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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of General Sessions

Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2024-000112

THE STATE,

Respondent,

v.

TYQUAN JAMAR JOHNSON,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Issue Statement

The trial judge erred in allowing appellant's confession into evidence at trial because it was given involuntarily as appellant was coerced into an admission of guilt due to improper police tactics used during the custodial interrogation that followed a search of his residence.

Respondent's Counterstatement

Whether the trial court properly allowed Appellant's voluntarily given confession into evidence.

STATEMENT OF THE CASE

In March 2023, a Florence County grand jury indicted Appellant for trafficking methamphetamine, 200 to 400 grams; possession of a stolen pistol; and possession of a weapon during the commission of a violent crime. (Tr. 10; Indictment 2023-GS-21-00379). In July 2023, a Florence County grand jury further indicted Appellant for trafficking methamphetamine in an amount of 400 grams or more. (Indictment 2023-GS-21-01976). Before trial, the State indicated that it did not intend to proceed on the indictment for trafficking methamphetamine, 200 to 400 grams. (Tr. 10). On January 8 and 10-12, 2024, Appellant proceeded to a jury trial before the Honorable Michael G. Nettles. (Tr. 1).

Before trial, the trial court conducted a *Jackson v. Denno*¹ hearing to determine the admissibility of Appellant's confession to law enforcement. (Tr. 52). Kevin Buxton, an officer with the City of Florence Police Department, testified that on May 4, 2022, he was the case agent for a search warrant that was executed on Appellant's residence. (Tr. 54). Law enforcement found several people at the residence and subsequently detained three people: Appellant, Harvey Allen, and Lorenzo Johnson. (Tr. 54-55). Officer Buxton confirmed that on the day of the incident, he wore a body-worn camera, the footage from which was before the trial court. (Tr. 55-56; State's Ex. 15).

Officer Buxton read *Miranda*² rights to all three men on the front porch of Appellant's residence before asking them questions. (Tr. 56). Appellant indicated that he understood his rights before directing law enforcement to a quantity of methamphetamine. (Tr. 57). Officer Buxton confirmed that law enforcement did not promise leniency, withhold water, withhold use of a

¹ 378 U.S. 368 (1964).

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

restroom, or otherwise attempt to overcome Appellant's will to force him to speak. (Tr. 57). Appellant's mother and wife, along with two children, were also at the residence and read *Miranda* rights by law enforcement. (Tr. 58).

Officer Buxton testified that he told everyone at the residence that if no one admitted to ownership of the drugs, then everyone present could be charged. (Tr. 59). According to Officer Buxton, he provides this information for every search warrant he executes because he does not want to put innocent people in jail for something that does not belong to them. (Tr. 59). After Officer Buxton told everyone that if no one claimed the drugs then everyone would be going to jail, Appellant claimed the drugs. (Tr. 59). Appellant also told Officer Buxton the location of at least one gun, some pills, and some marijuana. (Tr. 60-61). Officer Buxton did not consider it intimidation to inform everyone present that they could be arrested and charged if no one claimed the drugs. (Tr. 61).

Kendrick Spears, an officer with the City of Florence Police Department, testified that he was present for the execution of the search warrant. (Tr. 62-63). He wore a body-worn camera that day, the footage from which was before the trial court. (Tr. 63-64; State's Ex. 16). Officer Spears spoke to Appellant after Officer Buxton read *Miranda* warnings to Appellant. (Tr. 63). Appellant directed law enforcement to a trashcan³ outside the residence where Officer Buxton found a quantity of methamphetamine. (Tr. 64). Officer Spears believed Appellant understood that everyone at the residence could be arrested and charged with possession of the drugs if no one at the residence claimed them. (Tr. 65). Officer Spears reiterated that everyone present at the residence had *Miranda* rights read to them before law enforcement questioned them. (Tr. 66).

³ At trial, Officer Buxton described the trashcan as a standard green residential rolling trashcan. (Tr. 181).

Regarding the admissibility of his confession to law enforcement that he owned the guns and drugs, Appellant argued that law enforcement subjected him to coercion and duress. (Tr. 67). He believed that law enforcement stating that his mother and wife would be arrested if someone present at the residence did not claim ownership of the drugs amounted to duress because he wanted to keep his mother and wife "out of harm's way." (Tr. 67). He asserted that he made the decision to claim the drugs under duress and under "some kind of compulsion" to prevent his mother and wife from being charged. (Tr. 68).

