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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

JESSIE WAYNE DAVIS,

APPELLANT

APPELLATE CASE NO. 2014-000282

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting statements made by appellant who has cognitive deficits and who was questioned after he asked for an attorney?

STATEMENT OF THE CASE

On April 8, 2013, an Oconee County grand jury indicted appellant for four counts of first degree criminal sexual conduct (“CSC”) with a minor and two counts of third degree CSC with a minor. R. 426. On January 27, 2014, appellant was tried before the Honorable Alexander S. Macaulay and a jury. R. 1. Lindsey Satterfield Simmons represented the State. R. 1. R. Daniel Day, Jr. represented appellant. R. 1. The jury convicted appellant on all counts. R. 384, 1. 4 – 386, 1. 2. Judge Macaulay sentenced appellant to concurrent terms of life imprisonment on three of the first degree CSC counts, twenty-five years’ imprisonment on the other CSC count, and fifteen years’ imprisonment on the third degree CSC counts. R. 402, 1. 10 – 403, 1. 12. This appeal follows.

ARGUMENT

The trial court erred in admitting statements made by appellant who has cognitive deficits and who was questioned after he asked for an attorney.

Relevant Facts

At the Jackson v. Denno, 378 U.S. 368 (1964) hearing, Dr. Donna Schwartz-Watts (“Watts”) testified that, in her opinion, to a reasonable degree of medical certainty, appellant Jessie Wayne Davis (“Davis”) “has some cognitive deficits.” R. 166, l. 18 – 167, l. 7. Davis has a history of learning disabilities. R. 166, l. 18 – 167, l. 7. She described Davis as “very dependent upon his mother.” R. 167, ll. 2 – 4. Dr. Watts opined, “[C]ertainly people with learning disabilities or cognitive impairments, they can be influenced.” R. 167, ll. 5 – 7.

After receiving a report of sexual abuse, officers from the Oconee County Sheriff’s Department took Davis “voluntarily” from his home to the sheriff’s office in the back of their police car at approximately 11:00 PM. R. 98, l. 23 – 100, l. 20. R. 112, ll. 2 – 4. R. 117, ll. 2 – 21. R. 138, ll. 6 – 8. Davis called his mother from the back seat of the police car. R. 138, ll. 9 – 10. Davis’s mother told him to ask for a lawyer and not to speak with the police until she arrived at the police station. R. 138, l. 22 – 139, l. 1. Davis asked the police for a lawyer twice in the police car, again before they began questioning him, and then a fourth time after the officers began questioning him. R. 139, ll. 2 – 16. Davis’s mother testified at the hearing that she heard Davis tell the officer he wanted an attorney “[m]ore than once” while she was on the phone with him. R. 155, ll. 8 – 12.

Both police officers who testified denied that Davis ever asked for an attorney. R. 104, ll. 4 – 5. R. 123, ll. 16 – 18. After the officers had Davis sign a waiver of his rights, Davis denied committing any sexual abuse. R. 123, ll. 4 – 8. R. 112, l. 19 – 113, l. 1. Davis asked to speak to his mother. R. 112, ll. 5 – 8. One of the officers told Davis that he was an adult, he was 21 years old, and that he would talk with him and not his mother. R. 112, ll. 9 – 13. The officers then turned Davis over to a “consultant” for a polygraph exam. R. 112, l. 19 – 113, l. 1. R. 82, l. 24 – 83, l. 2.

Davis again denied the abuse allegations to the polygraph examiner. R. 87, ll. 22 – 24. The polygraph examination took approximately one hour and 45 minutes. R. 87, ll. 15 – 21. Davis asked the polygraph examiner if he could speak with his mother. R. 89, ll. 20 – 24. The polygraph examiner stated, “I told him he was 21 years old and he could make his own decision. He was an adult.” R. 90, ll. 5 – 7. The polygraph examiner testified that at this point, Davis “could have got up and walked out of the room at any point in time he wanted to.” R. 90, ll. 11 – 19. After the examination, the polygraph examiner called Davis “a liar.” R. 144, ll. 13 – 19.

