STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Newberry County

Eugene C. Griffith, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERNEST EUGENE WILLIAMS, JR.,

APPELLANT

APPELLATE CASE NO. 2013-002618

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the lower court err in finding Appellant's statement to police officers was knowingly, voluntarily, and freely given in light of Appellant's hospitalization at a mental health facility due to auditory hallucinations, from which Appellant was transported for the interrogation, coupled with Appellant's use of prescription medication for his chronic illnesses?

STATEMENT OF THE CASE

On March 15, 2013, a Newberry County grand jury indicted Appellant for armed robbery (2013-GS-36-0124) and possession of a weapon during the commission of a violent crime (2012-GS-36-0125). R. * (indictments). The case was called for trial before the Honorable Eugene C. Griffith, Jr., and a jury on December 2, 2013. Dale Scott and Taylor Daniel represented the state, and Charles Verner represented Appellant. Tr. 1. The jury found Appellant guilty as charged. Tr. 320, lines 8-13. Judge Griffith sentenced Appellant to eighteen years' imprisonment for armed robbery, and five years' imprisonment for possession of a weapon. He ordered the sentences to be served concurrently. Tr. 322, lines 15-19; R. * (sentence sheets).

Appellant filed a timely notice of appeal. This brief follows.

STATEMENT OF FACTS

On December 8, 2012, the Li'l Cricket convenience store was robbed at gunpoint around 10 p.m. Tr. 110, line 25 – Tr. 112, line 9. According to the store clerk, Frederick Cooper, the perpetrator initially entered the store while other customers were present. The perpetrator "fixed him a cup of peanuts, … sat the peanuts on the counter, [and] went to the restroom." Tr. 112, lines 10-17. When the perpetrator returned from the restroom, he pulled a gun on the clerk. Tr. 113, lines 1-7. The clerk was completely focused on the gun. Tr. 113, lines 17-19. After the clerk opened the register, the perpetrator took the money and left. However, the perpetrator quickly returned, grabbed the cup of peanuts, and left again. Tr. 114, lines 4-13. The clerk described the perpetrator as wearing a hooded red Chicago Bulls jacket. Tr. 114, lines 16-19. Despite the presence of an operable video surveillance system at the Li'l Cricket, the perpetrator was unidentifiable on the video. Tr. 115, lines 6-19. However, the clerk identified Appellant as the perpetrator during the trial. Tr. 119, lines 5-11.[1] Nevertheless, the responding officer testified the clerk said he could not make an identification at the scene. Tr. 130, lines 4-21.

The Newberry Police Department responded to Li'l Cricket. Tr. 130, lines 1-8. One of the responding officers learned the Newberry County Sheriff's Department had received a "suspicious person" call from the El Típico, which was a short distance from the Li'l Cricket. Tr. 149, lines 4-17. The description of the "suspicious person" was similar to the

[1] The clerk claimed that he was certain that he had identified Appellant in a photographic line-up on the Monday prior to trial. Tr. 120, lines 11-22. However, the police testified the clerk was shown only one line-up. This occurred on the night of the robbery and prior to Appellant becoming a suspect. Therefore, the line-up did not include Appellant. Further, the clerk did not identify anyone in the line-up. Tr. 133, line 15 – Tr. 135, line 23; Tr. 175, lines 4-24.

clerk's description of the perpetrator. Tr. 149, lines 18-22. The officer responded to the El Típico and searched an area where the suspicious person had been. In that area, the officer found a pair of shoes and a cup. Tr. 150, line 2 – Tr. 151, line 10.[2]

Another officer responded to Li'l Cricket and watched a portion of the video. Tr. 198, lines 3-10. He did not recognize the perpetrator. Tr. 198, lines 12-13. The officer claimed that he also viewed the video from El Típico's surveillance system and observed a person dressed similarly to the person seen in the Li'l Cricket video. Tr. 198, liens 13-16. The officer used the camera on his phone to take a photo of the person the El Típico video. Tr. 199, line 22 – Tr. 200, line 8. Thereafter, the officer showed the photograph on his phone to the county and city police officers in the area. Eventually, the officer showed the photograph to Odell Schumpert from the Sheriff's Department. Schumpert claimed the photograph showed Appellant. Tr. 200, line 14 – Tr. 201, line 4.