The trial court noted that the question was whether Appellant's will was overborne by the activity of law enforcement. (Tr. 68). The trial court ruled that it was not. (Tr. 68). In its ruling, the trial court noted that it watched Officer Buxton's and Officer Spears' body-worn camera footage. (Tr. 68). The trial court stated that after watching the videos, "it's clear that there was no abusive conduct and, essentially, [Officer Buxton] . . . was stating what the law is" regarding constructive possession. (Tr. 68). The trial court determined that law enforcement attempted to be fair based on the testimony that law enforcement would arrest everyone if the owner of the drugs did not claim them. (Tr. 68-69). The trial court found that law enforcement's behavior was not coercive, that law enforcement did not threaten Appellant, that law enforcement did not withhold food or water, and that law enforcement did not tell Appellant that they would punish him in any particular way. (Tr. 68-69). The trial court determined that Appellant's statement was voluntary and given pursuant to *Miranda*. (Tr. 69). The trial court noted that Appellant was protected "in all respects" regarding his objection to the admissibility of his confession. (Tr. 69).

At trial, Cody Jordan, a lieutenant with the City of Florence Police Department, testified that he assisted in the execution of the search warrant on Appellant's residence. (Tr. 102-03). As he approached the residence, Lieutenant Jordan observed two individuals near the residence run

toward the residence's backyard while reaching into their clothes and throwing items toward the residence. (Tr. 105-06). The items were subsequently recovered and included guns and a sausage. (Tr. 106).

Shannon McKenzie, an officer with the City of Florence Police Department, testified that she assisted with the execution of the search warrant. (Tr. 121-22). She recovered the items the two men threw when they ran away. (Tr. 124). The items included: (1) a Glock .40 caliber gun found in the backyard; (2) a .22 caliber revolver found next to the residence; and (3) a Ruger found on the roof of Appellant's residence. (Tr. 124). Officer McKenzie testified that the Glock had been reported stolen. (Tr. 137).

Officer Buxton testified that once the scene was secured, he and his team came in, read out the search warrant, read *Miranda* rights to everyone present, and proceeded to collect evidence and question the individuals present at Appellant's residence. (Tr. 149). He testified that he met with Appellant while wearing a body-worn camera, that he read *Miranda* rights to Appellant, and that Appellant indicated he understood those rights. (Tr. 149-50). Part of his body-worn camera footage was played for the jury. (Tr. 151; State's Ex. 15). Officer Buxton stated that he searched a trash receptacle and found methamphetamine tablets. (Tr. 153). He also searched a car and found a handgun along with Appellant's state-issued identification card. (Tr. 154-55). Officer Buxton testified that the tablets he found subsequently tested positive for methamphetamine. (Tr. 158). According to Officer Buxton, Appellant claimed both the Glock and the .22 caliber revolver, which Appellant admitted to throwing when he ran away. (Tr. 164).

Officer Buxton testified that after Appellant received his *Miranda* rights, Appellant stated everything illegal that law enforcement found belonged to him. (Tr. 165). Officer Buxton told Appellant that to claim anything found, he needed to specifically state what he was claiming. (Tr.

165). After that, Appellant claimed two guns, some marijuana, and the methamphetamine pills in the trashcan. (Tr. 165).

Officer Buxton testified that Officer Spears may have been the officer to inform everyone at the residence that if no one claimed ownership, then everyone could be charged. (Tr. 169). Officer Buxton stated that based on constructive possession, Officer Spears' statement was correct and that he viewed informing everyone of constructive possession as a courtesy. (Tr. 169). He denied that law enforcement said everyone would go to jail; rather, he stated that everyone was informed that they could be charged. (Tr. 170).

Officer Buxton testified that Appellant did not claim everything that law enforcement found, but Appellant did claim "a good portion of it." (Tr. 171). Appellant initially claimed the pills in the trashcan were ecstasy. (Tr. 172). Officer Buxton stated that in his experience, ecstasy pills or "X pills" are street terms for methamphetamine pills. (Tr. 172). Appellant told law enforcement where the pills were located and there was no indication that the pills were in the trashcan until Appellant told them the pills were there. (Tr. 181). The pills were in two individual bags inside another white bag, which was inside a dog food bag. (Tr. 181).

Officer Spears testified that he spoke to Appellant while wearing a body-worn camera. (Tr. 196). A portion of his body-worn camera footage was played for the jury. (Tr. 197-98; State's Ex. 16). Before he spoke to Appellant, he confirmed with Officer Buxton that Appellant had been read *Miranda* rights. (Tr. 197). When he approached Appellant after talking to Officer Buxton, Appellant stated that he had marijuana in his pocket and "was claiming other things on the property." (Tr. 197). He found a magazine drum for a handgun and some .22 caliber bullets in Appellant's bedroom. (Tr. 200).

