STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Sumter County

Honorable William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JACQUELINE MESIDOR,

APPELLANT

APPELLATE CASE NO 2015-001160

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Appellant's Fifth Amendment right against self-incrimination was violated by the introduction at trial of her video-taped statement to police where Trooper James O'Donnell told Appellant that police were ready to arrest her for conspiracy, failure to render aid, and accessory after the fact arising out of a hit and run accident and that, as a result of her imminent arrest, police were going to "lock-up" her house and SCDSS was going to take custody of her children.

STATEMENT OF THE CASE

On July 11, 2013, the Sumter County Grand Jury indicted Appellant Jacqueline Latrisha Mesidor for leaving the scene of an accident resulting death. R. 386 – 387.

On May 18, 2015, Appellant proceeded to trial before the Honorable Jeffery Young and a jury. S. Elaine Cooke represented Appellant, and Assistant Solicitors Scott Matthews and John P. Meadors represented the State. The jury found Appellant guilty as charged. R. 381, ll. 5-16. The trial court sentenced Appellant to twelve years imprisonment.

ARGUMENT

Appellant's Fifth Amendment right against self-incrimination was violated by the introduction at trial of her video-taped statement to police where Trooper James O'Donnell told Appellant that police were ready to arrest her for conspiracy, failure to render aid, and accessory after the fact arising out of a hit and run accident and that, as a result of her imminent arrest, police were going to "lock-up" her house and SCDSS was going to take custody of her children.

Relevant Facts

Just after midnight on April 13, 2013, Charles Dennis left a rural nightclub outside of Rembert in Sumter County on his motorcycle. R. 83, l. 1 - 86, l. 16. He headed south on Highway 521. As he approached the intersection of Highway 521 with Dinkins Mill Road, a blue sedan pulled out in front of him. *Id.*

Dennis was unable to stop his motorcycle in time. He skidded down to the pavement and his motorcycle struck the front left side of the sedan as it was crossing over Highway 521. R. 178, l. 2 - 191, l. 11. At this intersection, Dinkins Mill Road has a stop sign and traffic traveling down Highway 521 has the right of way. *Id.*

Christopher Ikner, who lived at the intersection of Highway 521 and Dinkins Mills Road, was awoken by the sound of the collision. He rushed outside and saw a blue sedan stopped on on Dinkins Mill Road just past the intersection. R. 82, l. 13 - 84, l. 21. Standing on his front porch, he saw something lying in the road behind the car. *Id.*

Ikner testified at trial that the car continued a short distance down Dinkins Mills Road and then changed directions heading back towards the intersection. *Id.* Once the blue sedan reached the intersection, it turned north onto Highway 521 at a high rate of speed. *Id.* As Ikner approached the intersection he realized that there was a body in the road and ran back to his house to call 911. R. 87, ll. 2-24.

Dennis died as a result of injuries sustained in the accident. R. 316, ll. 3-13. At the collision scene police recovered a blue plastic bumper with Chevrolet markings on it. R. 238, l. 2 - 239, l. 20. Based on the part number found in the bumper and discussions with a local car dealership, police determined that the bumper came from a 2005 Chevrolet Impala. *Id.*

Trooper O'Donnell then contacted the SLED fusion center in Columbia which provided, based on DMV records, a list of owners of blue 2005 Chevrolet Impalas who lived within thirty to forty miles of the accident scene. R. 244, l. 13 - 245, l. 18. O'Donnell and other law enforcement distributed a flyer in the area around the accident asking for information about people who owned a blue Impala. R. 245, l. 10 - 246, l. 16.

A short time later, O'Donnell received a call from another state trooper notifying him that several officers were at Appellant's house and had found a blue 2005 Impala with damage to its front bumper in the yard. *Id.* Appellant was home at the time and talking to the other officer's when Trooper O'Donnell arrived. R. 249, ll. 9-16.

Police Interrogation of Appellant

O'Donnell asked Appellant to come with him to his police cruiser. R. 8, ll. 7-25. He sat her in the back seat and began his interrogation by leading her back through her earlier statements to law enforcement. O'Donnell's patrol car is equipped with an audio recording system that captured the interrogation. (State's Exhibit 114). O'Donnell's interrogation began around 9:15 p.m. on April 13, 2013. *Id.* By this point in time, Appellant had already given law enforcement her version of events several times.