On December 9, 2012, the Newberry Police Department obtained arrest warrants for Appellant. However, the lead investigator claimed that she made no attempt to serve the arrest warrant. She explained when the police obtain an arrest warrant, the department serves the warrant as follows:

> Normally it is by word of mouth that we do have a warrant on hand for an individual and we also have a drawer that these warrants go into at the police department. And officers come in from various shifts and they will go through the drawer and pick out the warrants and possibly attempt to serve them.

Tr. 186, line 21 – Tr. 188, line 6. Apparently unbeknownst to the arresting agency – the Newberry Police Department – Schumpert and two other deputies went to Appellant's home

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[2] The officers found no fingerprints on the cup. Although the officers obtained swabs from the cup for DNA testing, the results were not received prior to Appellant's trial. Tr. 159, line 6 – Tr. 160, line 18.

in an attempt to locate him. Unable to find Appellant at his home, Schumpert and the two deputies went to the home of Appellant's girlfriend and to the home of another friend of Appellant's. Schumpert was unable to locate Appellant at those locations. Tr. 240, line 9 – Tr. 241, line 21.

In early December 2010, Appellant was visiting a friend in Newberry Hospital. While there, Appellant confided in a doctor that he was hearing voices. In light of Appellant's lupus, skin disease, the medications he was taking to assist with his ailments, and his complaint of auditory hallucinations, Appellant was hospitalized in Columbia at a mental health facility. Tr. 248, line 14 – Tr. 250, line 2. While in the mental health facility, Appellant learned from his mother and girlfriend that the police were looking for him. Tr. 251, line 18 – Tr. 252, line 22. Appellant informed a doctor that the police were looking for him and asked the doctor to contact the police on his behalf. Tr. 254, line 22 – Tr. 255, line 7. Thereafter, the police arrived and took him to Newberry. Tr. 256, line 4 – Tr. 258, line 7. Upon his arrival at the police station, two investigators handcuffed him to a chair and began interrogating him. Tr. 259, line 18 – Tr. 264, line 4.

ARGUMENT

The lower court erred in finding Appellant's statement to police officers was knowingly, voluntarily, and freely given in light of Appellant's hospitalization at a mental health facility due to auditory hallucinations from which Appellant was transported for the interrogation, coupled with Appellant's use of prescription medication for his chronic illnesses.

Relevant facts

Several days after the robbery at the Li'l Cricket, the lead investigator, Allison Moore, learned Appellant, the main suspect, was in a hospital in Columbia. Tr. 30, line 21 – Tr. 31, line 2. Appellant "was in the mental institution." Tr. 45, lines 14-21. Officers were dispatched to the hospital where Appellant was picked up and transported to the Newberry Police Department. Tr. 31, lines 3-8. Moore and a second officer, Kevin Goodman, were waiting on Appellant to arrive. Tr. 32, lines 9-11; Tr. 48, lines 13-16. Moore admitted she knew Appellant had been in a hospital in Columbia immediately prior to the interrogation. When asked if he was in a mental health facility, she responded, "I reckon so." Tr. 37, lines 4-8; see also, Tr. 60, lines 14-21.

When Appellant arrived at the police station, Moore "read him his Miranda warnings." Tr. 32, lines 12-14. Moore claimed Appellant did not appear to be intoxicated or under the influence of anything. Further, she claimed there were no threats or intimidation of Appellant. Tr. 32, lines 19-24. After Moore gathered basic demographic information from Appellant, she asked Appellant to write his statement. Tr. 34, lines 10-23. Prior to obtaining the written statement, Moore conversed with Appellant regarding the allegations against him. Tr. 34, line 24 – Tr. 35, line 4. Moore

claimed Appellant admitted to robbing the convenience store during their conversation prior to his writing a statement. Tr. 34, line 24 – Tr. 35, line 4.

