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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT T. KRONSBERG,

APPELLANT

APPELLATE CASE NO. 2014-002682

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge err in admitting Appellant's statement where the police violated Appellant's rights pursuant to the Fifth and Fourteenth Amendments by interrogating him the day after he had invoked his right to silence about the same crime?

II. Did the trial judge err in admitting Appellant's statement to police where the record demonstrated Appellant's purported waiver of his rights was not voluntary due to his ingestion of prescription medication shortly before the interrogation?

STATEMENT OF THE CASE

On May 6, 2013, a Charleston County grand jury indicted Appellant for murder (2013-GS-10-2456) and possession of a weapon during the commission of a violent crime (2013-GS-10-2457). R. 550 – 557; R. 553 - 554. The state, represented by Chad Simpson and Jessica Simpson, called the case for trial before the Honorable Roger M. Young, Sr., and a jury on December 1, 2014. R.1. D. Ashley Pennington, Charles Cochran, and Annie Andrews represented Appellant. R. 1.[1] The jury found Appellant guilty as charged. R. 509, lines 9 - 17. On December 9, 2014, Judge Young sentenced Appellant to life imprisonment for murder and five years' imprisonment for possession of a weapon. R. 539, line 20 – R. 540, line 9; R. 552; 555.

Appellant filed a timely notice of appeal. This brief follows.

[1] Shortly after the trial started, Mr. Pennington underwent surgery and was unable to continue his representation of Appellant. R. 285, lines 3-10.

STATEMENT OF FACTS

No one disputed that Appellant killed his girlfriend, Tasha Lucia. The only question for the jury was whether it was murder or voluntary manslaughter.

Appellant and Lucia had been in an on-again, off-again relationship for about a year. Some would describe it as "volatile" and "unstable." R. 170, lines 15-18; R. 183, lines 1-3; R. 185, lines 2-17; R. 186, lines 24-25; R. 206, line 25 – R. 207, line 2. The two regularly fought and belittled each other. R. 183, lines 5-6; R. 207, lines 3-21; R. 209, lines 19-24; R. 213, line 25 – R. 215, line 20; R. 216, line 17 – R. 217, line 1; R. 325, lines 7-24; R. 326, lines 6-12; R. 327, lines 4-9; R. 352, line 1 – R. 353, line 2. Lucia remained "very good" friends with her ex-boyfriend, Willie Parsons. This was a point of contention for the couple, especially because Lucia regularly emasculated Appellant with comparisons between the two men's genitals. R. 179, line 18 – R. 180, line 17; R. 184, lines 4-6; R. 353, lines 3-25; R. 342, lines 4-7; R. 363, line 5 – R. 364, line 4.

On February 9, 2013, Lucia worked at Locklear's Beach City Grill on Folly Beach until her shift ended around 5 p.m. R. 162, lines 11-22; R. 169, line 1; R. 169, lines 8-10; R. 181, lines 12-15; R. 186, lines 16-17. Thereafter, she and a group of friends set out to explore Folly Gras, a local festival. R. 170, line 23 – R. 171, line 5; R. 187, lines 5-9. After leaving Folly Beach, Lucia and her friend, Jessica Nelson, went to Smoky Oak, a bar near their homes. R. 172, lines 6-14. Lucia became very intoxicated over the course of her evening out with friends. R. 164, lines 6-9; R. 164, lines 15-16; R.

166, lines 21-22; R. 167, lines 3-5.[2] Additionally, throughout the evening, Lucia and Appellant argued via text messages. R. 351, lines 10-25; R. 354, lines 1-25.

