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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY

Court of General Sessions

Eugene C. Griffith, Jr., Circuit Court Judge

Appellate Case No. 2013-002618

THE STATE,

Respondent,

v.

ERNEST EUGENE WILLIAMS, JR.,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The evidence supports the trial court's ruling that Appellant's statement to police officers was knowingly, voluntarily, and freely given.

STATEMENT OF THE CASE

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.p.298-299; 301-302.) On December 2, 2013, Appellant proceeded to trial before the Honorable Eugene C. Griffith, Jr., and a jury. Charles Verner, Esquire, represented Appellant, and Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel represented the State. The jury found Appellant guilty of both charges, and Judge Griffith sentenced him to eighteen years' imprisonment for armed robbery and five years' imprisonment for possession of a weapon, to be served concurrently. (Tr. 286, 287.)

On December 9, 2013, Appellant filed a Notice of Appeal.

STATEMENT OF FACTS

On December 8, 2012, Investigator Allison Moore of the Newberry Police Department responded to an armed robbery at the Li'l Cricket. (R. 3, lines 2-23.) A black male entered the store armed with a revolver and demanded money from the clerk. (R. 4, lines 1-5.) Moore spoke to the clerk, Frederick Cooper, and reviewed video surveillance from the store. (R. 4, lines 6-13.) The same black male appeared on video at another nearby business, El Tipico. (R. 5, lines 11-22.) Sergeant Kevin Goodman joined the investigation and viewed the surveillance video from El Tipico. (R. 29, lines 1-20.) He was unable to obtain a copy of the video from the employee at El Tipico, so he took a still shot of the black male with his phone while the video was paused. (R. 29, line 21-R. 30, line 1.) Sgt. Goodman then showed the still shot to the other officers involved in the search. (R. 30, lines 5-12.) Lieutenant Odell Schumpert identified the man in the still shot as Appellant. (R. 30, lines 12-20; R. 206, line 12-R. 208, line 15.) After the police officers learned Appellant was in a hospital in Columbia, they drove to the hospital on December 14, arrested him, and brought him to Investigator Moore's office. (R. 7, line 21-R. 8, line 23; R. 134, lines 12-23.)

Pretrial, the trial court conducted a *Jackson v. Denno*[1] hearing to determine the voluntariness of Appellant's statement. (R. 2-66.) Investigator Moore testified that she and Sgt. Goodman questioned Appellant in her office after he was arrested. (R. 9, lines 2-11.) She first read him his *Miranda* warnings and testified he seemed to understand them. (R. 9, lines 12-18.) She testified he did not appear to be intoxicated or under the influence of anything. (R. 9, lines 19-21.) She denied that any threats or intimidation were used against Appellant by her or by Sgt. Goodman. (R. 9, line 22-R. 10, line 1.)

[1] 378 U.S. 368 (1964).

Appellant indicated he understood his *Miranda* rights by saying he did, initialing each right, and signing the statement form. (R. 11, lines 2-9.)

Investigator Moore testified Appellant admitted he robbed the Li'l Cricket and said he was sorry. (R. 12, lines 1-4.) Appellant explained he borrowed a revolver and gave it back to the person he borrowed it from, but he would not disclose who the person was. (R. 12, lines 8-13.) He indicated he knew the clerk at the Li'l Cricket. (R. 12, lines 14-16.) Moore testified that at no time did Appellant indicate he wanted to end the conversation or needed a bathroom or water break. (R. 12, line 21-R. 13, line 2.) After writing his statement, law enforcement asked Appellant to review and sign it. (R. 13, lines 3-7.)

During cross-examination, Moore testified she had Appellant initial the beginning and end of his statement and any mistakes he found upon review. (R. 17, lines 10-12.) She testified when Appellant went back over the statement, he found a mistake on his own and changed "pecans" to "peanuts." (R. 17, line 19-Tr. 41, line 5.) Similarly, she testified he changed the clerk's name from "James" to "Fred." (R. 18, lines 6-9.) She confirmed that neither change was made at her suggestion. (R. 17, line 25-R. 18, line 12.) Moore testified she did not show Appellant the video prior to interviewing him. (R. 20, lines 19-25.) On redirect examination, Moore testified that when she showed Appellant the video, "he smiled like, yes, that is me." (R. 21, lines 9-13.)