Officer Spears testified that Appellant did not mention ownership of the guns or drugs until after he had been read *Miranda* rights. (Tr. 213). He confirmed that Appellant claimed ownership after everyone at the residence was informed that could all be taken to jail if no one claimed ownership. (Tr. 213). Officer Spears also confirmed that Appellant's mother and wife were present and detained along with everyone else present at the residence. (Tr. 213-14). He stated that it was not just that Appellant claimed the guns and drugs but also that Appellant directed law enforcement to where the drugs were hidden. (Tr. 220). He confirmed that even with Appellant's admission of guilt, everyone in proximity of the drugs could still be charged. (Tr. 223). Officer Spears testified that Appellant referred to the pills as "X pills," which in Officer Spears' experience usually test positive for methamphetamine. (Tr. 224).

Officer Spears was qualified as an expert in the valuation of illicit drugs. (Tr. 207). He stated that 2000 methamphetamine pills would have a street value of between \$6,000 and \$10,000. (Tr. 208).

Willie Smith, a criminal analyst with the South Carolina Law Enforcement Division and an expert in chemical analysis, testified that the pills found in the trashcan tested positive for methamphetamine. (Tr. 265-66, 271). He stated that a total of 2,129 pills with a weight of 497 grams were recovered. (Tr. 273-74). Smith confirmed that methamphetamine and ecstasy are different drugs. (Tr. 275).

Appellant testified that on the day of the incident, he and his brother, Lorenzo, were going into the backyard to check on a litter of puppies. (Tr. 288). Appellant and his brother were talking to a neighbor, who wanted to buy one of the puppies. (Tr. 289). Appellant heard gunshots, saw law enforcement, and got on the ground. (Tr. 289). When law enforcement reached him, "[t]hey had guns in [his] face" and he "was scared to move." (Tr. 289). Appellant testified that he did not

have a gun on him that day and did not throw a gun anywhere. (Tr. 292). After law enforcement detained him, law enforcement asked him what was going on, why he did not go to work that day, and where the drugs were. (Tr. 293). He claimed to be focused on his mother and wife. (Tr. 293).

According to Appellant, when some of the officers talked about "locking everybody up," he was watching his mother and child because he did not want them to go to jail "for someone else's stuff." (Tr. 293-94). Appellant believed some of his neighbors were dealing ecstasy, which they stored in a trashcan. (Tr. 294). He stated he did not put the drugs in the trashcan, claiming his neighbors did. (Tr. 295).

Appellant confirmed that he understood the *Miranda* rights when law enforcement read the rights to him. (Tr. 295-96). After being read his rights, Appellant assumed that law enforcement was referring to his neighbors when they asked about the drugs. (Tr. 296). He told them about the pills in the trashcan because law enforcement said everyone could be locked up and he did not want his mother and wife to go to jail for something they did not do. (Tr. 296). Appellant believed the pills were ecstasy. (Tr. 296). According to Appellant, he knew what types of guns were found, despite his contention that he did not have any guns on him that day, because he overheard the types of guns mentioned on law enforcement's radios. (Tr. 297).

Appellant stated that the drugs found in the trashcan did not belong to him. (Tr. 299). He testified that he admitted to ownership of the drugs and guns "for the sole purpose of protecting [his] mother and [his] wife." (Tr. 301). Appellant confirmed that his dogs ate dog food and acknowledged that the drugs were found in a dog food bag. (Tr. 335).

The jury found Appellant guilty of trafficking methamphetamine, 400 grams or more, as well as of possession of a weapon during the commission of a violent crime. (Tr. 414). The jury found him not guilty of possession of a stolen pistol. (Tr. 414). The trial court sentenced Appellant

to twenty-five years' imprisonment for trafficking methamphetamine and a concurrent five years' imprisonment for possession of a weapon during the commission of a violent crime. (Tr. 421).

This appeal followed.

STANDARD OF REVIEW

Our Supreme Court has recently clarified the appellate standard of review when considering whether a defendant's statement to law enforcement was voluntarily made. *See generally State v. Collins*, 442 S.C. 444, 453, 900 S.E.2d 426, 431 (2024). "[T]he question of voluntariness presents a mixed question of law and fact." *Id.* (quoting *State v. Miller*, 441 S.C. 160, 119, 893 S.E.2d 306, 313 (2023)). Appellate courts "will review the trial court's factual findings regarding voluntariness for any evidentiary support." *Miller*, 441 S.C. at 119, 893 S.E.2d at 313. "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.*

ARGUMENT

I. The trial court properly allowed Appellant's voluntary confession into evidence because Appellant's will was not overborne and his capacity for self-determination was not critically impaired by law enforcement.

