE NO. 2023-001593

FINAL BRIEF OF APPELLANT

JOANNA K. DELANY
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 court erred where it admitted Appellant's two-and-a-half-hour long interrogation and confession, where, among other things, Appellant was shackled at the wrists and ankles, and where Investigator Reece promised to help Appellant if he confessed, since the confession was not voluntarily made under the totality of the circumstances?

STATEMENT OF THE CASE

On June 22, 2022, a Spartanburg County Grand Jury indicted Appellant, Marcus Batson, for two counts of murder. R. 440–443. Appellant was tried before the Honorable J. Derham Cole and a jury, from September 25 – 28, 2023. Charles Snyder, III, represented Appellant. James Hunter prosecuted the case. R. 1. Appellant was convicted as indicted. He was sentenced to life imprisonment without the possibility of parole for each offense. R. 434, ll. 2-8; R. 436, ll. 19-24; R. 444–447.

This appeal follows.

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 court erred where it admitted Appellant's two-and-a-half-hour long interrogation and confession, where, among other things, Appellant was shackled at the wrists and ankles, and where Investigator Reece promised to help Appellant if he confessed, since the confession was not voluntarily made under the totality of the circumstances.

Relevant facts

In July of 2021, Appellant was renting a room from Ronald Glenn in Glenn's house on Winsmith Avenue in Spartanburg. Another man, Matthew Booker, also rented a room. Glenn, Appellant, and Booker all lived there. R. 181, ll. 3-5. Glenn was known to be gay. R. 132, ll. 3-4; R. 123, ll. 17-21. Appellant, who worked at a carwash, was homeless before he rented the room from Glenn. R. 182, ll. 5-6; State's Exhibit #11.

In the early morning hours of July 6, 2021, Appellant struck and killed Glenn and Booker with a baseball bat. R. 370, ll. 15-17; State's Exhibit #11; R. 109, ll. 24 – 110, l. 11. Both men were killed by blunt force trauma to the head. R. 268, ll. 8-15; R. 273, l. 8 – 275, l. 25; R. 279, ll. 8-24. Law enforcement entered the home for a welfare check on July 8, 2021, and found the bodies. Booker was in the middle bedroom, face down in his bed, clothed. There was blood splatter above the bed and on the pillow, bed, and wall. Glenn was on the floor in another bedroom, which was locked, and he was naked from the waist down. R. 153, l. 8 – 160, l. 7; R. 162, l. 22 – 167, l. 24; R. 175, l. 14 – 176, l. 10; R. 330, l. 9 – 332, l. 3.

Glenn's bedroom had a deadbolt. He kept cash and a receipt book in the bedroom. In addition to renting rooms, Glenn's house was a "liquor house." Glenn sold bootlegged alcohol and cigarettes. Law enforcement did not find any money in Glenn's bedroom. R. 166, ll. 13-22;

R. 131, ll. 7-22; R. 127, ll. 14-24; R. 251, l. 23 – 252, l. 12; R. 343, ll. 11-20. However, Barbara Riaz, who was sometimes drunk to the point of not knowing "which days was which," claimed she saw Appellant with a wad of cash the night of July 6. R. 209, l. 12 – 210, l. 6; R. 215, ll. 9-23.

Appellant was interviewed by police officers twice on July 8, 2021, and he denied involvement in the deaths and stated he had been staying at Barabara Riaz's house for the last few days. Appellant suggested a man named Timothy Geter might be responsible. R. 178, l. 4 – 185, l. 11; R. 246, l. 7 – 253, l. 22. However, as the investigation continued, authorities developed Appellant as the murder suspect based on DNA on a bloody baseball bat, and after viewing video surveillance footage from Jackson Electric and the Spartanburg County E.M.S., which were nearby. R. 105, l. 18 – 108, l. 17; R. 169, l. 4 – 174, l. 4; R. 309, l. 5 – 310, l. 4; R. 310, l. 20 – 316, l. 13.