Sgt. Kevin Goodman testified regarding Appellant's statement. (R. 31, lines 4-8.) He testified that Appellant appeared to understand his rights, appeared lucid and clearheaded, and did not appear to be under the influence of anything. (R. 31, line 25-R. 32, line 10.) He testified Appellant was not threatened or intimidated in his presence in any way, never asked for a lawyer, and never asked for the interview to stop. (R. 32, line

20-R. 33, line 1.) Goodman testified he showed Appellant the video from the robbery when Appellant told Goodman he wanted to see it right at the end of the interview. (R. 37, lines 3-13.) He testified that after Appellant wrote his statement, they allowed him to read over it and add things or clear up any mistakes. (R. 38, lines 9-19.) Although Goodman did not know whether Appellant made his corrections while he wrote the statement or at the end, he was certain the corrections were Appellant's own. (R. 39, lines 1-6.)

Appellant testified he was at a mental health facility for between four days and a week when he found out from his mother and girlfriend that the police were looking for him. (R. 42, lines 8-9; R. 44, lines 5-12.) He asked someone at the mental health facility to get in touch with the police. (R. 44, lines 16-19.) Appellant recalled meeting with Officers Moore and Goodman after he was transported from the facility to the police department. (R. 45, line 7-R. 46, line 2.) He testified he was taking steroid pills for a skin disease and Lortabs for pain associated with lupus. (R. 42, lines 21-24; R. 45, lines 14-17.) When asked what his state of mind was at the police department, he stated he was "still woozy." (R. 46, lines 3-4.) Appellant testified the officers "demanded me to look at the video and told me to write what happened in the video." (R. 46, lines 11-12.) He testified his left hand was handcuffed to the chair. (R. 46, lines 23-24.) He admitted that he wrote the statement but that he was not involved in the crime. (R. 48, lines 21-25.) Appellant claimed he thought the officers would let him go if he wrote the statement, but he admitted nobody specifically told him that. (R. 49, lines 14-19.) He testified he was not in a clear state of mind that day because he was on medication. (R. 49, lines 23-24.)

On cross-examination, Appellant testified he took his steroids and Lortab as prescribed by the doctor. (R. 50, lines 14-22.) He admitted that while he was at the mental health facility, he was under a doctor's care who supervised everything he did while he was there, including administering medication. (R. 50, line 23-R. 51, line 9.) Appellant testified he had no access to alcohol or illegal drugs while he was in the treatment facility. (R. 51, line 20-R. 52, line 4.) The solicitor questioned Appellant regarding a pretrial hearing during which he described being in a good mental state of mind when he went to the police department. (R. 52, line 22-R. 53, line 5.) Appellant testified he could not recall this. (R. 52, line 22-R. 53, line 5.) However, he testified he was not in his right state of mind because he was on medication. (R. 53, lines 10-16.) He admitted he started taking Lortab in 2010 and he took the prescribed amount the day of his police interview. (R. 54, line 17-R. 55, line 10.) Appellant acknowledged his handwriting and initials on the waiver of rights form. (R. 56, line 21-R. 58, line 19.) He admitted he did not ask to end the statement at any time. (R. 60, lines 19-24.) He again claimed he wrote his statement as he watched the video. (R. 61, lines 2-5.)

Following Appellant's testimony, the State argued the pain killers Appellant was taking were administered by a trained medical professional and pointed out that Appellant was able to recall what happened that day in pretty good detail, indicating a pretty clear state of mind. (R. 62, line 22-R. 63, line 2.) The State also noted Appellant completed twelve years of education and that Appellant admitted he initialed each *Miranda* right while not indicating he had any trouble understanding those rights. (R. 63, lines 2-8.) In sum, the State asked the trial court to admit Appellant's statement as freely and voluntarily given. (R. 63, lines 8-10.)