Davis had been awake for 48 straight hours. R. 140, ll. 2 – 3. He was tired and wanted to go to sleep. R. 141, ll. 14 – 18. Davis testified, “By then I was ready to say anything they wanted me to say.” R. 141, ll. 14 – 18. The police told him he had to write a statement. R. 142, ll. 2 – 8. Davis told them he did not know how to spell properly. R. 142, l. 3. Davis testified, “As it went on, statement came out, and I started signing whatever that is – actually I don’t even know what it says, really, because I ain’t really read it. I just now heard it.” R. 142, ll. 5 – 8. In this statement written by the police officer, Davis admitted sexually abusing two girls. R. 105, ll. 11 – 14. R. 407

(State's Ex. 2). Another police officer hand wrote letters of apology to the alleged victims and had Davis sign them. R. 124, l. 21 – 125, l. 6. R. 409 (State's Ex. 3, 4). Davis wrote three other apology letters himself. R.411 – 413 (State's Ex. 5, 6, 7). The trial judge refused to suppress the statements. R. 177, l. 2 – 182, l. 11.

Discussion

A citizen cannot “be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law” U.S. Const. amend. V. “If the individual states that he wants an attorney, the interrogation must cease until an attorney is present.” Miranda v. Arizona, 384 U.S. 436, 474 (1966). An accused . . . having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police.” Edwards v. Arizona, 451 U.S. 477, 484-85 (1981).

“The State has the burden to show by the preponderance of the evidence that a defendant has voluntarily waived his right to counsel.” State v. Binney, 362 S.C. 353, 359, 608 S.E.2d 418, 421 (2005). The State did not meet its burden in this case. Davis testified that he unequivocally asked for an attorney on at least four occasions. He asked for an attorney twice in the police car and two other times at the police station. Davis's mother heard Davis ask the police for an attorney.


The officers, although denying that Davis asked for an attorney, admitted that they ignored his request to see his mother. The police also used a “consultant” as a polygraph examiner. Nothing in the record shows that Davis ever initiated conversation with the police after asking for an attorney. Instead, he denied involvement in response

to their questions and the police used a polygraph examiner to extract a confession from him. This interrogation took place in the middle of the night. The statement was signed at 2:09 AM. R. 407 (State's Ex. 2). When combined with Dr. Watts' testimony about Davis's cognitive deficits and vulnerability to coercion, the trial judge erred in finding the statements were voluntarily made after an invocation of the right to counsel. Davis's convictions should be reversed and this case remanded for a new trial.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial with instructions that his statements are inadmissible.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of October, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

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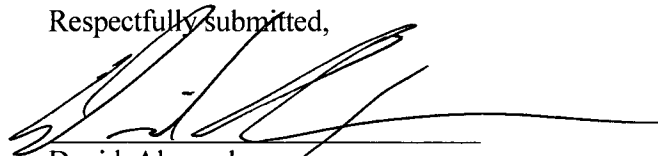
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jessie Wayne Davis states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Alexander S. Macaulay, which was held on January 30, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Jessie Wayne Davis.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 27th day of October, 2014.

STATE OF SOUTH CAROLINA

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Alexander S. Macaulay, Circuit Court Judge

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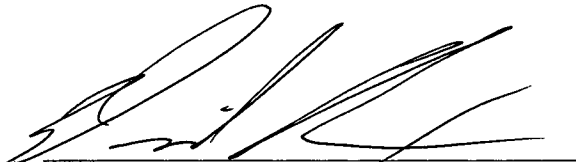
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Trial Transcript;
- (3) State's Ex. 1-7;
- (4) Court's Ex. 1-2.

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

October 27th, 2014



David Alexander
Appellate Defender

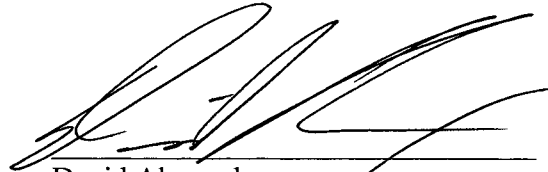
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(803) 734-1343

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."

October 27th, 2014



David Alexander
Appellate Defender

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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 Jessie Wayne Davis, #358628, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 27th day of October, 2014.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 27th day of October, 2014.

Maiz Hendel (L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.