After Appellant wrote his statement, Moore and Goodman reviewed it with him. Corrections were made to Appellant's statement. For example, the original statement indicated Appellant went to the store to buy pecans, but this was scratched out and the word "peanuts" used instead. Further, the statement initially identified the store clerk as "James," but this was stricken and the word "Fred" was used in its place. Tr. 40, line 7 – Tr. 41, line 9. Moore denied showing the video from the robbery to Appellant prior to the interrogation, but admitted she showed him the video that day. Tr. 43, lines 19 – 25. Goodman also admitted showing the surveillance video to Appellant "right at the end afterwards." Tr. 60, lines 3-13.[3]

Appellant explained that he was arrested on December 14, 2012 while receiving treatment at a mental health facility. He had been there between four days and a week. Tr. 64, line 14 – Tr. 65, line 9. Appellant had been hospitalized because he informed a doctor that he was hearing voices. He was also taking various medications to assist in controlling his lupus and a skin disease. Tr. 65, lines 10-24. When he learned the police were looking for him, he made efforts to let the police know where he was. Tr. 67, lines 2-21. Subsequently, officers arrived at the mental health facility and transported Appellant to the police department for interrogation. Tr. 68, line 7 – Tr. 69, line 2.

While Appellant was in the hospital, he was taking various medications, including Lortab, a narcotic used to reduce pain, and a steroid. Tr. 68, lines 14-17. Appellant was

[3] Appellant's statement makes reference to the video. Thus, it is clear that Appellant saw the video prior to writing his statement or while he was writing his statement. R. * (State's Exhibit #4).

"woozy" when he arrived at the police department. Tr. 69, lines 3-4. The officers showed Appellant the video of the robbery and instructed him to write down what he saw in the video. Appellant explained that due to his medication, he "was out of [his] mind, didn't know if [he] was coming or going." As a result, Appellant wrote that he was involved in the robbery. Tr. 69, lines 5-18; see also, Tr. 77, line 12. Further, Appellant was terrified of Goodman, who handcuffed him to his chair. Tr. 69, line 21 – Tr. 70, line 3.

Appellant moved to suppress the statement as the product of an involuntary, unknowing, and unintelligent waiver due to his unstable mental health and the effects of his medication. Appellant explained "it doesn't seem to make a lot of sense to take somebody out of a mental health facility and interrogate him the same day, both because of the probability that he is taking prescribed medicines and of course his state of mind at that time." Tr. 87, lines 11-15. "[I]t raises a red flag when you pull somebody out of a mental health treatment facility and interview him the same day that he is every likely not in his right mind or under the influence of pharmacology." Further, trial counsel noted the material changes to the statement indicated "the statement may have been coached in part." Tr. 87, liens 21-24.

The trial judge ruled "the statement will be admitted as voluntarily given." He considered the testimony that Appellant was in custody, but, according to the officers, was advised of his rights, that Appellant was allowed to write his statement, and "the observation[s] of the two officers that [Appellant] appeared lucid and normal." Tr. 88, line 25 – Tr. 89, line 11.

Discussion

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held 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." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002).

It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)). Thus, "[t]he waiver inquiry 'has two distinct dimensions': 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.'" Id. at 382-383 (quoting Moran v. Burbine, 475 U.S. 421, 421 (1986)).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did

the totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

> Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: 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.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted). The test requires consideration of "'totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation.'" Dickerson v. United States, 530 U.S. 428, 434 (2000)(citations omitted). Consideration of a person's mental capacity is an important factor in determining whether a statement to police was voluntary. State v. Callahan, 263 S.C. 35, 41, 208 S.E.2d 284, 286 (1974) (citing State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965)).

The trial judge erred in admitting Appellant's statement based on the clear and undisputed evidence in the record that Appellant had been in a mental health facility for several days until just forty-five minutes before his interrogation and that Appellant was under the influence of several prescription drugs. The police removed Appellant from a mental health facility where he was being treated for auditory hallucinations. In less than an hour of Appellant's removal from the mental health treatment facility, the police interrogated Appellant concerning a robbery. Appellant, unsurprisingly, was under the influence of several prescription medications, including a narcotic pain reliever. After removing Appellant from the mental health treatment facility and transporting him to the

police station, the officers handcuffed him to a chair and interrogated him about an armed robbery. The interrogation included allowing Appellant to view a video of the armed robbery, which greatly influenced Appellant's written statement as evidenced by the statement's reference to the contents of the video. Further, the statement contained obvious errors, such as a reference to "pecans" and to the name of "James" for the clerk. Those errors were corrected to refer to "peanuts" and "Fred." Consideration of Appellant's very recent hospitalization for mental illness, his physical illness of lupus, his ingestion of prescription medication, and the exertion of an improper influence – the video requires exclusion of Appellant's statement to law enforcement.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and sentences and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of November, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Eliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Ernest Williams, Jr. #358092, at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 10th day of November, 2014.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of November, 2014.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022 .