STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County

The Honorable R. Knox McMahon. Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID STALK,

APPELLANT

APPELLATE CASE NO. 2014-000166

INITIAL BRIEF OF APPELLANT

Raia Jane Hirsch, Esq.
9 Sweet Bay Drive
Columbia, SC 29209
(803) 719-3001
raiajane@gmail.com

ROBERT M. DUDEK
Chief Appellate Defender
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

Did the trial court err in failing to suppress Appellant's confession because it was made involuntarily?

1) The Court should have suppressed the Appellant's statement as involuntary because it was elicited as a result of improper coercive tactics, including:

    1. The confession was elicited following promises made by law enforcement to assist the Appellant in obtaining a bond on an unrelated charge;

    2. Appellant made involuntary statement following repeated recitations of the amount of time he faced on an unrelated charge;

    3. Law enforcement threatened Appellant's sister with the possibility of arrest and/or the removal of her children by the Department of Social Services.

STATEMENT OF THE CASE

On January 16, 2013, Kelvisus Anthony ("The Victim"), was shot during an alleged armed robbery, and subsequently died on January 28, 2013. (Tr. 7-8). In May of 2013, David Stalk ("The Appellant") was charged with Murder, Armed Robbery & Possession of a Deadly Weapon during the Commission of a Violent Crime. (Tr. 8-9). On January 14, 2014, the Appellant intended to enter a guilty plea to the charge of manslaughter, but prior to the adjudication, he elected to go forward on all three charges before a jury in the Court of General Sessions in the County of Lancaster, before the Honorable R. Knox McMahon. (Tr. 9-10). Three days later, he was found guilty on all three charges and sentenced to forty-five (45) years on the murder charge, twenty (20) years for the attempted armed robbery, and 5 (five) years on the weapons charge, to run concurrently. (Tr. 787). At trial, Mark Grier ("Defense Counsel") of the Lancaster Public Defender's Office raised a number of defenses and objections to the State's allegations, including assertions that: 1) Appellant had not been properly Mirandized; 2) Appellant's confession was coerced. (Tr.127); and 3) that the jury should have been instructed that they could find the Appellant guilty on the lesser-included charge of Manslaughter. Notice of Appeal was filed on January 27, 2014, followed by a Motion to Appoint Counsel dated October 3, 2014.

ARGUMENTS

The Circuit Court Erred in Failing to Suppress Involuntary Confession Made by Appellant.

The trial court should have suppressed the Appellant's confession as it was elicited involuntarily as the result of coercive tactics used by law enforcement. This Court should reverse the trial court's finding of guilty on all counts and remand this case for a new trial.

1) The confession was elicited following promises made by law enforcement to assist the Appellant in obtaining a bond on an unrelated charge.

The Appellant argues that he made a false and involuntary confession to the crime of murder as a result of coercive interrogation tactics on the part of the investigating officers. (Tr. p. 621, lines 3-4). While the record reflects that the Appellant did voluntarily waive his *Miranda* rights, he testified that he did so as a result of alleged improper promises and threats made by the interrogating and Lead Investigator. (Tr. p. 117, lines 6-19). The Appellant claims that these improper tactics included an explicit promise to assist in obtaining a bond on an unrelated charge, as well as an implicit promise that the bond would be obtained if he confessed to the murder. (Tr. 113, lines 1-5). As a result of these coercive tactics, in the form of both promises and threats, the Appellant argues that this inculpatory confession was not voluntary, and per *Miranda* should have been suppressed at trial. *Miranda v. Arizona*, 384 U.S. 436 (1966). As a result, Appellant requests that this matter be remanded to the circuit court for a new trial.

The determination as to whether or not a custodial statement is voluntary and admissible in court is made in a pre-trial evidentiary hearing based on a preponderance of the evidence. *Jackson v. Denno*, 378 U.S. 368 (1964). The requirements for voluntariness

are set forth in *Miranda,* which holds that "to render a statement admissible the proof must be adequate to establish that the accused was not involuntarily impelled to make a statement." *Miranda* at 462. At trial, the State has the burden of proving to the jury, beyond a reasonable doubt, that the statement was given voluntarily. *State v. Von Dohlen,* 322 S.C 234, 471 S.E.2d 689 (2007). The pre-trial decision is based on "whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances." *State v. Peake*, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) *citing State v. Rabon*, 275 S.C. 459, 272 S.E.2d 634 (1980). The Appellant argues that the State failed to meet its burden in both the evidentiary hearing and at trial, and thus requests the Court remand this case for a new trial.

"Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." *State v. Arrowood*, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007) *citing State v. Baccus*, 367 S.C. 41, 625 S.E.2d 216 (2006). The Appellant believes that such an error was committed in the admittance of his confession, as the voluntariness of the statement was overborne by the police's improper interrogation practices. While such a standard is a high threshold, historically courts have been more likely to find such an error occurred in cases where a statement served as the primary evidence for conviction. In *Arizona v. Fulminante*, the Court recognized that convictions hinging primarily on a defendant's confession are unlike others that might have relied on forensic evidence or eyewitness testimony, citing "the risk that the confession is unreliable, coupled with the profound impact that the confession has upon the jury, requires a reviewing court to exercise extreme caution before determining that the admission of the confession at trial was

harmless." 499 U.S. 296 at 323 (1991). Thus, it is entirely proper for this Court to find that the trial court's ruling of admissibility of Appellant's statement was more than harmless error, and thus order a new trial to ensure the protection of Appellant's constitutional rights.

The Appellant argues that induced to make an involuntary and false confession based on the Lead Investigator's promise to assist him in obtaining a bond on an unrelated charge. (Tr. 112, line 23). When a statement is induced by coercive tactics it is deemed involuntary, and thus inadmissible in a court of law. *State v. Rochester*, 301 S.C. 196, 391 S.E.2d 244 (1990). However, to be rendered involuntary, the statement must be "so connected with the inducement as to be a consequence of the promise," such that the defendant's will was "overborne." *State v. Arrowood*, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2007). Appellant maintains that this exact nexus existed in his case, as he would not have confessed to involvement in the homicide absent the promises made by the law enforcement during interrogation. (T. 112, line 23). The Appellant concedes that he waived his rights under *Miranda*, and this waiver was not contested at trial. However, even a statement given following the voluntary waiver of rights will not survive judicial scrutiny if it can be shown that such a statement was obtained by coercive means. *Id.* at 366, 442.

In *Arrowood*, the defendant challenged the admissibility and voluntariness of his confession arguing that officers coerced him into making a statement by promising to drop unrelated charges. Additionally, he alleged that officers promised to help him obtain a low bond on the charge he faced, and that they used a polygraph machine coupled with the statement that it would be in his "best interest to tell the truth." *Id.* The Court of

Appeals found in favor of the State because the officers contested the defendant's assertions. Law enforcement testified that they limited their promises to help by stating that all they could do was tell the judge that the defendant cooperated. *Id.* at 368, 443. The conflicting testimony was resolved in favor of the State, as "the officers' offer to attest to Arrowood's cooperation did not constitute promises of leniency." *Id.*

In Arrowood, the Court distinguished their finding from that in *State v. Peake,* where they did find that law enforcement's promise of leniency induced an involuntary confession from the defendant. 291 S.C. 138, 352 S.E.2d 487 (1987). In that case, a confession was made after officers "suggested" they might not to seek the death penalty if an inculpatory statement were made. *Id.* at 138, 488. The Court stated, "the officer was in a position of apparent authority, and his comments [were] tantamount to a promise not to seek the death penalty if the appellant gave a statement." *Id.*

The current matter is factually closer to *Peake* than *Arrowood* as the officer's testimony is not in direct conflict with that of the defendant's. The Leading Investigator concedes that he did more that promise to tell the judge that Appellant was cooperative. He actually agreed to help Stalk get a bond. (Tr. 100, lines 6-17). Specifically, Lead Investigator testified that "I knew our judge wouldn't be able to do anything with the murder charge," but he never says the same of the accessory charge, the offense on which he promised to help the Appellant. (Tr. 99, lines 20-24). When asked by defense counsel if he would characterize his communications as having "committed yourself to speaking on behalf of Mr. Stalk?" he answered, "I would say yes." (Tr. 108, line 1). While this exchange on its face alone may not seem egregious enough to warrant the subsequent confession involuntary, the conversation between Appellant and Lead Investigator must

be analyzed under the "totality of the circumstances." *Peake* at 139, 488. When evaluated under this standard, it is clear that the Court could find Appellant's confession was obtained involuntarily, and thus should have been suppressed at trial.

