

ORIGINAL

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-GS-23-03835

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SC Court of Appeals

State of South Carolina,

Respondent,

v.

Bryan Keith Byrd,

Appellant.

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ABUSE ITS DISCRETION IN ADMITTING TESTIMONY REGARDING APPELLANT'S ALLEGED CONFESSION WHEN THE TESTIMONY OF ALL WITNESSES ESTABLISHED THAT THE ALLEGED STATEMENT WAS MADE AFTER APPELLANT WAS BEATEN IN THE HEAD WITH A TIRE IRON, WAS BLEEDING PROFUSELY FROM A LARGE WOUND TO HIS HEAD, AND WAS TWICE SHOT WITH A TASER DEVICE?

STATEMENT OF THE CASE

Appellant Bryan K. Byrd (Appellant) was charged with and tried for first-degree burglary. The State's case rested largely on circumstantial evidence, including an alleged confession made to one of the responding officers. After deliberation and an Allen charge, the jury found Appellant guilty of first-degree burglary. Appellant now appeals his conviction based on the trial court's failure to exclude evidence of his alleged confession, as such confession did not meet the standard of Jackson v. Denno, 378 U.S. 368 (1964).

FACTS

On April 16, 2011, Officer James Metcalf arrived at a Spartanburg home in response to a 911 call. (Transcript p. 197, ll. 16-19). He was met outside the residence by Berry Butler, the owner of the home, who explained that an individual had broken in through the back door, that Mr. Butler and his friend had "beat him up," and that the individual was still in the house. (Trans. p. 198, ll. 23-25; p. 199, ll. 10-14). When the officer entered the residence, he saw the Appellant lying face down in a pool of blood near the kitchen area. (Trans. p. 199, ll. 18-24; p. 203, ll. 13-15). Officer Metcalf noticed that the Appellant "was very bloody" and testified "[y]ou could definitely tell he had a large wound to his head. He was bleeding a lot." (Trans. p. 200, ll. 7-10). The officer saw a bloody tire iron near the Appellant. (Trans. p. 201, ll. 13-15; p.

202, ll. 3-8). Mr. Butler testified that he and his friend, James Rector, had beaten the Appellant in the head with the tire iron before the officer arrived. (Trans. p. 15, ll. 7-10).

Officer Metcalf instructed the Appellant to remain still, but recalled that Appellant “was not having any part of listening to me whatsoever.” (Trans. p. 25, ll. 11-20). When the Appellant attempted to rise, Officer Metcalf deployed his Taser and fired the device into Appellant’s chest. (Trans. p. 28, ll. 9-16). Appellant dropped to the ground for a moment, then pulled the Taser probes from his chest and attempted to rise again. (Trans. p. 206, ll. 5-12). Officer Metcalf then inserted another cartridge into his Taser and fired the device at Appellant again, hitting him in the same general area. (Trans. p. 206, ll. 13-23). The officer testified that with this second shot, Appellant “got the full tase” and stayed down. (Trans. p. 207, ll. 7-10).

Officer Metcalf stated that, after receiving the shock from the second Taser shot, Appellant made a statement:

In so many words, I’m not going to say I can remember exactly word-for-word. In so many words, it was to the effect of you already know why I’m here. Why you think I broke in this house? You know it’s a gambling house.

(Trans. p. 208, ll. 9-13).

Prior to trial, the court held a hearing pursuant to Jackson v. Denno, to determine the admissibility of the above statement. The State presented testimony from Mr. Butler, James Rector, and from Officer Metcalf. Appellant’s counsel presented Appellant’s testimony. Appellant testified that, when confronted by Officer Metcalf, he was on the floor. (Trans. p. 30-31, ll. 23-25, 1-2). Appellant recalled that he had lost consciousness at some point and was “semi-conscious” when the officer entered. (Trans. p. 31, ll. 5-9). He denied making any statements to the police, explaining that he was “in too much pain to be doing anything.” (Trans. p. 32, ll. 4-8).

The State argued that the statement should be admitted as a “spontaneous utterance” by the Appellant and noted that no questions were asked of the Appellant to elicit the alleged confession. (Trans. p. 33, ll. 12-14). Appellant’s counsel conceded that no questions were asked to elicit the statement, but argued that, given the circumstances, any statement would not have been freely and voluntarily made. (Trans. p. 34, ll. 4-6, 11-13). Counsel further explained:

[The Appellant] was on the ground with a gaping head wound, if not unconscious, was clearly, I would think, rattled at that point and had been hit with a [T]aser, not once, but twice. I would think that anything he would say at that point would be just inherently unreliable and, for that reason, would ask the Court not to allow this alleged statement into evidence.

(Trans. p. 34-35, ll. 21-25, 1-3).

The trial judge disagreed with Appellant’s counsel and allowed the statement, holding that “there was a voluntary statement and that it was a spontaneous utterance by the defendant and not elicited in any way by a government act or so.” (Trans. 35, ll. 4-11). Appellant now appeals the ruling of the trial court.