At approximately 6:30 on the morning of July 6, 2021, an employee of Bobby Jackson's found a visibly bloody baseball bat by the dumpster at Jackson Electric. The next day, Jackson told his daughter about the bat, and she called the police. R. 104, l. 24 – 108, l. 15; R. 109, l. 24 – 112, l. 22. A patrolman came and picked up the bat on July 7, 2021, and left it outside the evidence room at the Spartanburg Police Department. Two police officers, including the patrolman and Officer Ed Guthro, mistakenly touched the bat, not knowing its significance. The next day, the bodies were found. R. 114, l. 12 – 118, l. 1; R. 200, l. 18 – 201, l. 24.

An expert in DNA analysis testified DNA located at the top of the bloody bat was likely Glenn's: the DNA "profile is approximately 56 septillion times more likely if Ronald Glenn contributed to the profile than if an unidentified, unrelated individual contributed to the profile." R. 309, l. 5 – 310, l. 4. She also testified the DNA on the handle of the bat was a mixture of four

individuals, which may have included Ed Guthro and Appellant, and may have included Ed Guthro and Glenn. This testimony was complicated, but it supported the State's theory Appellant touched the baseball bat.[1] R. 302, ll. 15-19; R. 310, l. 20 – 316, l. 13.

On July 30, 2021, Appellant was at work when he was arrested for the murders of Glenn and Booker. He was taken to headquarters and interrogated by two detectives, Chindar Ryant and William Reece, for approximately two and a half hours. He was given *Miranda* warnings[2] and signed a waiver of rights. *See* State's Exhibit #14. Appellant was given a bottle of water and his handcuffs were removed for most of the interrogation, although he was shackled at the legs throughout the interrogation. Approximately an hour and a half into the interrogation, Investigator Reece told Appellant the following:

> We ain't judging nobody here man, that is not what we do, that ain't why we're here. **We're just here to** get to the bottom of what the heck's going on, dude. And at the same time, **help the man that's sitting in front of me cuz I'm gonna tell you right now**, **we the only ones that can help you right now**, **we really are**.

See State's Exhibit #11 at time mark 14:00:24. Appellant maintained his innocence during most of the questioning. However, at approximately the 14:45:00 time mark, Appellant was re-shackled in handcuffs. After Appellant was handcuffed, Investigator Reece stated to Appellant,

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1 The testimony included the following. The DNA "profile is approximately 1.5 quadrillion times more likely if Ed Guthro, Marcus Batson and two unidentified, unrelated individuals contributed to the mixture than if Ed Guthro and three unidentified, unrelated individuals contributed to the mixture." "It's very strong support that [Appellant] is included as a contributor." The DNA "profile is approximately 49 million times more likely of Ed Guthro, Ronald Glenn and two unidentified, unrelated individuals contributed to the mixture than if Ed Guthro and three unidentified, unrelated individuals contributed to the mixture." R. 310, l. 20 – 316, l. 13.

2 *Miranda v. Arizona*, 384 U.S. 436 (1966).

"Since you ain't got no remorse, *good luck to you* . . . If I was sitting where you are, this is the only time I can help myself. It really is, Mark. This is the only time." State's Exhibit #11 at time mark 14:46:28 – 14:47:04.

At that point, Appellant began to cry. Less than a minute later, at approximately 14:47:57, Appellant stated he was tired of being raped. The interrogation continued for roughly another twenty minutes. During that time, Appellant was crying and he confessed to killing Glenn and Booker. Appellant stated he killed the men because they had been raping him for two weeks while he was intoxicated or asleep. Appellant stated he had nowhere else to go. The night of their deaths, Appellant explained he was drunk and "messed up on pills" when he awoke to Glenn and Booker sexually assaulting him, orally and anally. Appellant stated he was penetrated orally by both men and hit in the face by Glenn. He stated Glenn was trying to penetrate him anally. He stated Booker stopped and went to bed. Appellant explained he hit Glenn several times with the baseball bat to try to get him to stop, and that he hit Booker once or twice after Booker had gone back to his room.[3] *See* State's Exhibit #11.