Although Lucia had planned to spend the night at her friend's house, she returned home. R. 164, lines 1-10; R. 165, lines 8-12; R. 167, lines 10-13. Appellant was at the apartment when Lucia arrived. Lucia and Appellant began arguing with Lucia "saying that Willie was a better man than he was and he had a bigger penis." R. 342, lines 4-7; R. 363, line 5 – R. 364, line 4. Lucia yelled and told him that she was unhappy. Then, Lucia began to hit Appellant.[3] Appellant returned her blows. R. 342, lines 8-10; R. 364, lines 5-18. When Lucia began screaming, Appellant started choking her. R. 342, lines 12-14. Lucia continued to scream and Appellant grabbed the "nearest thing to him," a hammer.[4] He hit her in the head with the hammer and she started to convulse. Appellant grabbed a knife and stabbed Lucia in the chest. R. 342, lines 15-22.[5]

On February 10, 2013, Lucia did not answer her phone when her co-workers attempted to contact her. R. 172, line 21 – R. 173, line 4; R. 187, line 18 – R. 188, line 1. Unable to reach Lucia, Nelson and Kristin Tanner, went to Lucia's apartment after 5 p.m. R. 174, line 15 – R. 175, line 8; R. 179, lines 13-15; R. 189, lines 4-7; R. 189, lines 16-25.

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[2] The pathologist testified that Lucia's blood alcohol level was 0.259 and she had marijuana metabolite in her blood. R. 423, lines 18-19.

[3] The knuckles on Lucia's right hand were bruised. R. 267, line 25 – R. 268, line 11. Appellant had bruises and abrasions on his abdomen. R. 236, lines 16-25; State's Exhibits #63-67.

[4] Lucia's DNA was on the hammer handle, indicating she may have wielded the hammer at some point during the altercation. R. 308, lines 2-14.

[5] Lucia died as a result of "cardiac and pulmonary disruption due to multiple stab wounds to the chest and contributory or blunt force injuries." R. 423, lines 3-6.

Tanner entered Lucia's apartment through an unlocked door. R. 175, lines 18-21; R. 190, lines 19-23. When Nelson and Tanner entered, they found Appellant on the bed. He "was snoring, but was wide awake. ... His eyes were open, but they were rolling back in his head." R. 176, lines 12-18. Appellant was in "a complete daze, and he couldn't even talk. His words were, like, gurgling in his throat, and he couldn't speak." R. 176, lines 20-24; see also R. 195, lines 2-9.

They found Lucia in the spare bedroom under a blanket. She had blood on her legs and a knife in her chest. Scared, the two ran from the apartment. R. 177, lines 4-19; R. 177, lines 23-25; R. 178, lines 1-2; R. 192, lines 1-18; R. 195, line 20 – R. 196, line 5; R. 205, lines 5-12; R. 213, lines 4-11. They called for help. R. 177, lines 20-22; R. 192, line 19; R. 196, lines 15-20.

The police found Appellant still on top of the bed with blood on his chest and abdomen. R. 221, lines 17-20. When the officer ordered him to put his hands behind his back, Appellant "sat bolt upright, muttering unintelligibly," and "muttering nonsense, just gibberish." R. 221, line 21 – R. 222, line 3; R. 222, line 23; R. 225, lines 16-20. Appellant's eyes were "wide open and wild looking." R. 222, lines 4-6. Eventually, Appellant complied with the officer's commands and was arrested. R. 222, lines 7-13. While putting on the handcuffs, the officer noticed Appellant had a laceration to his left wrist. R. 222, lines 14-20. Medical personnel bandaged Appellant's wrist and transported him to MUSC. R. 223, lines 17-22.[6]

[6] In the room where Appellant was found, the officer found "a marijuana bong on the nightstand, a bottle on the floor, clear liquid, a bottle of vodka." R. 223, lines 3-5. The officer removed a knife from the nightstand. R. 223, lines 9-12. The police also found a knife on the bed and an open pill bottle on the table beside the bed. R. 247, lines 6-11. When the officers removed the covers from the bed, the officers found two large knives and

ARGUMENT

I. The trial judge erred in admitting Appellant's statement where the police violated Appellant's rights pursuant to the Fifth and Fourteenth Amendments by interrogating him the day after he had invoked his right to silence about the same crime.

