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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAQUAVIUS T. CLEVELAND,

APPELLANT

APPELLATE CASE NO. 2014-001842

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily?

STATEMENT OF THE CASE

An Oconee County Grand Jury indicted Appellant at the October 28, 2013 term of General Sessions for attempted murder and possession of a weapon during the commission of a violent crime. R. 251. His case was called to trial on July 21, 2014 before the Honorable Alexander S. Macaulay, and a jury. R. 1. Assistant Solicitors Lindsey Simmons and David Wagner appeared on behalf of the state, and Charles Griffin represented Appellant. R. 1.

On July 24, 2014, the jury found Appellant guilty. R. 236, l. 20 – 237, l. 10. Judge Macaulay sentenced him to twenty-two years imprisonment for attempted murder and five years consecutive for the weapons offense. R. 242, l. 15 – 243, l. 3.

This appeal follows.

ARGUMENT

The court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily.

Relevant Facts

Appellant moved pretrial to suppress the inculpatory statements he gave to law enforcement shortly before his arrest. The court held a Jackson v. Denno, 378 U.S. 368 (1964) hearing on the matter. R. 4, l. 15 – 5, l. 7.

Sergeant Margaret Tinsley with the Oconee County Sheriff's Office testified that Appellant's Aunt Patrice drove sixteen-year-old Appellant to meet with Corporal Phillip Robertson, who was a family friend, shortly after the altercation occurred. Corporal Robertson transported Appellant to the sheriff's office in his patrol car. Once at the sheriff's office, Appellant was escorted to an interview room in the criminal investigations division. R. 6, l. 7 – 7, l. 8.

Tinsley said she advised Appellant of his Miranda[1] rights at 5:50 pm and Appellant signed the waiver of rights form at 5:52 pm and agreed to speak with her and Corporal Robertson. R. 13, ll. 10-16. She claimed the three talked until 6:14 pm when Appellant began writing a written statement. R. 13, l. 10 – 14, l. 1. In this first written statement, Appellant allegedly said Hakeem Kirkland, who was his second cousin, came over to his house and confronted him about two hundred dollars Appellant had borrowed a year before

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

and never repaid. Appellant said Hakeem had a gun and he got scared so he stabbed Hakeem a couple of times in the shoulder with his pocketknife and ran. R.. 15, ll. 4-12.

Tinsley claimed that after this first interview, she and Appellant went to the conference room and watched television while they waited on the investigators to gather more information. She said a couple of officers had been sent to Greenville Memorial Hospital to interview Hakeem who had been admitted due to his injuries. Other investigators were gathering evidence from the scene in front of Appellant's house where the altercation took place and the location where Hakeem was later found a short ways away and treated by EMS. R. 16, ll. 2-14.

Tinsley testified that after the first interview, she arranged for Appellant to take a polygraph exam. It took about an hour for the examiner to arrive. In the meantime, Appellant allegedly signed a consent form and an officer drove to his mother's work and his mother also signed a consent form. R. 24, l. 19 – 25, l. 25. It was unclear what time the polygraph exam took place. However, the exam allegedly showed "signs of deception." Tinsley said the examiner would have told Appellant the results. R. 26, ll. 2-17.

Eventually Sergeant David McMahan, who had travelled to the hospital to speak with Hakeem, returned to the sheriff's office. According to Tinsley, McMahan said Hakeem had been stabbed eleven times and that Hakeem had shown McMahan text messages he had exchanged with Appellant where the two arranged for Hakeem to sell Appellant a firearm and some marijuana. Tinsley said this information did not match what Appellant had told them during his first interview so they decided to question him further. R. 17, ll. 6-18.

The second interview began at 1:15 am, which was almost eight hours after Appellant had first arrived at the sheriff's office. Tinsley testified that this interview also occurred in the interview room and that this time she and Captain Greg Reed were present. They did not advise Appellant of his Miranda rights a second time. Tinsley and Reed confronted Appellant with the evidence the officers had discovered and told him the evidence did not match up what he had stated in his written statement. R. 18, l. 14 – 19, l. 9. They also stressed the results of the polygraph exam which allegedly indicated Appellant was being deceptive. R. 41, ll. 1-10.