Appellant moved to exclude the statement at a pretrial *Jackson v. Denno* hearing.[4] R. 32, ll. 8-11; R. 55, l. 8 – 78, l. 19; R. 79, l. 14 – 80, l. 8; R. 81, l. 18 – 83, l. 5; R. 83, l. 17 – 84, l. 7; R. 85, l. 5-19. Both Investigators Ryant and Reece claimed Appellant was not made any promises. R. 63, l. 25 – 64, l. 7; R. 70, ll. 7-11. Defense counsel argued the statements should be excluded as involuntary based on the circumstances, which included, inter alia, Appellant being fully shacked when he confessed, and based on the promises made by law enforcement.

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[3] Troublingly, statements that Appellant had served time in prison, for robbery, are contained in the interview. However, defense counsel did not object to their inclusion or request their redaction.

[4] *Jackson v. Denno*, 378 U.S. 368 (1964).

> It was a long interview. He was never offered a chance to go to the bathroom; he was never offered anything to eat. There were never any breaks during the interview.
>
> It was a two-and-a-half-hour interview. **First two hours of that interview**, **he did not make any incriminating statements or give a confession**. **It was not until he was shackled that he did**. **The argument**, **the circumstances surrounding the interview**, **the length as well as promises the officers made**, **as well as being shackled two hours into it**, **would deem any confession involuntary**.
>
> It would be our position that **he was** . . . **essentially broken down** by the length of the interviewing and questioning . . . **the statement should not be considered voluntary** for purposes of trial.

R. 79, l. 16 – 80, l. 7. Counsel further argued Appellant only confessed to killing the men after he had been "shackled. And at that point, that's when he—things changed. He becomes very emotional, and its just due to all of the surrounding, certainly totality of the circumstances, that led Mr. Batson probably to feel that, you know—he got very under duress . . . I believe what may have started out as a voluntary interview became involuntary due to the circumstances surrounding it." R. 83, l. 17 – 84, l. 7.

The solicitor argued Appellant was provided *Miranda* warnings, and did not invoke his rights.

> They think that the interview or interrogation is about to be over at which point he re-engages and wishes to speak to them . . . He was in shackles, but just because he was in shackles does not mean that anything he says when he's in handcuffs or shackles can never be used.
>
> He was given his rights. He understood his rights. He did not invoke them, and he continued to speak; and therefore we believe that the interrogation was voluntary, the statements were voluntary, and that they complied with *Jackson vs. Denno* and they should be admitted as freely and voluntarily given by Mr. Batson.

R. 82, l. 16 – 83, l. 5.

The trial court took the matter under advisement and stated it would watch the footage from the interview. The court ultimately found the statement was voluntarily made. It ruled:

> The defendant was in custody, but he was properly advised of his *Miranda* rights. It appeared to me that he was making those statements completely of his own free will and accord. He was not placed upon any pressure; **he was not offered anything, not promised anything, not coerced in any way**; **and therefore the statement** . . . **is admissible, it having been freely and voluntarily made** after having been properly advised as to his *Miranda* warnings.

R. 86, ll. 11-20 (emphasis added). The statement was subsequently admitted into evidence.

Other notable evidence in the case included the following. Appellant was thirty-two years old. *See* State's Exhibit #14; State's Exhibit #11. Booker was fifty-six years old and Glenn was seventy-three years old. R. 273, ll. 10-19. Sexual assault kits were taken from the bodies of Booker and Glenn; this included oral, anal, and penile swabs. R. 277, l. 2 – 279, l. 3. No foreign DNA was present in the sexual assault kits, only each man's own DNA, except that the DNA evidence provided "very strong support" that Glenn likely had Appellant's DNA under his fingernails. "[T]he DNA profile is approximately 40 quintillion times more likely if Ronald Glenn and Marcus Batson contributed to the mixture than if Ronald Glenn and an unidentified, unrelated individual contributed to the mixture." R. 318, l. 19 – 325, l. 22. Booker's estranged wife claimed that Booker was not homosexual, and she stated that he took a number of medications and was impotent. R. 143, ll. 4-22; R. 147, ll. 14-15.

As seen, Appellant was convicted and sentenced to life without parole for each offense.