Relevant facts

Appellant moved to suppress his statement to law enforcement based upon the officers' failing to scrupulously honor his invocation of his right to remain silent. R. 3, line 20 – R. 13, line 7; R. 542 - 546.[7] On February 12, 2013, Investigator Amanda Cone and Investigator Richard Holmes went to the intensive care unit at the Medical University of South Carolina (MUSC) to interrogate Appellant. R. 14, line 25 - R. 15, line 25; R. 20, line 24 – R. 21, line 2; R. 26, line 17 – R. 27, line 2; R. 40, lines 19-20.[8] Appellant, who was in a secure area of the hospital, was handcuffed and restrained. R. 15, lines 18-19; R. 21, lines 7-21; R. 40, lines 12-14. Appellant was asleep when the investigators arrived, but was awakened in order to be interrogated. R. 15, lines 19-23; R. 40, lines 21-25.

Cone immediately noticed Appellant was "very groggy, lethargic, just – slurred speech." R. 16, lines 7-9; R. 23, line 25 – R. 24, line 7. As she began to advise

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a pair of scissors. R. 256, lines 13-16; R. 265, line 22 – R. 266, line 8. Three knives and another pair of scissors were found in the bathroom. R. 266, lines 9-18.

[7] Court's Exhibit #5 is on file with this Court.

[8] The testimony regarding the time of the first interrogation was conflicting. On cross-examination, Cone was asked if the interrogation occurred at 10:30 p.m. and she responded she was not sure of the time. R. 21, lines 3-6. On re-direct examination, Cone testified that law enforcement uses 24 hour time and 10:15 on a report would indicate 10:15 a.m. R. 24, lines 16-23. However, the point was never made that this was the time of the actual interrogation with Cone. On the other hand, Holmes testified the first interrogation occurred at 10:15 a.m. R. 27, lines 6-8.

Appellant of his rights, Cone thought to herself, "[T]his isn't going to go over so well." R. 17, lines 9-16; see also R. 41, lines 3-5. In light of Appellant's "physical and mental condition," Cone thought "nothing he said would be admissible in court." R. 17, lines 17-25. During the interview, Cone even asked Appellant to "stay" with them. R. 18, lines 12-13; R. 24, lines 8 - 10. Holmes claimed that he advised Cone that he "thought it wasn't going to be feasible to have the interview completed at that time." R. 26, line 25 – R. 27, line 2. Holmes indicated he felt Appellant was "not coherent enough to understand." R. 27, lines 9-21.

Appellant told the investigators he did *not* want to talk about that. R. 19, lines 9-11; R. 27, lines 22-25. Specifically, Cone told Appellant to "[t]ell us what you know" and Appellant responded he did *not* want to. R. 75, line 25 – R. 76, line 4. Cone persisted and Appellant again said he did not want to speak to the police. R. 76, lines 5-6. Holmes asked for clarification, and Appellant said he did not want to talk about it. R. 76, lines 8-12. Thereafter, the investigators discontinued the interrogation by leaving the hospital room. R. 19, lines 14-16.

Based on Holmes' twenty-two years of law enforcement experience, he interprets a suspect saying, "I don't want to talk to you" to mean "it's not presently that he's not willing to talk, but he's just maybe not at that time - - in my investigations, I've always, if he says, Not at that time, I'm willing to come back at another time, a specific location, come in." R. 28, lines 4-11. Based on his "understanding of the law," it is "sometimes appropriate to re-approach a criminal suspect even though they [*sic*] have previously asserted that they [*sic*] might wish to - - arguably wish to remain silent." R. 29, lines 20-24.

Therefore, unsurprisingly, Holmes returned with another detective to MUSC the next day to continue his interrogation of Appellant. R. 29, line 25 – R. 30, line 9. Holmes claimed Appellant was "more coherent at the time" and he "was alert and conscious." R. 30, lines 3-9. Holmes noted that Appellant was watching television and claimed that he "saw a totally different person from the 12th to the 13th. R. 31, lines 4-9. On February 13, Holmes harbored no reservations about interrogating Appellant because "at the time, he was fully alert and conscious." R. 32, lines 1-8.

According to Holmes, the officers administered Miranda[9] warnings on February 12 and "Miranda warnings were then repeated for the second time" on February 13. R. 33, line 25 – R. 34, line 4.

