STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOSEPH MICHAEL MANNERS,

APPELLANT

APPELLATE CASE NO 2016-000355

ANDERS BRIEF OF APPELLANT

TAYLOR D GILLIAM
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ATTORNEY FOR APPELLANT

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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 Appellant had been in a car accident which caused his vehicle to fall into the Ohio River after a high speed chase with the police, and Appellant earlier attempted to commit suicide, signaling his confused mental state?

STATEMENT OF THE CASE

A Sumter County Grand Jury indicted Appellant at the February 6, 2014 term of General Sessions two counts of murder and one count of arson, first degree. R. 395 - 401. His case was called to trial on February 16, 2016 before the W. Jeffrey Young, and a jury. Assistant Solicitors Ernest A. Finney, III and John P. Meadors appeared on behalf of the prosecution and Timothy L. Griffith represented Appellant. R. 1.

At the conclusion of the trial on February 18, 2016, the jury found Appellant guilty as indicted. R. 375, l. 4 – 376, l. 3. Judge Young sentenced Appellant to life in prison for each of the murder charges and to a term of 30 years' imprisonment for the arson charge, with the sentences to run consecutive. R. 392, l. 15 – 393, l. 5.

This appeal follows.

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 Appellant had been in a car accident which caused his vehicle to fall into the Ohio River after a high speed chase with the police, and Appellant earlier attempted to commit suicide, signaling his confused mental state.

Relevant Facts

Rhonda Webster was a neighbor of the deceased. R. 109, l. 21 – R. 110, l. 18. On June 1, 2013, she heard a noise that sounded like a "sheet of glass being dropped" and spotted a white car leaving the decedents' driveway. R. 111, ll. 2 – 12; R. 112, ll. 6 – 8. She next noticed smoke and fire at the home and called 911. R. 112, ll. 1 – 25.

Officer Michael McCauley with the Sumter County Sheriff's Office was one of the first officers to arrive at the scene. R. 121, ll. 17 – 24. Investigator Julian Blair, deemed an expert in arson by the trial court, testified in great detail regarding the fire and the discovery of the bodies. R. 134, ll. 14 – 17; R. 153, l. 12 – 160, l. 11. He concluded that the fire was intentionally set using a flammable material. R. 178, ll. 11 – 23.

Captain Robert Burnish, a lieutenant with the investigation division at the time, determined that the decedents' 2008 white Honda Accord and was missing from the home. R. 233, ll. 1 – 15. He issued a BOLO statewide for the car and/or Appellant, since Appellant was living with the decedents, his grandparents, at the time. R. 234, ll. 5 – 18; R. 234, l. 24 – 235, l. 24.

Sergeant Kimberly Klare of the Erlanger Police Department in Kentucky received the BOLO call from her supervisor on the morning of June 2, 2013. R. 244, l. 25 – 245, l. 24. She located a Honda Accord bearing the same tags as the car which was mentioned by her supervisor.

R. 248, ll. 6 – 10. She notified her radio dispatch that she was behind the car and requested a second unit. R. 248, l. 22 – 249, l. 14. After Klare activated her blue lights, the Honda Accord accelerated "to an extremely high rate of speed and fled in a west bound direction". R. 253, ll. 3 – 6.

Nearby officers placed "stop sticks" across the interstate but the Honda Accord avoided them.[1] Once the car drove into Ohio, additional police officers joined the chase. R. 256, l. 1 – 259, l. 23. Throughout the chase, Klare observed a single occupant in the car. R. 260, ll. 4 – 10. The entire pursuit lasted a little over twenty-two miles. R. 260, ll. 2 – 3.

The car ended up in the Ohio River. R. 35 ll. 22 – 24. Ohio officials determined that the occupant of the vehicle was seen fleeing from the car after it entered the river bank from a boat ramp. R. 261, ll. 11 – 17. After the occupant was detained by the Delhi Police, Jennifer Mitsch and her partner, Detective Howard Grant, interviewed Appellant at the University Hospital in Cincinnati, Ohio. R. 266, l. 21 – 267, l. 24.

The next morning, Captain Burnish received a call from law enforcement in Kentucky which had gotten into a car chase with a Honda Accord with the same license tag as the vehicle which was missing. R. 239, ll. 9 – 25.

Appellant waived extradition to South Carolina. R. 240, ll. 23 – 25. Captain Burnish flew from Sumter County to Cincinnati, picked up Appellant, and brought him back to Sumter. R. 241, ll. 1 – 6.

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[1] "Stop sticks" are "a spike strip that is able to be thrown out away from the officer and then wheeled in to attempt to puncture the tires of the vehicle in order to get it to slow down."

Jackson v. Denno Hearing

Prior to the start of trial, defense counsel requested a Jackson v. Denno[2] hearing to determine the admissibility of Appellant's written statement obtained by law enforcement while Appellant was in custody. R. 31, l. 18 - 32, l. 22.

Sergeant Jennifer Mitsch of the Cincinnati Police Department testified that she spoke with Appellant at the hospital following the submergence of his vehicle in the Ohio River. R. 36 l, 2 – R. 37, l. 19. Prior to the start of her questions, she claimed to have read him his Miranda rights.[3] According to Mitsch, Appellant understood his rights signed a Notification of Rights form. R. 38, ll. 13 – 20; R. 40, ll. 2 – 25. His signature, however, appeared slanted and differed from other signatures obtained from Appellant. R. 286, ll. 14 – 24; R. 290, ll. 4 – 7.