Discussion

"There are two constitutional bases requiring any confessions admitted into evidence to be voluntary: the Due Process Clause of the Fourteenth Amendment and the Fifth Amendment right against self-incrimination." *State v. Miller*, 441 S.C. 106, 120, 893 S.E.2d 306, 313 (2023) (citing *Dickerson v. United States*, 530 U.S. 428, 433 (2000)). The Fifth Amendment requirement of *Miranda* warnings does not dispense with the voluntariness inquiry. *Dickerson*, 530 U.S. at 444. "[C]ertain interrogation techniques, either in isolation, or as applied to the

unique characteristics of a particular suspect, are so offensive to a civilized system of justice that they must be condemned under the Due Process Clause of the Fourteenth Amendment." *State v. Miller*, 441 S.C. at 120, 893 S.E.2d at 313 (quoting *Miller v. Fenton*, 474 U.S. 104, 109 (1985)). It is "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." *Jackson v. Denno*, 378 U.S. at 385 (citing *Rogers v. Richmond*, 365 U.S. 534 (1961)).

Pursuant to *Jackson v. Denno*, a defendant is entitled to a reliable determination as to the voluntariness of his confession by a tribunal other than the jury charged with deciding his guilt or innocence. *State v. Collins*, Op. No. 28197 (S.C. Sup. Ct. filed Apr. 3, 2024) (Howard Adv. Sh. No. 13 at 11). "In South Carolina, the trial judge makes this initial determination of voluntariness required by *Jackson v. Denno*." *Id.* (citing *State v. Fortner*, 266 S.C. 223, 226–27, 222 S.E.2d 508, 510 (1976)).

The standard for determining the voluntariness of a confession is whether, under the totality of the circumstances, the confession is the product of an essentially free and unconstrained choice by its maker or whether his free will has been overborne and his capacity for self-determination critically impaired. *Schneckloth v. Bustamonte*, 412 U.S. 218, 225-26 (1973). "If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). "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. *Miller*, 441 S.C. at 120, 893 S.E.2d at 313–14 (citing *Schneckloth v. Bustamonte*, *supra*).

A totality of the circumstances inquiry may include consideration of the physical condition of the accused and the location of the interrogation. *E.g.*, *State v. Miller*, 441 S.C. at 121, 893 S.E.2d at 314. Appropriate factors that may be considered in a totality of the circumstances analysis include: "background; experience; conduct of the accused; age; maturity; physical condition and mental health; *length of custody or detention*; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; *threats of violence*; *direct or indirect promises, however slight*; lack of education or low intelligence; *repeated and prolonged nature of the questioning*; exertion of improper influence; and the use of physical punishment, such as the *deprivation of food* or sleep." *State v. Moses*, 390 S.C. 502, 513–14, 702 S.E.2d 395, 401 (Ct. App. 2010) (emphasis added).

Coercive police activity is necessary predicate to finding confession is not voluntary within the meaning of the Due Process Clause. *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). "Coercion is determined from the perspective of the suspect." *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (citation omitted). *See State v. Collins*, Op. No. 28197 (S.C. Sup. Ct. filed Apr. 3, 2024) (Howard Adv. Sh. No. 13 at 11) ("false assurance of confidentiality from law enforcement is inherently coercive because it interferes with a layperson's ability to make a fully informed decision whether to engage in an interview under such circumstances").

Law enforcement may not make implied or express promises to a suspect which extract a confession. *See Malloy v. Hogan*, 378 U.S. 1, 7 (1964) (when government obtains a confession, it "must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence") (cleaned up); *State v.*

Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (same). However, a "statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (citing *State v. Peake*, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987)). *Cf. State v. Miller*, 375 S.C. 370, 387, 652 S.E.2d 444, 453 (Ct. App. 2007) ("Miller's statements were made in the 'hope' of leniency rather than as a consequence of a 'promise.'").

"The State bears the burden of proving by a preponderance of the evidence that a statement allegedly given by an accused was voluntary and that the accused voluntarily, knowingly, and intelligently waived his rights to silence and to have counsel present during interrogation." *State v. Henderson*, 286 S.C. 465, 470, 334 S.E.2d 519, 522 (Ct. App. 1985) (citations omitted). A "waiver must be voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception, and made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Berghuis v. Thompkins*, 560 U.S. at 382–83 (cleaned up). "[W]aivers of counsel must not only be voluntary, but must also constitute a knowing and intelligent relinquishment or abandonment of a known right or privilege, a matter which depends in each case upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused." *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (cleaned up).

