

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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AUG 13 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TAWANDA ALLEN,

APPELLANT

Appeal from Williamsburg County
Clifton Newman, Circuit Court Judge

Opinion No. 2014-UP-304

APPELLATE CASE NO. 2010-172506

PETITION FOR REHEARING

Petitioner seeks rehearing pursuant to Rule 221(a), SCACR because this Court has, respectfully, overlooked the fact that appellant gave an incriminatory statement as the direct result of being threatened. As such her statement should have been suppressed. This Court's focus on the self-serving denials of Investigator Lail that the words of law enforcement did not constitute a threat.

Lail interrogated appellant on May 28, 2009. R. 9, ll. 4-14. The interrogation began at 10:30 a.m. Appellant had been arrested for accessory before and after the fact of murder. She was not charged with murder. R. 10, l. 12 – 11, l. 4.

Investigator Lail admitted that appellant was told she needed to come straight or she could be charged with murder. Lail testified, for what her self-serving conclusion was worth, that this was not a threat.“ R. 22, l. 25 – 24, l. 11. Appellant was told “**don’t let us have to change your charge to murder, so you need to tell us exactly what happened.** I have been sitting here listening to you roam on about what happened. All that is good, but you’re here, so let’s start on the fourth, which is a Saturday, when Kenyon got killed that night.” R. 24, l. 18 – 25, l. 17. (emphasis added).

Lail acknowledged during the interrogation that Detective Collins told appellant “that she needed to come straight.” Lail acknowledged they thought appellant was lying to them at that point during the interrogation. R. 21, ll. 12-25. Lail maintained appellant was “just roaming and rambling on,” and that she would not tell the police what really happened. R. 22, ll. 8-24.

Defense counsel Barr argued that appellant had been threatened “at least twice” during the interrogation. He noted that appellant was threatened if she did come straight that accessory charges would be upgraded. Defense counsel argued at the point appellant was threatened “**the statement took a different turn at that point.**” R. 30, l. 11 – 31, l. 11. (emphasis added).

The solicitor argued that the penalty for being an accessory before the fact of murder was the same as the penalty for murder and that appellant could read and write. The solicitor continued to stubbornly deny that appellant had been threatened into confessing. R. 31, l. 12 – 32, l. 11. Defense counsel Barr responded that appellant was threatened, and that appellant gave her confession out of the fear of the threat. R. 32, l. 14 – 33, l. 7.

Judge Newman ruled appellant had been given her Miranda rights and ruled by a preponderance of the evidence that appellant’s statements were made freely and voluntarily

tendered. R. 33, l. 12 – 37, l. 9. Appellant’s position was, and remains, that her statement was not freely and voluntarily made because it was given as the direct result of a threat.

The majority of this Court disagreed finding that Collins’s statement about “coming straight” was not delivered in a threatening manner. Appellant respectfully requests that this Court reconsider and grant rehearing because this case is not distinguishable from State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990) in any material way. Osborne was told she would be charged with “withholding evidence” if she did not make an honest statement. The Sheriff admitted that Osborne was told if she withheld information she could be charged with a crime. The Sheriff also acknowledged Osborne was told that fact from the beginning of the interrogation. He also did not consider it a threat. Again, and as discussed at oral argument the **conclusory** statements of law enforcement about whether a statement was a threat or a promise should not carry the day.

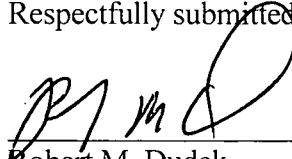
With respect to the concurrence, trial counsel argued that the statement should not be admitted because it was given as the result of a threat. It therefore was not given freely and voluntarily. That is what appellant continues to argue on appeal. The judge’s bottom line ruling was that the statement was given freely and voluntarily.

The fact trial counsel or appellate counsel could have further taken issue with a part of the judge’s ruling that was also incorrect within his ultimate ruling is, respectfully, not a valid application of a procedural bar. The defense arguments on the involuntariness of appellant’s statement given the threat were fully and correctly made to the trial judge. Counsel argued the obvious – the threat changed and **controlled** the voluntariness analysis. The judge heard all of the correct arguments about the threat, and he still ruled the statement was voluntarily tendered. For the concurrence to consider the issue procedurally barred because all of the judge’s ruling was not attacked at trial and on appeal -- where the judge failed to apply the law to the facts – is,

respectfully, playing a game of “gotcha” that this Court has stated it would not engage in to harm litigants. State v. Haygood, Op. No. 5247, Shearouse’s Adv. Sh. #26 at p. 156-157 (June 30, 2014).

For the above reasons, rehearing should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 13th day of August, 2014.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Alphonso Simon, Jr., Esquire, this 13th day of August, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 13th day
of August, 2014.

Rhonda Demese Foxworth (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.