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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Court of General Sessions

The Honorable Daniel D. Hall, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ISRAEL MENDOZA CERVANTES,

APPELLANT.

Op. No. 2025-UP-423

APPELLATE CASE NO. 2022-001214

PETITION FOR REHEARING

On December 23, 2025, this Court issued an unpublished opinion affirming Appellant Israel Mendoza Cervantes' convictions for trafficking heroin, twenty-eight grams or more; possession with intent to distribute cocaine; and possession of a weapon during the commission of a violent crime. Pursuant to Rules 221 and 240, SCACR, Cervantes respectfully submits that this Court may have overlooked or misapprehended several material points of law and fact and therefore petitions for rehearing.

I. The record does not support that, under a totality of the circumstances analysis, Cervantes' statement to law enforcement was voluntarily given.

This Court concluded that "the trial court did not err in denying Cervantes' motion to suppress his statement to law enforcement . . . based on [the trial court's] findings of facts and under the totality of the circumstances."

In its opinion, this Court correctly recognized that the trial court's factual findings had evidentiary support. See State v. Miller, 441 S.C. 106, 119, 893 S.E.2d 306, 313 (2023). ("[Appellate courts] review 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.") The record reflects that the officers testified Cervantes was advised of his *Miranda* rights, was not threatened, and was questioned for approximately ten to fifteen minutes.

Respectfully, however, in conducting its totality of the circumstances analysis, the Court did not address an undisputed and significant fact: a juvenile was handcuffed in Cervantes' presence. Regardless of the duration, the presence of a handcuffed juvenile materially alters the coercive environment and bears directly on voluntariness.

South Carolina law makes clear that a statement may be rendered involuntary by improper influence, including implied coercion. See State v. Rochester, 301 S.C. 196, 200, 391 S.E2d 244, 247 (1990). ("[A] confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence.") The act of restraining a juvenile in handcuffs reasonably conveys the imminent threat of incarceration and may exert substantial psychological pressure on an adult witness or suspect. Cf. State v. McClure, 312 S.C. 369, 371, 440 S.E.2d 404, 405 (Ct. App.

1994)(recognizing that threats involving the arrest of family members may render a confession involuntary).

When this undisputed circumstance is incorporated into the totality of the circumstances analysis, it makes it clear that Cervantes' statement was involuntary. Accordingly, the trial court's denial of Cervantes's motion to suppress constituted legal error.

II. The solicitor's repeated direct and indirect references to the "hand of one is the hand of all" doctrine denied Cervantes of due process.

This Court determined that the trial court did not abuse its discretion in denying Cervantes' motion for a mistrial based on the State's reference to the "hand of one is the hand of all" doctrine, reasoning that the solicitor made only a single explicit reference, that any error was cured by the jury charge, and that the evidence of guilt was overwhelming.

Respectfully, this analysis overlooks the cumulative effect of the solicitor's closing argument. Although the doctrine was expressly referenced once, the solicitor repeatedly and indirectly invoked the same theory throughout her argument by consistently linking Cervantes with Ibarra, referring to them collectively as "Ace and Migo," and characterizing them as "working hand in hand together." These repeated associations effectively conveyed accomplice liability despite not directly naming the doctrine itself.

South Carolina courts assess the range and propriety of closing arguments by assessing whether the comments "so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Goodwin, 384 S.C. 588, 605, 683 S.E.2d 500, 509 (Ct. App. 2009). Here, the persistent emphasis on collective culpability created precisely that risk. The impropriety was not isolated but pervasive. See State v. McDaniel, 320 S.C. 33, 462 S.E.2d 882 (Ct. App. 1995) (finding reversible error where repeated rhetorical devices cumulatively deprived the defendant of a fair trial).

Additionally, although the trial court instructed the jury that closing arguments are not evidence and that it must apply the law as charged, this Court has recognized that the presumption juries will invariably follow such instructions is not absolute. See State v. Sweet, 342 S.C. 342, 536 S.E.2d 91 (Ct. App. 2000)(holding that a general jury instruction did not cure the solicitor's improper comments on the defendant's failure to testify during closing argument). While the record contains no indication that a juror expressly disregarded the trial court's instructions, the repeated and deliberate linkage of Cervantes and Ibarra throughout closing argument created a substantial risk that the jury implicitly absorbed the substance of the "hand of one is the hand of all" doctrine.

Finally, the presence of strong evidence of guilt does not preclude a finding that a mistrial is warranted where an improper closing undermines the fairness of the proceedings. State v. Liberte, 336 S.C. 648, 521 S.E.2d 744 (Ct. App. 1999) (ordering reversal despite strong evidence of guilt).

Therefore, given the cumulative and repetitive nature of the solicitor's argument, the denial of a mistrial deprived Cervantes of due process.

CONCLUSION

For the foregoing reasons, together with the arguments raised in Appellant's Final Brief, Appellant Israel Mendoza Cervantes respectfully requests that this Court rehear this matter, vacate its previous opinion, and remand this matter for a new trial with instructions Cervantes' statement to law enforcement be suppressed.

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PROOF OF SERVICE

Pursuant to Rule 262, SCACR, and S.C. Sup. Ct. Order 2024-04-24-01, I certify that a copy of Appellant's Petition for Rehearing in this case has been served on the following individuals:

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I further certify that all parties required by Rule to be served have been served.

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