

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2011-UP-583 (S.C. Ct. App. filed 12/21/2011)

07-GS-37-1835-36.

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FEB 27 2012
S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

DAVID LEE COWARD,

APPELLANT

PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS

ELIZABETH A. FRANKLIN-BEST
Appellate Defender

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ATTORNEY FOR PETITIONER.

INDEX

INDEX 1

CERTIFICATE OF COUNSEL 2

QUESTION PRESENTED 3

STATEMENT OF THE CASE 4

ARGUMENT

 The trial judge erred in admitting Coward’s statement to police when
 the police threatened to incarcerate Coward’s mother if he did not
 give the statement 5

CONCLUSION 7

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that the petition for rehearing was made and finally ruled on by the Court of Appeals on 1/27/2012.

QUESTION PRESENTED

Whether the trial judge erred in admitting Coward's statement to police when the police threatened to incarcerate Coward's mother if he did not give the statement?

STATEMENT OF THE CASE

David Lee Coward was indicted by the Oconee County grand jury of Burglary 1st degree (2007-GS-37-1835) and petty larceny (2007-GS-37-1836). He was tried by the Honorable Alexander S. Macaulay and a jury on January 26th and 27th, 2007. He was represented by Dallas Ball, Esquire. He was convicted, and sentenced to 15 years incarceration.

Coward timely filed an appeal, and the South Carolina Court of Appeals affirmed the conviction and sentence by way of an unpublished opinion on December 21, 2011. State v. Coward, Op. No. 2011-UP-583. App. 1-2. The Court of Appeals then denied Coward's petition for rehearing on January 27, 2012. App. 7-8.

This petition for writ of certiorari timely follows.

ARGUMENT

The trial judge erred in admitting Coward's statement to police when the police threatened to incarcerate Coward's mother if he did not give the statement.

The victim's house was robbed at nighttime by friends of her son. Her son, at the time, was incarcerated on theft charges. Three co-defendants, including Coward, were arrested in connection with the crime, and were charged with burglary and petty larceny. One of the co-defendants shot and killed the victim's dog.

During a Jackson v. Denno¹ hearing held during the trial, the lead investigator in the case, Scott Arnold, testified to his extracting an inculpatory statement from Coward. On cross-examination, defense counsel asked about statements made relating to Coward's mother, Cindy:

Q: But Cindy's situations did come up?

A: Yeah, I mentioned her name.

Q: In what capacity? How did that come up?

A: I told him that his mother's name had been mentioned and I felt like that—you know, I knew she didn't commit the crime and I told him I don't think anyone else needs to get in trouble over this because his mother's name had been mentioned in a capacity where she had knew – she knew some things and I felt like, you know, that she didn't—nobody else needed to get in trouble except the ones that committed the crime.

ROA p. 14, ll. 15-24.

In fact, it was Coward's mother who initially informed the victim that her son had stolen items from her house, so it is extremely unlikely that she would have had any legal exposure in this case. ROA p. 1, l. 8- p. 2, l. 10; ROA p. 3, ll. 14-24.

¹ 378 U.S. 368 (1964).

Coward testified that the only reason he gave a statement to Arnold was because Arnold was threatening to arrest his mother. ROA p. 19, ll. 19-23; ROA p. 22, ll. 1-5.

Trial counsel asked that the statement be excluded from trial. ROA p. 24, ll. 16-17. The State, during its argument to allow the statement to be introduced, seemingly conceded that the threats had, indeed, occurred:

I'd also ask the Court to take a look, I know he says his mother was threatened but he by this own admission gave a voluntary statement on another burglary case that he was currently at the time this statement was given was locked up on and Officer Arnold had not done anything to make him give a statement on that case.

ROA p. 26, ll. 15-20.

The judge ruled that the statement was admissible. ROA p. 27, l. 1- 28, l. 13.

When the statement was introduced at trial, defense counsel renewed its objection. This was error, and the statement should have been excluded.

Veiled threats against family members can render a confession involuntary. State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (1992). And see State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). The introduction of an involuntary statement at trial is a violation of Miranda v. Arizona, 384 U.S. 436 (1966). Arnold's statements about possibly implicating Coward's mother in these crimes and having her arrested rendered Coward's statement involuntary. But for Arnold's actions, Coward would not have given a statement to law enforcement. Because Coward's right to due process was violated by the use of his statement at trial which was rendered involuntary by Arnold's threats against his family, Coward respectfully asks this Court to grant his petition for writ of certiorari and allow full briefing on the issue.

CONCLUSION

For the preceding reason, Coward respectfully asks this Court to grant his petition for writ of certiorari and allow fully briefing on the issue.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'E. Franklin-Best', written over a horizontal line.

Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER.

This 27th day of February, 2012

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THE STATE,

RESPONDENT,

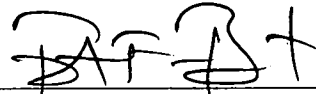
V.

DAVID LEE COWARD,

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CERTIFICATE OF SERVICE

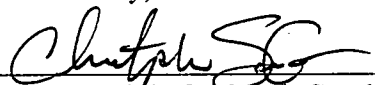
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix, in this case has been served on Julie M. Thames, Esquire, and the S.C. Court of Appeals this 27th day of February, 2012.



Elizabeth A. Franklin-Best
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 27th day
of February, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: May 16, 2021