Appellant explained that she had gone to bed around 11:00 p.m. on April 12 and had allowed a man named Milton Black to borrow her car. R. 300, l.7 - 303, l. Sometime after she

woke-up around 10 a.m. on April 13th, Black came by her house and explained that he had been in accident that damaged the front bumper of her car. *Id.*; (State's Exhibit 114 at 18:16).

He apologized and offered to pay for any repairs before getting into his cousins' car and leaving. (State's 114 at 47:30- 59:50). Appellant then went about her day, running several errands, and having a hair appointment. It was not until later on the afternoon of April 13th that she realized her car had been involved in the accident with Dennis and that Black had stolen her cell phone from her car's center console. *Id.* Without the phone she was unable to contact him.

Appellant stated that she suffered from bi-polar disorder and took several prescription medications to manage her condition. During the course of the interview, Appellant repeatedly asked to smoke a cigarette, but O'Donnell refused to let her smoke. (State's Exhibit 114). Appellant also yawned repeatedly and explained to O'Donnell that she had already told the police what she knew about the collision. *Id.*

Approximately thirteen minutes into the interrogation, O'Donnell advised Appellant of her *Miranda*[1] rights. (State's Exhibit 114 at 13:05). When told she had the right to have a lawyer present and that a lawyer would be provided to her if she could not afford one, Appellant responded "for real?" R. 364, ll. 9-25; R. * (State's Exhibit 114 at 15:00). O'Donnell assured her that a lawyer could be provided, but reiterated throughout the interrogation that she was not under arrest. *Id.*

Forty-five minutes after *Mirandizing* her, Trooper O'Donnell finished leading Appellant through her version of events. He then left the patrol car to confer with the other officers. Appellant was left inside the car, O'Donnell refused to let her speak with her sister, who was standing nearby. (State's Exhibit 114 at 57:00).

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

Twenty minutes later, O'Donnell returned to the vehicle and began applying more pressure to Appellant. R. 17, l. 6 - 47, l. 20; (State's Exhibit 114 at 1:12:52). O'Donnell informed Appellant that the other officers at the house wanted to arrest her and that people in the community believed she had been driving the car:

> What I've been told, is what we have right now is they are ready to go ahead and arrest you for leaving the scene of an accident resulting in death, failure to yield right of way to on coming traffic, parties to a crime, conspiracy, accessory after fact, failure to give info and render aid. . . . . **They're going to seize your car, they're lock up your house, put your kids out, go stay with family or contact DSS. . . . that's where you are right now.**

(State's Exhibit 114 at 1:18:00 - 1:19:56); *see also* R. 17, l. 6 - 53, l. 23. Appellant was audibly crying. O'Donnell also made clear that he believed she was the driver, but reassured her that there must have been extenuating circumstances explaining why she fled the scene. *Id.*

O'Donnell also threatened to arrest her live-in boyfriend as an accomplice because he helped fix the car's bumper. *Id.* O'Donnell explained that "this is your come to Jesus time." Appellant then 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 [going] to lock me up." (State's Exhibit 114 at 1:20:09-1:20:26).

O'Donnell explained that they had not made a decision to arrest Appellant yet. *Id.* Appellant then asked for a cigarette, O'Donnell refused, but stressed that calls from the community identified her as the driver and that her family was worried about her. R. 26, l. 19 - 28, l. 16. O'Donnell's interrogation continued for another forty minutes. Appellant continued to deny that she was driving the vehicle at the time of the accident.

Throughout the interrogation, O'Donnell made clear that he does not believe her version of events. He repeatedly asked her to "clear her conscious" so that she can "rest easy tonight".

(State's Exhibit 114 at 1:33:05). "There are two families suffering, your sister, I mean she is upset, . . . because she knows what's going on and [Appellant's boyfriend] is doing his dangest looking out for you . . . but he is tore up too." *Id.*

Following a pause in the interrogation, O'Donnell told Appellant that she is being placed under arrest. He refused to let her see her two children before being taken to jail and refused to contact Appellant's sister so that she could take custody of her two children. Leveraging the uncertain fate of Appellant's children in one last push for a confession, O'Donnell added:

> I don't have any control over that, I'll have to talk to the other officers and see what the options are. Unfortunately that's where you are, they won't let me start giving considerations and things when you're not giving consideration for the circumstances that you're in. I guess that's a good way to put it.