STANDARD OF REVIEW

The admission or exclusion of evidence is left to the discretion of the trial judge. See State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). A trial judge’s ruling regarding the admissibility of evidence must be reversed if the ruling is based on an abuse of discretion or commission of a legal error which results in prejudice to the defendant. See State v. Mansfield, 343 S.C. 66, 77, 538 S.E.2d 257, 263 (Ct. App. 2000). If the trial judge abused her discretion in ruling to allow the admission of evidence, reversal is appropriate if the error resulted in prejudice to the appellant. Id.

ARGUMENTS

THE TRIAL COURT ABUSED ITS DISCRETION IN ADMITTING TESTIMONY OF APPELLANT’S ALLEGED CONFESSION WHEN THE TOTALITY OF THE

CIRCUMSTANCES SHOWED THAT APPELLANT'S WILL WAS OVERBORNE AT THE TIME OF THE ALLEGED CONFESSION AND HIS STATEMENT WAS NOT VOLUNTARY.

Given the uncontroverted facts set forth in the Jackson v. Denno hearing, Appellant respectfully submits that the trial court's finding that Appellant's alleged confession was voluntarily made constitutes an abuse of discretion. Appellant was prejudiced by the admission of the confession as the State's case was largely based on circumstantial evidence, the jury required an Allen charge before delivering a verdict, and given the importance the jury placed on the officer's testimony.

A. Appellant's Alleged Confession was not Voluntary

An accused's confession is not admissible at trial for any purpose unless it was voluntarily made. See State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996). The requirement that a confession be voluntary in order to be admissible is based on the due process clause of the Fourteenth Amendment. See Jackson v. Denno, supra. An accused is entitled to an initial determination, made outside of the presence of the jury, to determine the voluntary nature of the confession. See State v. Salisbury, 330 S.C. 250, 271, 498 S.E.2d 655, 666 (Ct. App. 1998), aff'd as modified, 343 S.C. 520, 541 S.E.2d 247 (2001). In South Carolina, this initial determination is made by the trial judge. See State v. Fortner, 266 S.C. 223, 226-27, 222 S.E.2d 508, 510 (1976).

During a Jackson v. Denno hearing, the State bears the burden of showing by a preponderance of the evidence that an accused's confession was voluntary. See Von Dohlen, 322 S.C. at 243, 471 S.E.2d at 695. In considering the question, the trial judge must examine the totality of the circumstances to determine whether the State has carried its burden. See State v. Childs, 299 S.C. 471, 475, 385 S.E.2d 839, 842 (1989). The test for voluntariness is "whether a

defendant's will was overborne' by the circumstances surrounding the given confession.'" See Dickerson v. United States, 530 U.S. 428, 434 (2000). Stated another way, the court must consider whether the confession "was knowingly, intelligently, and voluntarily given under the totality of the circumstances." See State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005).

In the instant case, the testimony of all witnesses presented at the Jackson v. Denno hearing makes plain that the State failed to meet its burden to show the alleged confession was voluntarily made. First, the testimony uniformly establishes that the Appellant was subjected to extreme physical conditions before giving his alleged confession. As noted above, Mr. Butler and Mr. Rector testified that, prior to Appellant's alleged confession, he had been beaten by the two men. (Trans. p. 12, ll. 11-15). During the incident, one of the two men struck the Appellant in the head with a tire iron and he was "bleeding profusely" from a large gash in his head. (Trans. p. 15, ll. 7-14; p. 25, ll. 13-20). Both men then held the Appellant down on the floor until police arrived. (Trans. p. 14, ll. 11-13; p. 22, ll. 15-18). When the officer arrived on the scene, he successfully fired his Taser at Appellant twice, sending electrical current through Appellant's body. (Trans. p. 28, ll. 13-22). Only after all of this did Appellant allegedly make a statement to the officer.

Second, the testimony from all witnesses demonstrates that the Appellant was affected by the physical trauma. Mr. Butler and Mr. Rector agreed that, as they awaited the police, the Appellant was "out of control." (Trans. p. 14, ll. 11-13, p. 22, ll. 15-18). Once Officer Metcalf arrived and began instructing Appellant to remain still, Mr. Butler testified that he didn't think that Appellant was paying the officer any attention, describing his behavior as "just ranting and raving." (Trans. p. 14, ll. 2-6). Officer Metcalf noted that Appellant "was not having any part of

listening to me whatsoever.” (Trans. p. 25, ll. 11-20). Mr. Byrd testified that he was only semi-conscious at the time he encountered the officer, having only just regained consciousness. (Trans. p. 31, ll. 5-9). Importantly, the testimony of the other witnesses, most notably, Mr. Rector, who was in the room with the officer, did not hear a confession stated in a strong, clear voice but instead heard only unintelligible mumbling. (Trans. p. 22, ll. 5-8). This further reflects Appellant’s physical and mental state at the time of the alleged confession.