Defense counsel argued "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 probabil[i]ty that he is taking prescribed medicines and of course his state of mind at that time." (R. 64, lines 11-15.) He also argued the changes made to the statement could indicate it may have been coached in part. (R. 64, lines 21-24.) The trial judge ruled:

> I think that based upon the testimony that has been presented, considering the *Jackson v. Denno*, the State has provided that he was in custody, advised and explained of his rights, he initialed and understood his rights. He was then interviewed and allowed to write the statement himself. I think all of those considered, the observation of two officers he appeared lucid and normal. I think that the statement will be admitted as voluntarily given understanding to challenge the, some of the issues not having prior knowledge of any medical history or mental illness or mental status of [Appellant]. I am going to allow it.

(R. 65, line 25-R. 66, line 11.)

Ultimately, the jury found Appellant guilty of both charges, and the trial court sentenced him to eighteen years' imprisonment for armed robbery and five years' imprisonment for possession of a weapon, to be served concurrently. (R. 286, 287.)

ARGUMENT

The evidence supports the trial court's ruling that Appellant's statement to police officers was knowingly, voluntarily, and freely given.

Appellant argues the trial 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 and Appellant's use of prescription medication. However, a trial court must examine the totality of the circumstances in determining the voluntariness of a statement and specifically examine whether the defendant's will was defeated. Regardless of recent mental health issues, evidence shows Appellant was clearheaded and understood his rights. His will was not overborne.

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion, which occurs when the trial court's conclusions either lack evidentiary support, or are controlled by an error of law. *State v. Pagan*, 369 S.C. 201, 631 S.E.2d 262, 265 (2006). The trial court's factual conclusions regarding the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion, and the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. *State v. Saltz*, 346 S.C. 114, 551 S.E.2d 240, 252 (2001); *see also State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); *State v. Miller*, 375 S.C. 370, 652 S.E.2d 444, 448 (Ct. App. 2007).

> In South Carolina, the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the confession. 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. This list of factors is not an exclusive list. Moreover, **no single factor is dispositive** and each case requires careful scrutiny of all surrounding circumstances.

State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010) (emphasis added and internal citations omitted). The burden is on the State to show a confession is admissible. The trial court should examine the totality of circumstances to determine admissibility. The State must prove the statement was voluntary and in compliance with *Miranda*. *State v. Middleton*, 288 S.C. 21, 339 S.E.2d 692 (1986). "In order to determine whether a statement is voluntary, the trial court must inquire whether under the totality of the circumstances the suspect's will was overborne." *State v. Carmack*, 388 S.C. 190, 199, 694 S.E.2d 224, 228 (Ct. App. 2010) (citing *Miller*, 375 S.C. at 384, 652 S.E.2d at 451).

Appellant argues, "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 facility for several days until just forty-five minutes before his interrogation and that Appellant was under the influence of several prescription drugs." (App. Br. 12.) However, these two pieces of evidence do not render the statement involuntary in and of themselves. They are merely two factors to be considered within the totality of the circumstances. No single factor is dispositive; therefore, Appellant's stay in a mental facility and his use of prescription medication were not, alone, enough to make the

statement inadmissible. *See Moses*, 390 S.C. at 513, 702 S.E.2d at 401 (stating no single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances).

While mental health is one of the factors, being under the influence of drugs—prescription or otherwise—is not. However, because the list is not exhaustive, the State submits consideration of medications could be a valid factor for the trial court's determination of the totality of the circumstances. Here, the trial court properly considered both Appellant's mental health and his use of prescription medication. During the *Jackson v. Denno* hearing, both the State's witnesses and Appellant himself provided testimony regarding his treatment at the mental health facility and his use of prescription medications. The trial court was able to hear testimony from Appellant that he "wasn't in [his] right state of mind . . . [b]ecause [he] was on medication." (R. 53, lines 14-16.) However, the trial court also heard him testify he had been taking Lortab since 2010 and had taken the correct amount prescribed by the doctor on the day of the interview. The trial court was also able to evaluate Appellant's testimony regarding his signing and initialing the waiver of rights as well as his writing of the statement, both of which he admitted.

