STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County
Honorable William Jeffrey Young, Circuit Court Judge
Appellate Case Tracking No. 2015-001160

The State, Respondent,

vs.

Jacqueline Mesidor, Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court did not err in admitting Appellant's statement when any statements by the officer clearly did not cause her will to be overborne because she never changed her statement and always maintained someone else committed the crime.

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

ARGUMENT

I. The trial court did not err in admitting Appellant's statement when any statements by the officer clearly did not cause her will to be overborne because she never changed her statement and always maintained someone else committed the crime.

Appellant contends the trial court erred in failing to suppress statements Appellant gave to Trooper O'Donnell because the statement was not voluntary. She asserts Trooper O'Donnell applied threats causing her statement to be coerced. However, Appellant's will was clearly not overborne because her story to Trooper O'Donnell never changed even after the alleged threats occurred. Further, even if the threats somehow rendered the second part of her statement involuntary, the first portion of her statement was clearly admissible and any subsequent statement was merely cumulative.

In criminal cases, the appellate court only reviews errors of law and is bound by the trial court's factual findings unless the findings are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001). When reviewing a trial court's ruling concerning voluntariness, this Court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. Id.

"In order to introduce into evidence a confession arising from custodial interrogation, the State 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. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)." State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010).

"Once a voluntary waiver of the Miranda rights is made, that waiver continues until the individual being questioned indicates that he wants to revoke the waiver and remain silent or circumstances exist which establish that his 'will has been overborne and his capacity for self-determination critically impaired.'" State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting State v. Moultrie, 273 S.C. 60, 62, 254 S.E.2d 294, 295 (1979)).

The United States Supreme Court explained the danger of involuntary, coerced statements:

> It is now inescapably clear that the Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the "strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will," and because of "the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves."

Jackson v. Denno, 378 U.S. 368, 385–86 (1964) (internal citations omitted).

"The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession." State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) (citing Dickerson v. U.S., 530 U.S. 428, 434 (2000)). This Court has explained: "The test of voluntariness is 'whether a defendant's will was overborne' by the circumstances surrounding the given [statement]. The due process test takes into consideration 'the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.'" State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (citing, *inter alia*, Dickerson, 530 U.S. at 434 (2000); State v. Aleksey, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000); State v. Linnen, 278 S.C. 175, 179, 293 S.E.2d 851,

853 (1982); State v. Gillian, 360 S.C. 433, 458, 602 S.E.2d 62, 76 (Ct. App. 2004)). Some of the elements to be considered in determining whether a statement is voluntary include: 1) the crucial element of police coercion; 2) the length of the interrogation; 3) its location; 4) its continuity; 5) the defendant's maturity; 6) education; 7) physical condition; and 8) mental health. See Withrow v. Williams, 507 U.S. 680, 693-694 (1993) (citations omitted). "They also include the failure of police to advise the defendant of his rights to remain silent and to have counsel present during custodial interrogation." Id. A statement may not be "extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence." Rochester, 301 S.C. at 200, 391 S.E.2d at 247 (citing Hutto v. Ross, 429 U.S. 28, 97 S.Ct. 202, 50 L.Ed.2d 194 (1976)). The United State Supreme Court has also explained: "[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was 'compelled' despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare." Berkemer v. McCarty, 468 U.S. 420, 433 n.20 (1984).

First, it is clear in the instant case Appellant's will was not overborne by any alleged threats by Trooper O'Donnell. Prior to the threats identified by Appellant in her brief, she provided a completely voluntary statement to Trooper O'Donnell in which she explained her movements and actions throughout the day prior to the time of the accident. She explained the people she associated with, where they met, and what they did during the day. She explained how she took one of the individuals home, going near the location where the victim was struck by Appellant's vehicle. Finally, she maintained she loaned her vehicle to an individual named Milton Black prior to the time of the victim being struck and that she went to bed only to arise to

Milton returning the vehicle damaged. (State's Exhibit 114).[1] After the comments by Trooper O'Donnell, which Appellant alleges were threats and pressure tactics to force her to confess, **Appellant did not change her story**. She **never** confessed.

Specifically, Appellant made very few statements after the alleged threats made by Trooper O'Donnell. Immediately after the alleged threats, she asked: "Why did they tell me if I talked to them that it's going to be held against me at law and tell me I can have an attorney present when questioned if they are fixing to lock me up?" (State's Exhibit 114 at 1:20:09-1:20:26). She then stated: "I just wish y'all would really investigate and find Milton." (State's Exhibit 114 at 1:21:50-1:21:57). "I would really just want to talk to my sister and get some advice right now because I've . . . talked, I've been telling . . . you everything I know." (State's Exhibit 114 at 1:22:45-1:22:53). Appellant then talks about seeing the victim several hours before he was struck and killed, and when questioned about seeing him before she got into a wreck with him, she responds: "I saw him before a couple hours that they said he got into a wreck." (State's Exhibit 114 at 1:36:17-1:36:22). They then discuss what will happen to her kids, and after Appellant asks when she will get a bond hearing. She then asks: "How do I get the lawyer to prove that it wasn't me driving?" (State's Exhibit 114 at 1:38:34-1:38:37). None of these statements sound like the statements of a person whose will has been overborne and has been coerced into giving the statements. She is maintaining the exact same story as she provided

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[1] Appellant seems to maintain because over forty-five minutes into the statement Trooper O'Donnell makes allegedly coercive statements then the entire statement should be excluded, even the portion that occurred before the allegedly coercive statements. This is illogical and not what is required when a statement is suppressed. The first portion of Appellant's statement is unquestionably voluntary. She was read Miranda, voluntarily told Trooper O'Donnell her version of the facts, and never was under any kind of coercive or threatening pressure. As a result, the first portion of her statement to Trooper O'Donnell is properly admitted regardless of this Court's decision regarding the second portion of the statement. See e.g., State v. Lee, 670 S.E.2d 879, 881 (Ga. App. 2008) ("[A]ny hope of benefit given by the police to a defendant *after* the defendant has already confessed cannot be said to have induced the confession and thus does not affect its voluntary nature.") (italics in original).

before any alleged threats were made. As a result, none of her statements were coerced or involuntarily made and the trial court correctly admitted the statements to the jury.