After hearing argument from the state and Appellant on this point, the trial judge ruled the police did not engage in coercive conduct when they returned on February 13 for the interrogation. R. 145, lines 22-24. Additionally, the judge ruled the police did not violate the law by reinitiating the interrogation after Appellant invoked his right to silence. Specifically, the judge found the police "honored his request not to talk that day." The police returned the next day "after telling him they were going to come back, gave him his rights again, and he assented to all - - or a complete understanding of what his rights were." Thus, he found no "police misconduct" in that regard." R. 146, lines 7-15.

Based on the judge's ruling, the state introduced the recorded statement during the trial when Holmes testified before the jury. Appellant renewed his objection at the time. R. 380, lines 5-22; State's Exhibit #107.

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[9] Miranda v. Arizona, 384 U.S. 426 (1966).

Discussion

The United States Supreme Court held that "[i]f [an] individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. ... [A]ny statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." Miranda v. Arizona, 384 U.S. 426, 473-474 (1966). If a suspect invokes his right to silence, the interrogators must scrupulously honor the invocation. Michigan v. Mosley, 423 U.S. 96, 103 (1975); State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261 (2001). A suspect invokes his right to silence by clearly articulating his desire to end the interrogation and must do so "unambiguously." Berghuis v. Thompkins, 560 U.S. 370, 381 (2010); Davis v. United States, 512 U.S. 452, 459 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998).

Our state supreme court noted with approval that other courts have set forth five factors to analyze to ascertain whether the defendant's right to cut off questioning was scrupulously honored. The first is whether the police warned the defendant of his Miranda rights at the first interrogation. The second is whether the police immediately stopped the interrogation when the defendant indicated he did not want to answer questions. The third is whether the police resumed questioning only after passage of a significant period of time. The fourth is whether the police provided a second set of Miranda warnings prior to the second interrogation. Finally, the fifth factor is whether the second interrogation was restricted to a crime that had not been the subject of the earlier interrogation. Benjamin, 345 S.C. at 476-477, 549 S.E.2d at 261. These "factors provide a framework for determining

whether, under the circumstances, an accused's right to silence was scrupulously honored." Id. at 477, 549 S.E.2d at 261.

In Benjamin, the South Carolina Supreme Court agreed with other courts that a second interrogation on the same subject matter is not rendered unconstitutional automatically. Id. at 477, 549 S.E.2d at 262. After Benjamin was arrested, he was not advised of his Miranda warnings and told the questioning officer that he did not want to talk to him. Id. at 475, 549 S.E.2d at 261. Approximately one hour later, a SLED agent interrogated Benjamin. The SLED agent advised him of his rights and Benjamin agreed to waive those rights and speak. Id. In deciding that the statement was admissible, the Court noted that the initial officer did not advise Benjamin of his right to silence, that the officer immediately ceased talking to him, and there was no immediate resumption of questioning. Id. at 478, 549 S.E.2d at 262. The Court explained that "[w]hat is paramount is that police, under the totality of the circumstances, 'scrupulously honor' the suspect's right to remain silent." Id.

Applying the factors to the case presented, it is clear the judge erred in admitting the statement and finding the police scrupulously honored Appellant's invocation of his right to silence. Although the police warned Appellant of his rights during the first and second interrogations, the police did not wait for the passage of a significant period of time. The second interrogation began the very next day while Appellant remained restrained in a hospital bed and medicated. While the police stopped the interrogation, it was not immediate. In fact, the officers asked him at least twice if he wanted to speak to them. Appellant had to persist in his assertion of his right to silence. Additionally, the record indicates the officers ceased the interrogation at least in part because of

Appellant's mental state, and were less concerned with his invocation. Finally, there can be no question but the police interrogated Appellant concerning the same crime as was the subject of the earlier interrogation. Appellant invoked his Fifth Amendment right to silence on this subject, and law enforcement erred by re-initiating questioning. The trial judge compounded this error by admitting the statement into evidence at the trial.