The trial court also heard the State's witnesses, Officers Moore and Goodman, testify regarding Appellant's statement. Officer Moore testified Appellant did not appear to be intoxicated or under the influence of anything at the time. Officer Goodman testified Appellant seemed lucid and clearheaded and "normal" to him and did not appear to be under the influence of anything. (R. 32, lines 3-10.) The trial court must determine whether under the totality of the circumstances the suspect's will was overborne. In *Carmack*, this Court determined the trial court correctly found Carmack's will was not

overborne when evidence showed he was fully advised of his rights, he indicated he understood those rights, and nothing suggested to the officers that he was intoxicated despite the fact he was drinking earlier in the night. 388 S.C. 190, 694 S.E.2d 224. *See also State v. Saxon*, 261 S.C. 523, 201 S.E.2d 114 (1973) (finding the fact the defendant was intoxicated does not necessarily render him incapable of comprehending the effect of his words and thus does not render his statement inadmissible as a matter of law); *State v. White*, 311 S.C. 289, 294-95, 428 S.E.2d 740, 743 (1993) (finding defendant's statement to police voluntary because the fact he was under medication and strapped to his bed was only one circumstance the trial court had to consider).

Here, despite the fact that Appellant had been in a mental health facility and was taking prescription drugs, the trial court found the evidence showed Appellant was advised of his rights and initialed and understood those rights, and the officers found him lucid and normal. Thus, the trial court's ruling is supported by evidence and should be affirmed. *See Carmack*, 388 S.C. at 199, 694 S.E.2d at 228 ("On appeal, this court reviews the trial court to 'simply determine[ ] whether the . . . ruling is supported by any evidence.'").

Appellant cites *State v. Callahan*, 263 S.C. 35, 208 S.E.2d 284 (1974), for the proposition that consideration of a person's mental capacity is an important factor in determining whether a statement to police was voluntary. The State agrees mental health is **one** of the factors to be considered when determining whether a defendant's will was overborne. However, in *Callahan*, the issue was whether the trial court properly excluded a psychiatrist's testimony regarding Callahan's mental retardation and low

mental capacity.[2] Here, no argument was made that Appellant has mental retardation or a low IQ. Thus, *Callahan* merely stands for the notion that lack of mental capacity is an important factor to be considered, with others, in looking at the totality of the circumstances to determine whether a defendant's will is overborne. It has no bearing on the issue here, which is whether being in a mental health facility and on prescription medication is enough to render a defendant's statement involuntary.

Appellant also argues he was influenced by watching the video of the robbery. However, testimony by both officers indicated Appellant did not view the video prior to his interview. Rather, they showed him the video at the end when he asked to see it. Thus, no exertion of improper influence by the video was shown requiring exclusion of Appellant's statement to law enforcement. Similarly, both officers testified the two changes Appellant made to his statement—"pecans" to "peanuts" and "James" to "Fred"—were made by Appellant on his own when he reviewed the statement, not at the suggestion of the officers. (R. 17, line 25-R. 18, line 12; R. 39, lines 1-6.)

Because the trial court found, based on the totality of the circumstances, that Appellant's will was not overborne, this Court should affirm the trial court's ruling and Appellant's conviction and sentence.

[2] Testimony by the psychiatrist in *Callahan* indicated Callahan's IQ was in the range of 55-65. 263 S.C. at 40, 208 S.E.2d at 286.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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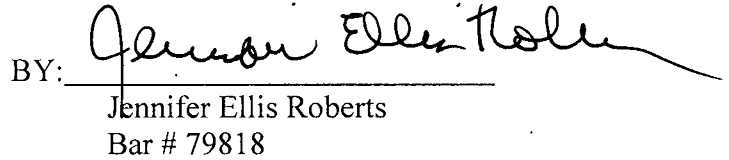

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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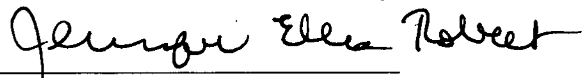
BY: 
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PROOF OF SERVICE

I, Angela Bennett, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.
This 25th day of March, 2015.

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