Further, this case is clearly distinguishable from State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992). In Corns, the officer "informed Corns he had a warrant for Corns's wife, that his wife could be arrested, and that the Department of Social Services could take his children." The Court explained after the statements by the officer "Corns was very uneasy and then stated something to the effect of 'I'll plead guilty to the marijuana, just don't mess with my wife and kids.'" Id. at 549, 426 S.E.2d at 325. This Court found: "the testimony of the officers conceding they informed Corns his wife could be arrested, that she could be 'involved in the marijuana,' and that their children could be taken from them amounted to an exertion of improper influence rendering Corns's statement involuntary." Id. at 552, 426 S.E.2d at 327.

The statements by Trooper O'Donnell were very different and certainly had a different impact in this case. Trooper O'Donnell indicated she could be arrested for numerous crimes applicable to the facts of the case and then stated: "They're going to seize your car, they're gonna lock down your house, put your kids out, go stay with family or contact DSS." (State's Exhibit 114 at 1:19:08-1:19:15). After she asks about why she was told what she said could be used against her and they would get her an attorney, Trooper O'Donnell reminded her: "you can stop talking any time if you want." (State's Exhibit 114 at 1:20:30-1:20:33). The circumstances of this interaction are much different than those recorded in Corns which clearly impacted the defendant and immediately caused him to confess. In this case, as discussed above, Appellant never confessed and did not change her story after the comments above made by Trooper O'Donnell. It is clear she was not "uneasy" as was Corns, and she took no action to prevent the

Trooper or others from doing exactly what he said he would unlike Corns who confessed to prevent his wife and kids from becoming involved.

This case is more similar to State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009). In Goodwin, the defendant maintained "his will was overborne by the culmination of police tactics used during his interrogation." Id. at 602, 683 S.E.2d at 508. He cited "the officers' lying about evidence, threatening inappropriate and unjustifiable police action against his family members, strongly suggesting they could influence the State's decision to seek the death penalty, and numerous emotional appeals relating to his family." Id. After describing the circumstances and Goodwin's characteristics, this Court concluded "the officers did not create an environment that caused Goodwin's will be to overborne, and when viewing the totality of the circumstances surrounding Goodwin's statements, evidence exists to support the trial court's determination that the statements were voluntary." Id. at 603, 683 S.E.2d at 508.

The circumstances of Goodwin's interrogation are very similar to Appellant's. She attended two years of college and had no serious mental or physical conditions which impacted the interrogation. Further, the interrogation was in a police vehicle on her property, included several breaks in the interrogation during which time she spoke to several people on the phone, lasted less than an hour and a half, and as discussed did not include any significant elements of coercion. Even though she was reminded several times of her right not to speak to Trooper O'Donnell and of her right to an attorney, at no time during the interrogation did Appellant state she wished to stop the questioning, and she never requested an attorney. This Court, as it did in Goodwin, should find the evidence supports the trial court's conclusion the statements given by Appellant were knowing and voluntary and her will was not overborne rendering them inadmissible.

Finally, any error in failing to suppress the portion of the statement which occurred after the alleged coercive comments is entirely harmless in light of the fact she never changed her story and all the information provided occurred during the portion of her statement before the alleged threats and coercion. As the first portion of the statements were voluntarily made and appropriately admitted, anything admitted after that portion was entirely cumulative and could not have reasonably impacted the verdict of the jury. See State v. Pagan, 369 S.C. 201, 212, 631 S.E.2d 262, 267 (2006) ("Generally, appellate courts will not set aside convictions due to insubstantial errors not affecting the result. Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); State v. Schumpert, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) (any error in admission of evidence cumulative to other un-objected to evidence is harmless).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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February 28, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County
Honorable William Jeffrey Young, Circuit Court Judge
Appellate Case Tracking No. 2015-001160

The State, Respondent,

vs.

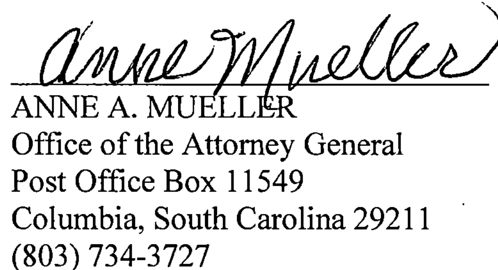
Jacqueline Mesidor, Appellant.

PROOF OF SERVICE

I, Anne A. Mueller, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing copies of the same in the United States mail, postage prepaid, addressed to:

John H. Strom, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, South Carolina 29211

I further certify that all parties required by Rule to be served have been served.
This 28th day of February, 2017.



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RE: State v. Jacqueline Mesidor
Appellate Case Tracking No. 2015-001160

Dear Mr. Strom:

I am enclosing copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case. If you have any questions, please do not hesitate to contact me.

Sincerely,

William M. Blitch, Jr.
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Enclosures

cc: Honorable Jenny A. Kitchings (original and one enclosed)
Victim Services