

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TERRY COOPER,

APPELLANT

APPELLATE CASE NO 2016-000683

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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SC Court of Appeals

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in admitting Appellant's statement to law enforcement where the State could not prove by a preponderance of evidence that Appellant's statement was knowingly, intelligently, and voluntarily made since evidence suggested Appellant was under the influence of intoxicating medications?

STATEMENT OF THE CASE

A Spartanburg County Grand Jury indicted Appellant at the August 2015 term of General Sessions for bank robbery. R. 224 - 225. His case was called to trial on March 14, 2016 before the Honorable J. Derham Cole, and a jury. Barry Joe Barnette appeared on behalf of the prosecution, and Michael David Morin represented Appellant. R. 1.

After a jury was selected but prior to opening statements, defense counsel challenged the voluntariness of Appellant's statement under Jackson v. Denno.¹ R. 37 l. 21 – 38 l. 1. During the hearing that followed, Investigator Jason Tapp and Appellant testified about the interview and accompanying waiver of rights form. At the end of the testimony, defense counsel objected to the admission of Appellant's written statement, arguing that the statement was not voluntarily given. R. 77 ll. 3 – 5. However, based upon the testimony and evidence presented, Judge Cole found that the State established by the greater weight of the evidence that the statement given by Appellant was freely and voluntarily made. R. 77 ll. 6 – 12.

At the conclusion of the trial on March 15, 2016, the jury found Appellant guilty as indicted. R. 213, l. 23 – 214, l. 6. Judge Cole sentenced Appellant to twenty-eight years imprisonment. R. 216 ll. 19 – 24.

This appeal follows.

¹ 378 U.S. 368 (1964).

ARGUMENT

The trial judge erred in admitting Appellant's statement to law enforcement where the State could not prove by a preponderance of evidence that Appellant's statement was knowingly, intelligently, and voluntarily made since evidence suggested Appellant was under the influence of intoxicating medications.

Relevant facts

On June 3, 2015, a masked man entered the BB&T on North Church Street in Spartanburg, South Carolina. R. 92 ll. 7 – 21; R. 99 l. 19 – 100 l. 8. He demanded money at one of the teller windows and after receiving it, left the bank on foot. R. 100 ll. 2 – 8. The dye pack which had been placed inside the bag with the money exploded soon thereafter, causing the man removed his hoodie and shirt. R. 104 l. 7 – R. 105 l. 9. The man ran and fell down a nearby embankment. R. 105 ll. 10 – 21.

Officer Stephen McClure of the Spartanburg Police Department was dispatched following the bank robbery. R. 140 l. 17 – 141 l. 7. He saw a shirtless male jogging through a parking lot near the bank. R. 142 l. 16 – 143 l. 18. The man scaled a two-feet tall retaining wall and continued jogging. R. 143 ll. 4 – 14. McClure approached the man with his gun drawn and ordered him to the ground. R. 143 ll. 19 – 22. The man complied, and McClure held him at gunpoint until other officers arrived. R. 143 l. 19 – 144 l. 14.

At trial, McClure identified Appellant as the man who he found in the parking lot. R. 144 l. 19 – 145 l. 3. Following the detention of Appellant, Investigator Jason Tapp interviewed him at the Spartanburg Police Department. R. 160 ll. 2 – 21. According to Tapp, Appellant was provided with a "Statement of Rights" and chose to waive them. R. 162 l. 3 – 165 l. 7; R. 220 – 223. Tapp wrote

out a "Voluntary Statement" for Appellant which contained incriminating admissions. R. 221 – 223.

Tapp claimed Appellant appeared to understand his rights, initialed by each line, and signed the waiver of rights form. R. 162 l. 19 – 165 l. 7. Other officers came in to ask Appellant some questions and to photograph him. R. 44 l. 23 – 45 l. 5. For the full duration of the interview, over an hour, Appellant was in shackles. R. 45 ll. 6 – 11; R. 51 ll. 6 – 14.

At the time of the interview, Appellant had taken Remeron², insulin, Seroquel, Neurontin, and Gabapentin. R. 52 ll. 8 – 17; R. 62 ll. 7 – 14. He also told Tapp that he had been under mental health care. R. 45 ll. 18 – 20. Appellant was questioned for over an hour without being provided a shirt. R. 44 ll. 6 – 10.

Appellant did not recall being read the written statement by Tapp. R. 52 ll. 18 – 20. Appellant was sick, nervous, and scared during the interview. R. 50 ll. 1 – 10. As a result of being ordered to the ground by Officer McClure, the hot concrete left a scrape and a red mark on Appellant's stomach. R. 64 l. 23 – 65 l. 2. During the interview, he was only wearing a pair of pants and tennis shoes. R. 51 ll. 15 – 17. Tapp never asked Appellant whether he was on any medication. R. 52 ll. 3 – 4. At the time, Appellant was taking medications for depression, "nerves", and anxiety. R. 52 ll. 8 – 17. Although Appellant told law enforcement he was hungry, he was never given any food. R. 53 ll. 15 – 19.

A three-page written statement was the product of the interview. R. 41 ll. 12 – 23; R.* (State's #7). Tapp claimed that Appellant understood the contents of the statement. R. 41 ll. 24 – 25. Tapp also maintained that he did not threaten Appellant or make any promises. R. 40 ll. 8 – 11. Prior to the start of trial, defense counsel requested a hearing to determine the admissibility of

² The transcript from Appellant's trial lists "Ramrod", but upon information and belief, Remeron was actually the name of the medication.

Appellant's written statement obtained by law enforcement while Appellant was in custody. R. 38, ll. 6-12.

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. 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). In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: Did the 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 (emphasis added).

An examination of the totality of the circumstances reveals Appellant did not provide a knowing, voluntary, and free statement to law enforcement. There was evidence that Appellant suffered from mental illness and was under the influence of medication at the time that he gave his statement. He suffered from mental illness since he was eight years old. R. 71 ll. 15 – 21. He was

on multiple medications at the time of the interview. As a result, his statement was not knowingly, voluntarily, or freely made to law enforcement.

Appellant's testimony suggesting he was under the influence of anti-depressants and anti-anxiety medication rendered his statement unknowing, involuntary, and compulsory. Thus, the lower court erred in finding the statement admissible.

CONCLUSION

For the foregoing reasons, Appellant's conviction should be reversed, and this case remanded to the Spartanburg County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2017.

STATE OF SOUTH CAROLINA

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APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Terry Cooper 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 J. Derham Cole, which was held on March 14-15, 2016 (Trial), 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 Terry Cooper.

Respectfully Submitted,



Taylor D Gilliam

Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of January, 2017.

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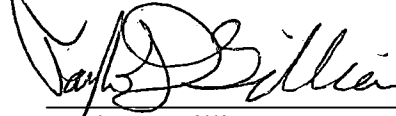
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CERTIFICATE OF COUNSEL

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."

January 06, 2017.

A handwritten signature in cursive script, appearing to read "Taylor D Gilliam", written over a horizontal line.

Taylor D Gilliam
Appellate Defender

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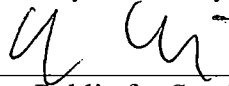
CERTIFICATE OF SERVICE

The undersigned 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 J. Benjamin Aplin, 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 have been served on Terry Cooper, #118061, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 6th day of January, 2017.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of January, 2017.

 (L.S)
Notary Public for South Carolina
My Commission Expires: 5/12/2025.