II. The trial judge erred in admitting Appellant's statement to police where the record demonstrated Appellant's purported waiver of his rights was not voluntary due to his ingestion of prescription medication shortly before the interrogation.

Relevant facts

During the pre-trial hearing, Holmes testified to his interaction with Appellant on February 13, 2013 at MUSC. As explained, Holmes and Williams re-initiated the interrogation on February 13, 2013 between 10 and 11 a.m.[10] after Appellant indicated on February 12, 2013 that he did not want to speak to police and after Holmes and Cone noticed that Appellant was incapable of participating in an interrogation due to his mental incapacity.

According to Holmes, on February 13, Holmes advised Appellant of his Miranda warnings by using a card and having Appellant sign a space on the card. R. 34, lines 2 – R. 35, line 8. Holmes claimed he did not engage in "[a]ny aggressive direct questioning" or take "any sort of confrontation stance" or make "[a]ny threats or promises." R. 35, lines 5-11. Importantly, though Holmes asked if Appellant wished to talk to the police, Appellant *never* gave an answer. R. 45, lines 1-7. Rather, Holmes interrupted himself and asked Appellant if he knew where he was. R. 45, lines 8-12. Holmes never returned to his question of whether Appellant wanted to waive his rights and speak to police. R. 45, lines 13-19.

During the interrogation, Appellant gave a full confession. State's Exhibit #107.[11] Holmes claimed he was unaware that Appellant was hospitalized because he had

[10] Holmes did not testify regarding a time of the interrogation. However, Dr. Mullis testified the confession "was on February 13th, between 10 and 11 a.m." R. 55, lines 19-21.

overdosed on pills just days before the interrogation. R. 37, line 23 – R. 38, line 4; R. 39, line 23 – R. 40, line 1. Holmes was not even aware that Appellant was hospitalized by law enforcement, a member of the same department where Holmes worked, because he had cut his wrists in a suicide attempt. R. 39, lines 8-22. Although Holmes was clearly aware that Appellant was in the intensive care unit of a hospital, Holmes made no inquiries of any hospital personnel concerning Appellant's physical and mental condition. He never inquired about prescription medications that may be influencing Appellant at the time of the interrogation. R. 43, lines 13-20.

Appellant was admitted to the hospital on February 10, 2013 and began receiving Haldol at 10:27 p.m. that day. R. 61, lines 13-14. He received a second dose shortly after midnight on February 11. R. 61, lines 9-10. On February 11, at 10:48 a.m., he received another five milligrams followed by another dosing at 5:27 p.m. He received none on February 12, 2013, but received a final dose on February 13 at 7:53 a.m. R. 61, lines 14-22; R. 74, line 24 – R. 75, line 7.

The state called Dr. Diana Mullis, a psychiatrist with MUSC, to testify. She reviewed Appellant's medical records in preparation for her testimony. R. 53, line 22 – R. 54, line 2. According to the records, Appellant was being administered Haloperidol, or Haldol, which is an antipsychotic medication. Dr. Mullis conceded that its primary use is to treat psychotic disorders, but she claimed it can be used for mania and anxiety as well. R. 55, line 22 – R. 56, line 4. Appellant received "a pretty standard dosing for treating someone who is agitated ... probably a delirious state." R. 57, lines 17-22. She

[11] The recording of the interrogation is State's Exhibit #106 and is on file with this Court.

found the dosage of five milligrams not unusually high because doctors could "go much higher." R. 57, lines 23-25.

She claimed "confusion" was "rare with Haldol" and that "sedation is infrequent." R. 59, lines 16-19. Further, she would not expect to see *severe* influences on a person's ability to exercise free will. R. 60, lines 17-19. Haldol "should actually help with the thinking." R. 60, lines 20-21. When administered intravenously, as it was with Appellant, Haldol takes effect immediately according to Dr. Mullis. R. 62, lines 3-8. The effects of Haldol would last for four to five hours. R. 74, lines 1-2.