In assessing the voluntary nature of an alleged confession, a court must consider the mental condition of the declarant. Such considerations were particularly important in the racism-driven cases in our Nation’s history, which often featured confessions obtained under duress. In his concurrence in Haley v. Ohio, 332 U.S. 596, 605 (1948), which concerned a confession given after extended interrogation, Justice Frankfurter noted that “psychological factors” must be considered in determining the admissibility of a confession. Additionally, in another extended interrogation case, the Supreme Court of the United States invalidated a confession, noting that at the time he confessed, the defendant mind was “dazed and bewildered.” Leyra v. Denno, 347 U.S. 556, 560 (1954). The Court found the facts of the case “irreconcilable with petitioner’s mental freedom ‘to confess to or deny a suspected participation in a crime’” Id. at 561. South Carolina courts too have found the declarant’s mental capacity is an “important factor” to be considered in determining the voluntary nature of a confession. See, e.g., State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965), overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

Considering the totality of the circumstances, it cannot be said that the State carried its burden of proving, by a preponderance of the evidence, that the Appellant “knowingly, voluntarily, and intelligently” gave the alleged statement. See Compton, 366 S.C. at 680, 623

S.E.2d at 666. Instead, the circumstances make plain that Appellant's will was overborne. See Dickerson, 530 U.S. 428 at 434.

B. Admission of the Confession Prejudiced Appellant

As set forth above, it is respectfully submitted that the trial court abused its discretion in admitting Appellant's confession. Moreover, Appellant was prejudiced by the erroneous admission.

The case presented against Appellant was largely circumstantial and based on the testimony of Mr. Butler and Mr. Rector. Appellant contended that the residence in which he was arrested was a "gambling house" in which Mr. Butler sold beer, cigarettes, and various items. (Trans. p. 254, ll. 9-15, 20-22). Appellant testified that he had visited the house before "on several occasions." (Trans. p. 249, ll. 22-23). He even went so far as to describe and present a drawing of the layout of the home (Trans. p. 250, ll. 11-16), which was confirmed by Mr. Butler as "pretty close" to an accurate drawing. (Trans. p. 118-19, ll. 24-25, 1-4). Once the case was submitted to the jury, the jurors reported that they were deadlocked and the judge gave the jury an Allen charge. (Trans. p. 358, ll. 12 – 13; p. 361 - 63, ll. 8 – 25, 1-25, 1-11). Even after hearing the Allen charge, the jurors asked for written statements and, significantly, to re-hear the testimony of Officer Metcalf, who testified regarding Appellant's alleged confession. (Trans. p. 363, ll. 21 – 23; p. 365 – 66, ll. 25, 1-7).

Moreover, the very nature of a confession suggests its prejudicial effect. As noted by Justice White:

A confession is like no other evidence. Indeed, "the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him. . . . The admissions of a defendant come from the actor himself, the most knowledgeable and unimpeachable source of information about his past conduct. Certainly, confessions have profound impact on the jury, so much so that we may justifiably doubt its ability to put them out of mind even if told to do so."

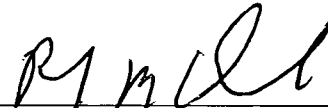
Arizona v. Fulminante, 499 U.S. 279, 296 (1991), citing Bruton v. United States, 391 U.S. 123, 139-140 (1968) (White, J., dissenting).

Given the circumstantial nature of the State's case as well as the fact that the jury plainly struggled to reach its verdict, Appellant was prejudiced by the admission of testimony regarding his alleged confession.

CONCLUSION

Considering the totality of the circumstances, the trial court abused its discretion in finding that the State had satisfied its burden of showing the Appellant's alleged confession to be voluntary. Moreover, Appellant was prejudiced by the admission of testimony regarding the alleged confession. Consequently, Appellant respectfully requests that the Court vacate Appellant's conviction and remand for a new trial.

Respectfully submitted,

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Greenville, South Carolina
December 13th, 2013

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**DESIGNATION OF MATTER
TO BE INCLUDED IN APPEAL**

Pursuant to Rule 209, SCACR, counsel for Appellant hereby designates the following materials to be included in the appeal:

A. The following portions of the transcript of trial proceedings:

Pages 1 – 36

Pages 66 – 147

Pages 151 – 368

Pursuant to Rule 209(c), SCACR, I hereby certify that the Designation of Matter to be Included in the appeal of the above-referenced case contains no matter which is irrelevant to the appeal.

This 13th day of December, 2013.

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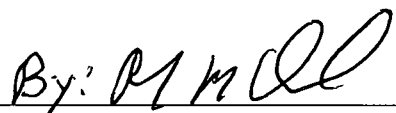
Bryan Keith Byrd,

Appellant.

CERTIFICATE OF SERVICE

I, Robert M. Dudek, counsel for Appellant, certify that I have served the written Initial Brief of Appellant on Respondent, State of South Carolina, by depositing three copies of same in the United States mail, postage prepaid, addressed to the Office of the Attorney General of the State of South Carolina, P.O. Box 11549, Columbia, S.C. 29211.

This 13th day of December, 2013.

By: 

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