Reed and Tinsley talked to Appellant for forty-five minutes until 1:58 am. Appellant refused to write a second written statement because he was too tired. When Appellant refused to write a statement, the officers had him sign the bottom of the handwritten notes Tinsley had taken during the interview and adopt it as his statement. R. 21, ll. 7-24; R. 37, l. 5 – 38, l. 2.

During this early morning interview, Appellant allegedly said he had contacted Hakeem by text message about purchasing a gun for a friend and buying some marijuana. Appellant supposedly said he did not have any money to pay for the items so he planned on robbing Hakeem. When Hakeem arrived outside Appellant's house, Appellant spoke with Hakeem in his car for a while and then went back into his house and grabbed a "butcher knife." Appellant allegedly returned to the car and, when Hakeem was distracted, started stabbing him. The two scuffled and then Appellant took off running. R. 20, ll. 1-23.

After Appellant gave the second statement, he was arrested sometime around 2:30 am. R. 22, ll. 12-18. Despite being only sixteen-years-old, Appellant was charged as an adult.

Appellant testified that his aunt was contacted by Corporal Robertson and agreed to drive Appellant to meet Robertson. He said they met Robertson at Appellant's house and then Robertson drove him to the sheriff's office. Before leaving his aunt, she told Appellant "to write a statement and [he] would be going home." R. 44, l. 2 – 45, l. 11. Appellant testified that once he arrived at the sheriff's office, he did not feel free to leave. R. 45, ll. 15-17.

Appellant explained that after he gave his first statement, he was given a polygraph exam. The examiner told Appellant he "was lying." R. 45, l. 18 – 46, l. 5. Appellant thought the officers could use the results of the polygraph exam against him in court. R. 46, ll. 19-21. He was eventually interviewed a second time. Appellant said he refused to write out a second statement because he was too tired and "didn't really feel like it." R. 46, l. 6 – 47, l. 4. Appellant testified that the only reason why he went down to the sheriff's office and spoke with law enforcement was because his aunt told him that if he gave a statement, he would be able to go home. R. 50, ll. 8-11; R. 51, ll. 14-16.

Yashica Cleveland, Appellant's mother, testified that she received a call from her sister around 4:30 pm while she was at work. Her sister told her Appellant had been in a fight and stabbed his cousin and that the police had surrounded her house. Her sister also said Corporal Phillip Robertson was one of the officers at her house. R. 56, ll. 4-15.

Cleveland maintained that no one from the Oconee County Sheriff's Office ever contacted her or notified her that Appellant had been brought in for questioning. The first contact she had from the sheriff's office was when a female investigator came to her work sometime between 7:00 pm and 8:00 pm and sought permission to have Appellant take a

polygraph exam. She did not know Appellant had already given a written statement at that point. All she knew was what her sister had told her. R. 56, l. 16 – 57, l. 6.

Cleveland testified that she continuously called the sheriff's office throughout that evening and night, but no one ever knew where Appellant was located or would provide her with any information related to her son and the investigation. She was not able to speak with Appellant until the early morning hours, sometime between 2:00 am and 3:00 am. R. 57, ll. 2-20; R. 58, ll. 14-25.

Arguments and Ruling

Defense counsel argued the state failed to show by a preponderance of the evidence that Appellant gave the statements to law enforcement freely and voluntarily. Counsel stressed Appellant's young age and immaturity, the length of the detention and questioning, the absence of Appellant's mother during the interviews, the late hour, and the polygraph exam. R. 62, l. 17 – 67, l. 12.

The assistant solicitor argued the officers did not promise Appellant anything nor threaten him in order to obtain a statement. He also stressed that Appellant was read his Miranda rights and voluntarily waived those rights before giving a statement. The solicitor maintained that under the totality of the circumstances, Appellant's statements were freely and voluntarily given. R. 67, l. 15 – 69, l. 7.

The court found by a preponderance of the evidence that Appellant was advised of his Miranda rights and knowingly and intelligently waived those rights. The court also found that Appellant's statements were given freely and voluntarily without duress, without coercion, without undue influence, without promise of hope for reward or leniency, without threat of injury, and without inducement of any kind.

At the end of the court's ruling, the judge stated, "So the statements marked for identification [as] . . . State's Exhibit 2 and 3 being the two statements allegedly made by the defendant will be admitted." R. 76, l. 22 – 78, l. 4. The court reporter then noted in the transcript: (WHEREUPON, State's Exhibit Numbers 2 and 3 were admitted into evidence.) R. 78, ll. 5-6. Because the court had already admitted the statements into evidence during the pretrial Jackson v. Denno hearing, trial counsel did not renew his objection when the statements were later discussed before the jury nor did the assistant solicitor later seek to admit the two exhibits into evidence. See R. 150, l. 4 – 153, l. 2; see also R. 155, l. 23 – 156, l. 19.