2) **Appellant made involuntary statement following repeated recitations of the amount of time he faced on an unrelated charge**

The Supreme Court of South Carolina addressed coercive interrogation techniques and involuntary confessions, where the appellant, after waiving her rights and providing statements denying her involvement in the crime, was repeatedly presented with threats by interrogating officers. *State v. Osborne*, 301 S.C. 363, 392 S.E.2d 178 (1990). Specifically, she was told that she could be charged with "withholding evidence" if she did not provide an account that "fit the facts." *Id.* at 364, 179. The Court found that any statement given after such a threat, even if *Miranda* rights had been waived, would be deemed involuntary and inadmissible at trial. *Id.* at 367, 180. Appellant asserted, "that even though she was advised of her *Miranda* rights, these statements were coerced because of these threats." *Id.* at 365, 179.

Similarly, in this case, the Appellant also made an initial statement, after waiving his rights, in which he denied involvement in the murder. (Tr. 77, line 1). It was only after he was denied bond on a different charge, and interrogated a second time, that he "confessed" in an attempt to placate law enforcement. (Tr. 105, lines 14-15). Finally, as in *Osborne*, during the interrogation process, Appellant was presented with the fact he faced a number of years in prison on another charge. (Tr. 433, 21-25). The factual similarities between *Osborne* and the case at bar signifies that this is the case law that should be applied in this matter. As a result, the inculpatory statement that followed from

coercive tactics should have been suppressed at trial.

3) Law enforcement threatened Appellant's sister with the possibility of arrest and/or the removal of her children by the Department of Social Services

There is evidence that when looking for the Appellant, the Lead Investigator threatened the Appellant's sister with arrest herself, and possible involvement of Social Services with her children. (Tr. 527, lines 9-23). The Court addressed this issue directly in *State v. Corns*, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992), where the question at bar was specifically "whether the trial judge erred in admitting oral statements...because the statements were made involuntarily...to threats regarding his family." *Id.* at 548, 325. They held that such statements should be suppressed, as threats to a family member of the interrogated were just as "coercive" as threats made directly to the defendant himself. *Id.* The similarity between the method of intimidation in *Corns* is almost identical to those alleged to have been made in this matter, specifically the threat made by the officer to the defendant that "he could take out a warrant for his wife, that his wife could be put in jail and that his children could be taken by D.S.S." *Id.* at 550, 326.

Appellant's sister contends that similar threats were made to her when the Lead Investigator visited her home, repeatedly and without warning, in search of her brother. (Tr. 527, lines 16-18). While the threat was made to her directly, rather than the Appellant, the Appellant likely was aware of these threats, as he resided with his sister and her children, and thus was a household member just as the defendant was with his wife in *Corns*. Additionally, Appellant's sister claims that the Lead Investigator told her he could help obtain a bond for the Appellant if she was able to produce him or reveal his whereabouts. (Tr. 526, line 5-7). Further, she testified, "that's when he say something

about social services would get involved with me. He said something else about I can go to jail for accessory for or after," after repeatedly accusing her of lying about knowing where her brother was located. Thus, under *Corns*, these threats are also considered coercive in evaluating whether or not the Appellant's confession was voluntary.

CONCLUSION

For the reasons stated, this Court should reverse the circuit court's findings, and remand the matter for a new trial.

Respectfully submitted,

Raia Jane Hirsch, Esq.
9 Sweet Bay Drive
Columbia, SC 29209
(803) 719-3001
raiajane@gmail.com

ROBERT M. DUDEK
Chief Appellate Defender
SC Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEYS FOR APPELLANT

This 9th day of March, 2015.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LANCASTER COUNTY
Court of General Sessions
R. Knox McMahon, Circuit Court Judge

APPELLATE CASE NO. 2014-000166

The State, Respondent,
v.
David Stalk, Appellant

PROOF 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 Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 9 day of March 2015.

Raia Jane Hirsch

Raia Jane Hirsch, Esq.
Attorney for Appellant
9 Sweet Bay Drive
Columbia, South Carolina 29209
(803) 719-3001

Donald J. Zelenka, Esquire
S.C. Attorney General's Office
Post Office Box 11549
Columbia, South Carolina 29211

Robert Dudek, Esquire
SCCID- Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

David Stalk
Broad River Correctional Institute

Resident 358508
4444 Broad River Road
Columbia, South Carolina 29210-4096

Columbia, South Carolina
March 9, 2015