

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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DEC 29 2015
SC 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

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the trial court err in denying Defense counsel's objection to suppress Defendant's inculpatory statement?
 - A. The Court should have suppressed the Appellant's statement as involuntary because it was elicited as a result of:
 - 1. An implied promise by law enforcement for reward in the form of a granted bond
 - 2. Threats by law enforcement in the form of repeated recitations of amount of time he faced on an unrelated charge;
 - 3. Law enforcement's threat to Appellant's sister regarding her potential arrest and/or removal of her children from her care 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. (R. pp. 1-2). In May of 2013, David Stalk ("The Appellant") was charged with the murder of the Victim. Armed Robbery & Possession of a Deadly Weapon during the Commission of a Violent Crime. (R. pp. 2-3). On January 14, 2014, the Appellant intended to enter a guilty plea to the charge of manslaughter, but prior to the adjudication, he changed his mind. Instead the Appellant elected to go forward on all three charges in a jury trial in the Court of General Sessions in the County of Lancaster, before the Honorable R. Knox McMahon. (R. pp. 3-4). 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 concurrent. (R. p. 458, lines 11-18). 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; and (2) Appellant's confession was coerced. (R. pp. 127-128).

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.

A. The trial court should have suppressed the Appellant's confession because the statement was made following a promise of leniency, express or implied, by law enforcement, and is thus involuntary and should be inadmissible at trial.

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. (R. p. 195, lines 3-4). While the record reflects that the Appellant did voluntarily waive his *Miranda* rights, he did so as a result of alleged improper promises and threats made by the interrogating and Lead Investigator. (R. p. 59, lines 6-19). He claims that these improper tactics included an explicit promise to assist in obtaining a bond on an unrelated charge, repeated recitations of sentences he could face on an unrelated charge, as well as an implicit promise that the bond would be obtained if he confessed to the murder. (R. p. 55, 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 thus 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 that the statement was given voluntarily, and they must do so to the jury beyond a reasonable doubt. *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 in the jury trial, and thus requests the Court to 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, because the voluntariness of the statement was overborne by the police’s interrogation practices. While such a standard is indeed a high threshold, courts are much more likely to find such an error occurred when it comes to evaluating the admissibility of confessions in cases where such a statement served as the primary evidence for conviction. In *Arizona v. Fulminante*, the court

recognized that convictions hinging 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 Appellant's Constitutional rights are not violated.

The Appellant argues that the offer to assist in obtaining a bond induced him to make an involuntary and false confession that should not have been admitted at trial. (R. p. 54, line 23). When a statement is given based on inducement 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 is exactly the case in this matter, as he only confessed to involvement based on promises made by the interrogating officer that included assisting him with obtaining a bond on an unrelated charge. (R. p. 54, line 23). In this case, the Appellant concedes that he waived his rights under *Miranda*, but 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.

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 where he denied involvement in the murder. (R. p. 19, 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. (R. p. 47, lines 14-15). Finally, as in *Osborne*, during the interrogation process, Appellant was presented with the fact he face a number of years in prison on another charge. (R. p. 265, 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.

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.” *State v. Arrowood*, 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2007). The Court of Appeals found in favor of

the State because the officers testified 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.*

The Court distinguished their finding from that in *State v. Peake*, where it was found that a 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 promised not to seek the death penalty if an inculpatory statement were made. *Id.* at 138, 488. This case is factually closer to *Peake* than *Arrowood* as the officer’s testimony is not in direct conflict with that of the defendant’s, as it was in *Arrowood*’s.

The Leading Investigator concedes that he did more than promise to tell the judge that Appellant was cooperative. He actually agreed to help Stalk get a bond. (R. p. 42, 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. (R. p. 41, 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.” (R. p. 50, 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 (1987). 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.

B. Threats or promises made to family members of a suspect are equally impermissible under Miranda, and may be considered when determining the voluntariness of a confession or statement made in the wake of learning of this threat.

There is evidence that when looking for the Appellant, the Lead Investigator threatened the Appellant's sister with arrest herself and the involvement of Social Services with her children. (R. p. 324, 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.

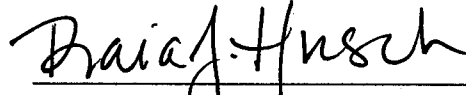
Appellant's sister contends that similar threats were made to her when the Lead Investigator visited her home, repeatedly and without warning, in search of her brother. (R. p. 324, lines 16-18). While the threat was made to her directly, rather than the Appellant, the Appellant likely was aware of these 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. (R. p. 323, 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,



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This 29th day of December, 2015.

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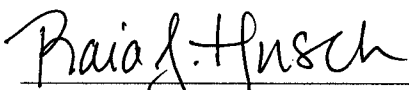
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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief complies with South Carolina Court of Appeals Rule 211(b), to wit: the final brief is identical to the brief previously served under Rule 208, except the references in the initial brief are revised to indicate where the material appears in the Record on Appeal; and the party has corrected obvious typographical errors and misspellings which were contained in the initial brief. No other changes have been made.

December 29th, 2015



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