Generally, an exculpatory or inculpatory statement made during a custodial interrogation is inadmissible unless the person was advised of their rights under *Miranda* and voluntarily waived those rights. *State v. Reed*, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). If, as here, a defendant has been "advised of his *Miranda* rights, but nevertheless chose to make a statement, the burden is on the State to prove by a preponderance of the evidence that his rights were voluntarily waived." *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978)).

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. Fortner*, 266 S.C. 223, 226, 222 S.E.2d 508, 510 (1976). In South Carolina, the trial court makes this initial determination of voluntariness required by *Jackson v. Denno*. *Id.* at 226-27, 222 S.E.2d at 510.

"The trial [court's] determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused." *State v. Saltz*, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001); *see also State v. Moses*, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010) ("In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession.").

"If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process." *Saltz*, 346 S.C. at 136, 551 S.E.2d at 252

(citing *Schneckloth v. Bustamonte*, 412 U.S. 218, 225 (1973)). "Ultimately, the determination will depend 'upon a weighing of the circumstances of pressure against the power of resistance of the person confessing.'" *State v. Miller*, 441 S.C. 106, 120, 893 S.E.2d 306, 314 (2023) (quoting *Dickerson v. United States*, 530 U.S. 428, 434 (2000)). Our Supreme Court has noted that "[c]ourts may consider the impact of a number of factors" in assessing voluntariness. Some of these factors include "the accused's youth and maturity, lack of education, or low intelligence; the failure to advise the accused of his constitutional rights; the presence of a written waiver of rights; the physical condition and mental health of the accused; the circumstances of the interrogation, including its length, repeated nature, location, and continuity; the use of physical punishment; whether law enforcement offered specific promises of leniency (as opposed to general comments that cooperation would be beneficial); and whether law enforcement made intentional misrepresentations of the evidence against the accused." *State v. Collins*, 442 S.C. 444, 455-56, 900 S.E.2d 426, 432 (2024); *see also Miller*, 441 S.C. at 120–21, 893 S.E.2d at 314 (enumerating a nonexclusive list of factors).

"It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect." *State v. Parker*, 381 S.C. 68, 89, 671 S.E.2d 619, 630 (Ct. App. 2008) (citation omitted). "These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." *Id.*

"Certain 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." *Miller*, 441 S.C. at 120, 893 S.E.2d at 313 (quoting *Miller v. Fenton*, 474 U.S. 104, 109 (1985)). "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).

Here, Appellant contends that his statement claiming ownership of the methamphetamine found at his residence was involuntary because law enforcement threatened him by saying that his mother and wife could be arrested and charged with constructive possession of the methamphetamine if he did not confess to ownership of the drugs. That is incorrect.

After Officer Buxton read Appellant his *Miranda* rights and Appellant indicated he understood, Officer Buxton asked Appellant if he had anything illegal. (State's Ex. 15 at 17:26:20 to 17:28:10).⁴ Appellant immediately stated he had marijuana in one of his pockets and claimed a gun, without clarifying which gun. (State's Ex. 15 at 17:27:30 to 17:28:10). Shortly thereafter, Appellant claimed the Glock and the .22 revolver. (State's Ex. 15 at 17:30:30 to 17:30:59). Appellant also claimed everything illegal that law enforcement would find at the residence, without specifically stating what illegal items were at the residence. (State's Ex. 15 at 17:31:00 to 17:31:59).

After law enforcement told Appellant that he needed to be specific in what he was claiming and that he could not blanket claim all illegal items at the residence, Officer Buxton stated that everyone present at the residence could be charged for possession of anything illegal that was discovered. (State's Ex. 15 at 17:31:29 to 17:31:35; State's Ex. 16 at 18:28:30 to 18:28:40). Officer Spears stated that if law enforcement found illegal items and no one present claimed those items, everyone present was "gonna go for it." (State's Ex. 16 at 18:29:10 to 18:29:20). Appellant stated he had some pills in one of the green outside residential trashcans. (State's Ex. 16 at 18:29:20 to

⁴ Time stamp citations to both State's Ex. 15 (Buxton's Body-Worn Camera Footage) and State's Ex. 16 (Spears Body-Worn Camera Footage) are to the time stamp in the video. The time stamps do not correspond between the two exhibits.