Despite the fact that Appellant received Haldol at 7:53 a.m. on February 13, 2013 and was interrogated by two officers between 10 and 11 a.m. that day, Dr. Mullis opined that the drug "did not impair his capacity to understand and comprehend his situation." R. 62, line 20 – R. 63, line 12. She had no "concerns that he did not have the capacity to comprehend his situation." R. 70, line 20 – R. 71, line 1. She explained that "if someone is suffering with a thought disorder or confusion, it can help to improve the thought processes." R. 63, lines 15 - 17. She was unaware of Haldol having "effects to sort of break the will of a person, to make them [*sic*] do things they [*sic*] don't want to do." R. 63, line 24 – R. 64, line 2.

Dr. Mullis listened to the recording of the interrogations. She noted concern that Appellant was "cognitively impaired" on February 12. R. 64, lines 22-23. However, she did not have the same concerns about the interrogation on February 13 because Appellant's "responses were appropriate and timely," Appellant "was able to state his date of birth, talk about his education, where he attended school" and Appellant did not have "slurred or slowed speech." R. 64, line 24 – R. 65, line 6.

Oddly, the hospital records indicated that on February 12, 2013, Appellant was "normal" because he "was obeying commands, opening his eyes spontaneously, and was alert and oriented." R. 67, lines 12-24. This was the day the officers thought he was not coherent enough to interrogate and that Dr. Mullis worried that he was cognitively impaired. The hospital records showed that Appellant was "normal" on February 13 as well because he "was alert and oriented, followed commands, had no sensory deficits." R. 67, line 25 – R. 68, line 3.

Appellant called Dr. Leonard Mulbry, Jr., a forensic psychiatrist to testify. Dr. Mulbry explained that Haldol affects dopamine, a neurotransmitter in the brain that enables the cells to work together. R. 83, lines 10-17. Essentially, Haldol blocks dopamine in the brain. R. 84, lines 3-4. For people who are psychotic, Haldol improves their thinking by blocking dopamine. R. 83, line 18 – R. 84, line 8. According to Dr. Mulbry, Haldol may be given to a person who is not schizophrenic to treat agitation, Tourette's syndrome, delirium, and mood disorders. R. 85, lines 5-14. Further, Dr. Mulbry explained that when Haldol is administered intravenously, the onset is "very rapid, ... immediate to a few minutes, ten minutes." R. 86, lines 2-9; R. 87, lines 1-3. Haldol will "work effectively for about four to six hours." R. 87, lines 6-12.

Although the doctors at MUSC administered Haldol to Appellant, he was not schizophrenic. R. 85, lines 15-17. According to the records, Appellant received five milligrams of Haldol for anxiety on Wednesday, February 13 at 7:53 a.m. R. 87, lines 16-19. This dosage of Haldol would still be active at the time of the interrogation, two and a half hours later. R. 87, line 24 – R. 88, line 3.

Dr. Mulbry found research regarding the effects of Haldol on people who were not psychotic. The subjects noted "slowing of thinking and movement," "profound inner restlessness," "paralysis of volition, [and] a lack of physical and psychic energy." R. 91, lines 9-16. Specifically, the subjects "felt unable to read, telephone, or perform household tasks of their own free will, but could perform tasks if demanded to do so." R. 91, lines 16-18. In another study, the subjects noted "vegetative stability and a condition of psychic indifference and removal from emotional and sensory stimuli." R. 93, lines 22-25.

The purpose of Haldol is to remove the patient's interest in the environment, to "not respond as fully to what's going on." R. 94, lines 4-10. Haldol reduces one's initiative to resist. R. 94, lines 11-13. Haldol is a "major tranquilizer." R. 95, lines 2-4. Put simply, Haldol would undercut a person's volition, and in Dr. Mulbry's opinion, Appellant's volition was dampened by the administration of Haldol a mere two hours before the interrogation. R. 96, line 25 – R. 97, line 6. As a result of the Haldol, Appellant's "ability to take initiative would be reduced," and his "ability to say no would be reduced." R. 97, lines 22-23. Appellant's ability to understand the consequences was compromised by the Haldol. R. 98, line 22 – R. 99, line 2.

