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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

Appeal from Greenville County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SEBASTIAN JAMES HEPBURN,

APPELLANT

APPELLATE CASE NO. 2012-213403

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

STATEMENT OF ISSUE ON APPEAL 3

STATEMENT OF THE CASE 4

ARGUMENT

The trial judge erred in refusing to suppress Appellant’s statement to police as
involuntary because it was induced by the promise of a reasonable bond 6

CONCLUSION 9

PETITION TO BE RELIEVED AS COUNSEL 10

TABLE OF AUTHORITIES

Cases

Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) 7

Dickerson v. United States, 530 U.S. 428, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000)..... 7

Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990) 7

State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977) 7

State v. Goolsby, 275 S.C. 110, 268 S.E.2d 31 (1980)..... 7

State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987)..... 7

State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980)..... 7

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress Appellant's statement to police as involuntary because it was induced by the promise of a reasonable bond?

STATEMENT OF THE CASE

In July of 2011, the Greenville County Grand Jury indicted Hepburn for criminal sexual conduct with a minor second degree, indictment #2011-GS-23-2699. On September 8, 2012, Hepburn proceeded to a bench trial before the Honorable Larry B. Hyman. Robert Ray represented Hepburn at trial. Lisa A. Bentley prosecuted the case. Judge Hyman found Hepburn guilty and sentenced him to ten years provided upon the service of six years the balance was suspended with five years probation. A timely notice of intent to appeal was served on November 16, 2012. This appeal follows.

The record reflects that, "Post-trial Motions, Closing Arguments, Verdict and Sentencing of the Court are unretrievable due to equipment malfunction that occurred after the conclusion of the proceedings." (R. p. 237, lines 17-20). Counsel moved and on November 14, 2013, this Court granted a motion to reconstruct the record. In preparing for the remand hearing appellate counsel spoke with trial counsel and the prosecutor. Neither could remember any objections being made during the missing portions of the transcript. Based on the fact that the only parts of the bench trial transcript that are missing are the post trial motions, closing arguments, pronouncement of the verdict and sentencing by the Court and based on the fact that it appears that no objections were made during these portions of the trial, appellate counsel determined that, for purposes of the direct appeal, those portions could be reconstructed by affidavits submitted by the attorneys rather than requiring a hearing.

On December 10, 2014, with approval from the trial judge, appellate counsel asked this Court to accept the affidavits from trial counsel and the prosecutor in lieu of requiring a reconstruction hearing as it appears that no objections were made during the

missing portions of the transcript of this bench trial. On January 15, 2015, this Court granted the motion to accept the affidavits in lieu of requiring a reconstruction hearing. The affidavits are included in the record on appeal.

ARGUMENT

The trial judge erred in refusing to suppress Appellant's statement to police as involuntary because it was induced by the promise of a reasonable bond.

At the start of the bench trial the judge advised that the Jackson v. Denno hearing could be held during the course of the officer's testimony. (R. p. 8, line 21 – p. 9, lines 1-6). Detective Dale Arterburn testified that he questioned Appellant after Appellant was arrested in Florida, waived extradition and was transported to the Greer City Jail. (R. p. 81, lines 1-16). The detective testified that Appellant was advised of and waived his Miranda rights. (Tr. pp. 81-85). The waiver of rights was introduced in evidence as State's Exhibit #1. (R. p. 85, lines 13-18; R. p. 247). The detective denied using any coercion to obtain the statement for Appellant. (R. p. 95, lines 12-14). The questioning, however, was not video or audio taped and there were no other witnesses present. (R. p. 98, lines 3-15).

Appellant testified that the detective told him that he had to admit that he touched the minor or his bond might be set at \$100,000.00. (R. p. 104, lines 2-9). Appellant testified that he stated that he touched the minor, while she was clothed, at the detective's suggestion that this would result in Appellant being released from jail. (R. p. 102, line 23 – p. 103, lines 1-16). Appellant testified that he felt pressured to make the statement he made in order to receive a bond that would allow him to get out of jail and prove his innocence. (R. p. 114, lines 15-24).

Appellant argued that the statement was inadmissible. (R. p. 115, lines 17-18). The judge found that the statement was made freely and voluntarily. (R. p. 116, line 9 – p. 117, line 1). The State moved to admit the statement in evidence as State's Exhibit #2. (R. p. 123, lines 21-23). Appellant objected. (R. p. 123, line 24). The judge admitted the statement, over objection. The judge erred.

The judge should have excluded the statement as involuntary because it was induced by the detective's promise of a reasonable bond. See State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987). The test of voluntariness is “ ‘whether a defendant's will was overborne’ by the circumstances surrounding the given [statement]. The due process test takes into consideration ‘the 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, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000) (citations omitted). The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances. State v. Rabon, 275 S.C. 459, 272 S.E.2d 634 (1980). A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise. See State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977); and 23 C.J.S., *Criminal Law*, § 825. The State bears the burden of proving beyond a reasonable doubt the statement given was voluntary. State v. Goolsby, 275 S.C. 110, 268 S.E.2d 31 (1980), cert. denied, 449 U.S. 1037, 101 S.Ct. 616, 66 L.Ed.2d 500. Coercive police activity is a necessary predicate to finding a statement is not voluntary. Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986). Coercion is determined from the perspective of the suspect. Illinois v. Perkins, 496 U.S. 292, 110 S.Ct. 2394, 110 L.Ed.2d 243 (1990).

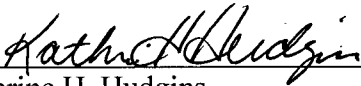
The detective's comment about bond was coercive. Appellant testified, ““He said, okay, you have to say you touched her. She's going to get in the courtroom and they're going to believe her and we're not getting nowhere. Your bond might be \$100,000. (R. p. 104, lines 2-5). The statement was not voluntary because it was induced by the detective's

promise of a reasonable bond. The judge erred in refusing to suppress the statement. The error was not harmless.

CONCLUSION

Based on the above argument, the conviction and sentence should be reversed and the case remanded for anew trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2015.

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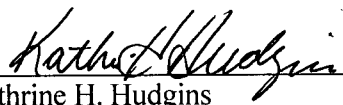
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sebastian James Hepburn states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Larry B. Hyman, Jr., which was held on November 8, 2012, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Sebastian James Hepburn.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of February, 2015.

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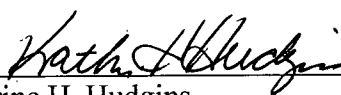
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial Transcript
- (3) Affidavit of Assistant Solicitor
- (4) Affidavit of Trial Counsel
- (5) State's Exhibit #1
- (6) State's Exhibit #2

I certify that this designation contains no matter which is irrelevant to this appeal.

February 17th, 2015



Kathrine H. Hudgins
Appellate Defender

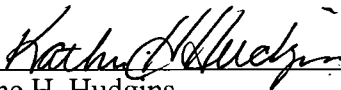
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PO Box 11589
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

February 17, 2015



Kathrine H. Hudgins
Appellate Defender

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Columbia, South Carolina 29211-1589

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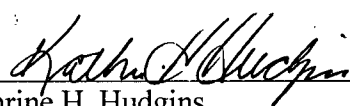
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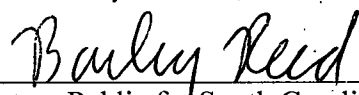
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Sebastian James Hepburn, #353163 at Turbeville Correctional Institution, this 17th day of February, 2015.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of February, 2015.


Bailey Reed (L.S.)
Notary Public for South Carolina
My Commission Expires: October 24, 2021