18:29:35). Appellant directed law enforcement to the specific trashcan shortly thereafter. (State's Ex. 16 at 18:29:35 to 18:30:59).

Officer Buxton and Officer Spears' statements did not constitute threats. *See Threat*, Black's Law Dictionary (12th ed. 2024) (defining threat as a "communicated intent to inflict harm or loss on another or on another's property, esp. one that might diminish a person's freedom to act voluntarily or with lawful consent; a declaration, express or implied, of an intent to inflict loss or pain on another"). Merely informing Appellant and the others present at the residence about constructive possession and correctly stating that everyone present—each of whom had the right to exercise dominion and control over any illegal items found at the residence—could be charged with possession of any illegal items discovered at the residence was not a communicated intent to inflict harm, loss, or pain on another. *See State v. Jackson*, 395 S.C. 250, 255, 717 S.E.2d 609, 611 (Ct. App. 2011) ("To prove constructive possession, the State must show a defendant had dominion and control, or the right to exercise dominion and control, over the [drugs]." (quoting *State v. Hudson*, 277 S.C. 200, 202, 284 S.E.2d 773, 774-75 (1981))).

While law enforcement may mislead a suspect about the facts in an investigation, our Supreme Court has specifically held that if law enforcement intentionally misrepresents *the law*, then that intentional misrepresentation of the law violates due process. *See Collins*, 422 S.C. at 454-55, 900 S.E.2d at 432. Here, the opposite occurred. Law enforcement made a correct representation of the law regarding constructive possession, especially considering everyone present on the day of the incident—except for possibly Harvey Allen, who is not the subject of this appeal—was a resident of the residence or otherwise had the right to exercise dominion and control over any illegal substance found at the residence. *See United States v. Braxton*, 112 F.3d 777, 782 (4th Cir. 1997) ("[A] law enforcement officer may properly tell the truth to the accused. Indeed,

truthful statements about the defendant's predicament are not the type of coercion that threatens to render a statement involuntary."); *see also Armstead v. State*, 978 So.2d 642, 648 (Miss. 2008) ("Threats to arrest a defendant's family member(s) do not render a confession involuntary so long as probable cause exists to arrest such person.").

Moreover, Officer Buxton and Officer Spears' statements did nothing to induce Appellant's confession. As seen in both body-worn camera footages, Appellant attempted to claim anything illegal found at the residence *before* law enforcement made any statement that everyone present could be charged for any drugs subsequently found if no one claimed them. Therefore, law enforcement's statements and Appellant's confession of ownership of the methamphetamine resulted from Appellant's own balancing of competing considerations and can be viewed as a clarification as to which illegal items Appellant was claiming ownership. *See Parker*, 381 S.C. at 89, 671 S.E.2d at 630 ("Few criminals feel impelled to confess to the police purely of their own accord without any questioning at all. . . . Thus, it can almost always be said that the interrogation caused the confusion. . . . It is generally recognized that the police may use some psychological tactics in eliciting a statement from a suspect. . . . These ploys may play a part in the suspect's decision to confess, but so long as that decision is a product of the suspect's own balancing of competing considerations, the confession is voluntary." (quoting *State v. Von Dohlen*, 322 S.C. 234, 244, 471 S.E.2d 689, 695 (1996))).

The record supports a finding that Appellant was not worn down by improper interrogation tactics such as lengthy questioning, trickery, or deceit. Appellant was not threatened or coerced into claiming ownership of the drugs and guns found at his residence. He was not denied food or water. He was not beaten. Appellant claimed ownership of the drugs and guns approximately seven minutes after receiving *Miranda* warnings and was either seated or standing on his front

porch while handcuffed during those entire seven minutes. (State's Ex. 15 at 17:25:00 to 17:35:00; State's Ex. 16 at 18:28:00 to 18:32:00). Appellant's reasons for directing law enforcement to and claiming the drugs and guns, however noble or ignoble those intentions may have been, were solely the result of Appellant balancing competing considerations and taking responsibility for his own actions. Therefore, based on the totality of the circumstances as contained in the record, Appellant's statement to law enforcement claiming ownership of the methamphetamine was voluntary.

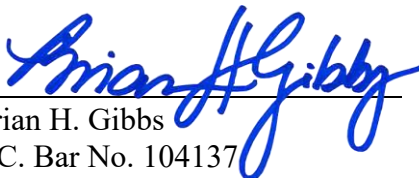
CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's convictions for trafficking methamphetamine and possession of a weapon during the commission of a violent crime, as well as his associated sentences.

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