Dr. Mulbry also had Appellant's jail records, which showed that Appellant had been prescribed Perphenazine, a neuroleptic similar to Haldol, to treat him for mood instability. R. 88, lines 4-16. After a month on the medication, Appellant refused to take it anymore because it made him feel like a "space cadet." R. 88, lines 17-21. According to the records, Appellant was concerned because the medication made him feel like he

could not defend himself. R. 88, line 22 – R. 89, line 5. Thus, Dr. Mulbry had a record to demonstrate how neuroleptics, like Haldol, actually affected Appellant.

In questioning Dr. Mulbry, the trial judge focused on the fact that Appellant's responses to law enforcement during the interrogation did not appear to be fabricated when compared to the other evidence in the case. In other words, it appeared that Appellant was telling the truth. The judge seemed perplexed that Haldol could affect Appellant's ability to waive his rights in a voluntary and knowing manner and, yet, Appellant's statements be true. R. 116, line 16 – R. 118, line 12.

In ruling on the motion, the judge explained that "the issue boil[ed] down to did the administration of that drug, Haldol, cause his will to be overcome to the extent that his confession wasn't voluntary." R. 146, lines 19-22. "[B]ased on the totality of the circumstances," the judge found Appellant's ingestion of Haldol a mere two hours before the interrogation "did not cause his confession to become involuntary." R. 146, lines 22-24; R. 147, line 24 – R. 148, line 3.

Understanding that Haldol may make a person who is agitated to become calm, the judge had a difficult time wrapping his head around "somebody who is calm and rational is at the same time being caused to become so compliant that they are just willing to agree to everything." R. 147, lines 4-11. The judge was persuaded because Appellant gave responses to non-leading questions and the police were not trying to trick him. R. 147, lines 12-19.

Based on the judge's ruling, the state introduced the recorded statement during the trial when Holmes testified before the jury. Appellant renewed his objection at the time. R. 380, lines 5-22; State's Exhibit #107.

Discussion

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002).

It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010)(citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)). Thus, "[t]he waiver inquiry 'has two distinct dimensions': waiver must be 'voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,' and 'made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.'" Id. at 382-383 (quoting Moran v. Burbine, 475 U.S. 421, 421 (1986)).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did

totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

> 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.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted). The test requires consideration of "'totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation.'" Dickerson v. United States, 530 U.S. 428, 434 (2000)(citations omitted). Consideration of a person's mental capacity is an important factor in determining whether a statement to police was voluntary. State v. Callahan, 263 S.C. 35, 41, 208 S.E.2d 284, 286 (1974) (citing State v. Cain, 246 S.C. 536, 144 S.E.2d 905 (1965)).

> [A] person's capacity to make an informed waiver requires three abilities: an understanding of the words and phrases contained within the warnings, an accurate perception of their intended functions (e.g., that interrogation is adversarial, that an attorney is an advocate, that these rights trump police powers), and a capacity to reason about the likely consequences of the decision to waive or invoke these rights.

Saul M. Kassin, The Psychology of Confessions, 4 Ann. Rev. L. & Soc. Sci. 193, 199 (2008).

The record before the trial judge indicated that Appellant's mental state was altered by the hospital's administration of an anti-psychotic, Haldol, to the point that he was unable to act voluntarily. He lacked free will due to the medication. Appellant had been

hospitalized in an intensive care unit for days following his attempted suicide by way of cutting his wrists and ingesting pharmaceuticals. Not only was he hospitalized, but his hospital bed was his jail cell as he was restrained to the bed and unable to even walk about the area. The totality of the circumstances revealed Appellant was unable to voluntarily and knowingly waive his rights; therefore, the trial judge erred in permitting the state to introduce his statement into evidence.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of January, 2016.

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CERTIFICATE OF COUNSEL

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

January 11th, 2016

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SC Court of Appeals

Susan B. Hackett

Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Roger M. Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT T. KRONSBERG,

APPELLANT

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 Susannah R. Cole, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 11th day of January, 2016.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 11th day of January, 2016.

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