Discussion

The court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily.

A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession. Jackson v. Denno, 378 U.S. 368 (1964).

"This principle is best justified when viewed as part and parcel of 'fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process Clause of the Fourteenth Amendment.'" State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Haley v. Ohio, 332 U.S. 596, 607 (1948) (Frankfurter, J., concurring)). "The United States Supreme Court has 'emphasized that admissions and confessions of juveniles

require special caution.'" State v. Parker, 381 S.C. 68, 88, 671 S.E.2d 619, 629 (Ct. App. 2008) (citing In re Gault, 387 U.S. 1, 45 (1967)).

"In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

"The totality of the circumstances includes "*the youth* of the accused, his *lack of education or his low intelligence*, the lack of any advice to the accused of his constitutional rights, the *length of detention, the repeated and prolonged nature* of the questioning, and the use of physical punishment such as the deprivation of food or sleep." Id. (internal citations omitted). Furthermore, no one factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances. Pittman, 373 S.C. at 566, 647 S.E.2d at 164.

As our Supreme Court explained in Pittman, 373 S.C. at 566, 647 S.E.2d at 164-165:

> In Haley v. Ohio, 332 U.S. 596 [(1948)] and again in Gallegos v. Colorado, 370 U.S. 49 (1962) [internal citations omitted] the United States Supreme Court reversed juveniles' convictions on the grounds that the confessions were involuntarily gathered. Though the court addressed the scrutiny applied to juveniles' confessions with quite broad language in each opinion it is firmly established that "a minor has the capacity to make a voluntary confession . . . without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.

(internal citations omitted)

For example, in Haley, the United States Supreme Court stated:

> That which would leave a man cold and unimpressed can overawe a lad in his early teens ... we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the

> victim first of fear, then of panic. **He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.**

Haley, 332 U.S. at 599-600.

Similarly, in Gallegos, the Court said:

> [A juvenile] cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights—**from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself.** A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult advice would have put him on a less unequal footing with his interrogators. **Without some adult protection against this inequality, a 14–year–old boy would not be able to know, let alone assert, such constitutional rights as he had. To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights.**

Gallegos, 370 U.S. at 54–55.

Here, sixteen-year-old Appellant was separated from his mother or other friendly adult for over eight hours and questioned on multiple occasions during that period. With only a tenth grade education and no friendly adult present, it was unlikely Appellant fully understood his constitutional rights or the consequences and effects of giving a confession. It was clear Appellant wrongly believed that if he gave a statement to law enforcement, he would be permitted to return home to his mother. Appellant testified that his aunt instructed him "to write a statement and [he] would be going home." See R. 44, l. 2 – 45, l. 11. Thus, it is obvious Appellant did not understand the severe consequences of giving a confession to the police.

In addition to holding Appellant for over eight hours, law enforcement questioned him into the early morning hours of the next day. Appellant's second interview, which occurred after he had already given a written statement and taken a polygraph exam, did not start until 1:15 am. After Sergeant Tinsley and Captain Reed questioned him for forty-five minutes, Appellant told them he was exhausted and too tired to give another written statement. These circumstances further show Appellant's will was overborne by the experienced officers and that his statements were not given freely and voluntarily.

Moreover, law enforcement administered a polygraph exam on Appellant sometime after his first interview but before his second interview. Sergeant Tinsley testified that the polygraph examiner would have told Appellant the results of the exam which allegedly showed Appellant was being deceptive. Captain Reed admitted that he and Tinsley confronted Appellant about these results during the second interview immediately before Appellant gave a full confession. Appellant also testified that the officers told him he was "lying." This is additional factor that proves Appellant was coerced into given a confession.

Because under the totality of the circumstances, Appellant's statements to law enforcement were not freely and voluntarily given, the trial court erred by admitting them into evidence. As a result, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of Novmeber, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

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November 6, 2015

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APPELLATE CASE NO. 2014-001842

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon David Spencer, Esquire at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 6th day of November, 2015.

Lara M. Caudy

Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
This 6th day of November, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.