As seen, Investigator Reece told Appellant: "We ain't judging nobody here man . . . We're just here to get to the bottom of what the heck's going on, dude. And at the same time, *help the man* that's sitting in front of me cuz I'm gonna tell you right now, *we the only ones that can help you right now*, we really are." State's Exhibit #11 at time mark 14:00:24. After Appellant was handcuffed, Investigator Reece stated to Appellant, "Since you ain't got no

remorse, *good luck to you . . . If I was sitting where you are, this is the only time I can help myself*. It really is, Mark. This is the only time." State's Exhibit #11 at time mark 14:46:28 – 14:47:04. These were implied promises of help by law enforcement. The promises were, when seen from the viewpoint of Appellant, coercive circumstances. See *State v. Collins*, Op. No. 28197 (S.C. Sup. Ct. filed Apr. 3, 2024) (Howard Adv. Sh. No. 13 at 11) ("false assurance of confidentiality from law enforcement is inherently coercive because it interferes with a layperson's ability to make a fully informed decision whether to engage in an interview under such circumstances"). These promises interfered with Appellant's ability to make an informed decision about whether to assert his rights, and they induced his confession. Investigator Reese implied three times he would "help" Appellant if Appellant confessed.

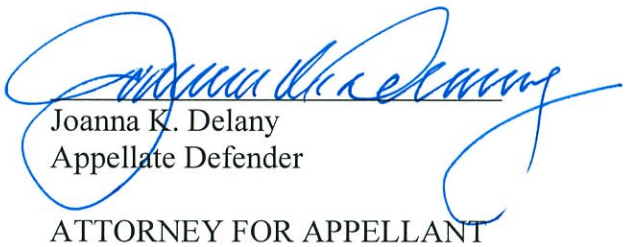
The shackling, lack of breaks, such as a bathroom break, or food, as noted by counsel, also contributed to Appellant's will being overborne. Also problematic was Reece's implied threat to Appellant" "good luck to you" if Appellant did not confess to get law enforcement's "help." Immediately after that threat by Reece, Appellant began to cry and confessed. Appellant was either yelling or crying throughout long portions of the interrogation. He was offered no chance to compose himself or have respite in which to consider the wisdom of whether he should assert his rights. Appellant did not confess until he had been re-shackled and Investigator Reece again implied law enforcement would help Appellant if he confessed. State's Exhibit #11 at time mark 14:46:28 – 14:47:04. Appellant's will was overborne.

His waivers of counsel and silence were the product of coercion and deception. *Berghuis v. Thompkins*, 560 U.S. at 382–83. The State did not prove by a preponderance of evidence that Appellant's waivers were the product of a free and voluntary choice, and the confession should

have been excluded. U.S. Const. amend. XIV; U.S. Const. amend. V; *Jackson v. Denno*, 378 U.S. at 385; *State v. Saltz*, 346 S.C. at 136, 551 S.E.2d at 252.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.



Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of January, 2025.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final 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."

January 17, 2025.

Joanna K. Delany
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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THE STATE,

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MARCUS DANTA BATSON,

APPELLANT

APPELLATE CASE NO. 2023-001593

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Final Brief of Appellant in the above-referenced case has been served upon R. Brandon Larrabee, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 17th day of January, 2025.

Joanna K. Delany
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

From:	Mcinnis, Sara
To:	Brandon Larrabee
Cc:	Donna D"Alessio; Delany, Joanna
Subject:	2023-001593 The State v. Marcus D. Batson Final Brief of Appellant
Date:	Friday, January 17, 2025 9:33:00 AM
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Good Morning Mr. Larrabee,

Attached for service in the above-referenced case is the Final Brief of Appellant, which will be filed with the Court of Appeals today, January 17, 2025, via email filing.

Thank you,

Sara McInnis
Administrative Assistant
South Carolina Commission on Indigent Defense
Appellate Division
(803) 734-1330