Mitsch stated that Appellant did not appear to be under the influence of alcohol, drugs, or any other intoxicants, even though Appellant said he took 90 oxycodin. R. 43, ll. 15 – 19; R. 54, l. 7 – 55, l. 7. He obtained the pills from his grandmother's medicine cabinet and took them in an apparent suicide attempt. R. 54, l. 7 – 55, l. 7. She explained that a request for food would have been accommodated. R. 44 ll. 11 – 16. She claimed to have not threatened or coerced Appellant in exchange for his statement, although he was handcuffed to the bed for the entirety of the interview. R. 44, ll. 17 – 24; R. 42, ll. 9 - 12. Appellant never requested an attorney. R. 48, ll. 12 – 17. However, he did indicate that he did not want to talk "about this anymore." R. 48, ll. 14 – 17.

On cross-examination, Mitsch could not remember whether Appellant was in the ICU at the hospital. R. 53, ll. 6 – 14. She admitted that Appellant appeared upset about the circumstances giving rise to his hospitalization. R. 54, ll. 2 – 18. When asked about how he started the fire, he

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[2] Jackson v. Denno, 378 U.S. 368, 385, 84 S. Ct. 1774, 1785, 12 L. Ed. 2d 908 (1964).

[3] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

responded "I don't even know." R. 56, ll. 16 – 24. As the interview progressed, Appellant began falling asleep. R. 57, ll. 2 – 23.

During the course of giving his statement, Appellant began guessing at what he thought he was going to be charged with. R. 48, ll. 23 – 49, l. 6. The rest of his statement implicated him in the arson and murders. R. 395 – 422.

Stacey Hannah, a friend of Appellant, observed him in the hospital room. R. 64, ll. 13 – 20. Having known Appellant since he was thirteen or fourteen years old, she testified in his defense, correctly asserting that he was confused while in the hospital room. R. 66, ll. 4 – 24. She stated that "[Appellant] has always been the kind of child that you had to break it down to him the nuts and bolts of everything. We had to explain to him what intervention/statement was. And after we explained it to him, you know, he was … really confused by that point." R. 67, ll. 2 – 7.

At the end of the pre-trial hearing, the trial judge found that Appellant voluntarily waived his rights, that he gave his statement freely and voluntarily, and that the statement in which Appellant admitted the crimes should be admitted into evidence in front of the jury provided the proper foundation was laid. R. 73, ll. 15 – 25.

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).

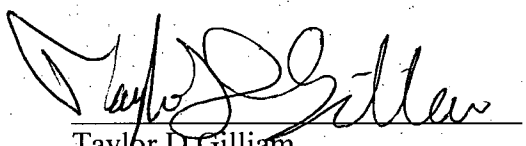
An examination of the totality of the circumstances reveals Appellant did not provide a knowing, voluntary, and free statement to law enforcement. There was evidence that Appellant suffered from an overdose and may have been under the influence of drugs at the time that he gave his statement. At the very least, he was in a state of confusion following the submergence of his car in the Ohio River. The evidence suggested that Appellant, who was in his twenties, was going to be sent back to Kentucky to live with other family members. There was also evidence that his signature on the waiver of rights was lopsided, indicating his drug-induced inebriated state.

The police knew that Appellant had been in a serious car accident. Mitsch knew of Appellant's depression and accompanying suicide attempt wherein he took 90 oxycodin. She should have asked Appellant more questions about his mental state and waited longer for his head to clear.

Appellant's "confused" condition suggesting he was under the influence coupled with the trauma he likely suffered as a result of the car accident rendered his statement unknowing, involuntary, and compulsory. Thus, the lower court erred in finding the statement admissible.

CONCLUSION

Appellant's convictions should be reversed and this case remanded to the Sumter County Court of General Sessions for a new trial.



Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of January, 2017.

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JAN 18 2017
SC Court of Appeals

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Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Joseph Manners 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 William Jeffrey Young, which was held on February 16 - 18, 2016, 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 Joseph Manners.

Respectfully Submitted,

Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of January, 2017.

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) True-billed indictment(s)
(2) Entire trial transcript
(3) Statement of Joseph Manners

I certify that this designation contains no matter which is irrelevant to this appeal.

January 18, 2017

Taylor D Gilliam
Appellate Defender

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PO Box 11589
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ATTORNEY FOR APPELLANT

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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 18, 2017.

Taylor D Gilliam
Appellate Defender

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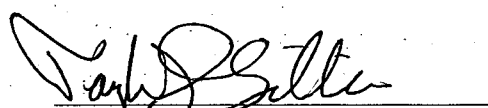
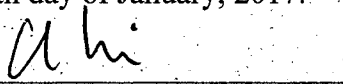
CERTIFICATE OF SERVICE

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 Donald Zelenka, 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 Joseph Manners, 367122, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 18th day of January, 2017.



Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of January, 2017.



(L.S)

Notary Public for South Carolina
My Commission Expires: 5/12/2025