(State's Exhibit 114 at 1:36:58 - 1:39:06). Appellant then asked when she would get a bond hearing. O'Donnell told her that she would get one the next morning along with a public defender, but that she should not expect to be released because of the seriousness of the charges. O'Donnell then again refused Appellant's request to smoke a cigarette.

Immediately before Appellant asked what are the police were going to do with her children. They responded that the children either had to go with Appellant's aunt or with SCDSS. However, they did not let Appellant contact her aunt prior to taking her to the jail. Where the children ended up after Appellant was arrested was never determined at trial.

***Jackson v. Denno*[2] Hearing**

The defense moved pre-trial to suppress Appellant's recorded interrogation by Trooper O'Donnell as well as a second recorded interrogation by Trooper Cary Lee Craig conducted on April 16, 2013. R. 44, ll. 4-19.

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[2] 378 U.S. 368 (1964).

When called to testify, O'Donnell stated that once Appellant sat in the back seat of his patrol car, she was no longer free to leave. R. 9, l. 14 - 10, l. 25. O'Donnell testified that Appellant told him she was bi-polar and on medication for the condition that left her sleepy. R. 15, l. 5 - 18. Nevertheless, he believed she was able to cogently answer his questions. *Id.*

The trooper did not recall Appellant ever requesting to speak with an attorney, although he conceded that she seem surprised that she had the right to an attorney. R. 16, ll. 6-24. He believed that she freely and voluntarily agreed to answer his questions. *Id.*

When asked if he promised Appellant leniency or to drop any of the potential charges in exchange for a confession, O'Donnell equivocated:

> I believe I said that during the course of our interview after Miranda that if she wanted to -- how I worded it -- the detail or depth of our investigation would be, I guess you could say, adjusted based on her cooperation as far as the interview. We had to seize her car, get a warrant to access her house, take a look at her belongings if she was actually involved in the event. But some of that stuff I think I said were powered down if it's a case of I made a judgment error, things of that nature, is how it was worded . . . .
>
> I think I mouthed off some of the charges that was being discussed in the group of officers outside the truck that were not part of the interview, listed to those charges out. But those charges were based on interactions with the investigation one extreme version; but as far as promising her if you do A we'll provide you with B, was not specifically played out.

R. 17, l. 6 - 18, l. 2. On cross-examination, O'Donnell reluctantly acknowledged that he told Appellant that her children would be sent to DSS if she did not cooperate. R. 23, l. 5 - 24, l. 23.

He also reluctantly admitted that he had threatened to arrest her live-in boyfriend as an accessory because he helped her fix the broken bumper. *Id.* O'Donnell did not recall Appellant asking "why did they tell me I could have an attorney present if they're fixing to lock up." R. 24, ll. 7-23.

After taking O'Donnell's testimony, the court ruled that Appellant's statements during the interrogation were freely made and that she never requested an attorney. "[U]nless there is a clear I'm [not] talking anymore, I want a lawyer present, you can talk to me after I have my lawyer, this statement comes in." R. 29, ll. 19-25.

By contrast the trial court ruled that Appellant's statements during the second interrogation by Trooper Craig would be suppressed. R. 71, ll. 3-11. During that interrogation, Appellant immediately stated that she wanted a lawyer. However, Craig continued to ask her questions after informing her that she could speak with a lawyer at a later time. R. 49, l. 2 - 50, l. 10.

The court held that Appellant had made an unambiguous request for an attorney and that, despite Appellant continuing to answer Craig's questions, her statements after the invocation of counsel would be suppressed. R. 52, l. 5 - 57, l. 22; R. 71, ll. 3-11.

Trial

Appellant's statements during Trooper O'Donnell's interrogation were a central feature of the State's case. Assistant Solicitor John Meadors promised jurors during opening statements that "[y]ou'll learn how [Appellant] asked for that bumper to be fixed . . . And finally, you'll hear about how [Appellant] admitted to driving within the vicinity of the accident that night. She admitted to driving near the wreck within an hour of when it happened." R. 78, ll. 6-13.

The recorded interrogation was played for jurors, allowing them to hear O'Donnell's frequent demands that Appellant "clean her conscious" and his repeated warnings that he, the other police officers, and people in the community all believed she was the driver. R. 282, l. 18 - 295, l. 19.

The State also presented evidence at trial that Milton Black, the individual Appellant identified as having borrowed her car on the night of accident, could not be located in a search of multiple law enforcement and DMV databases. However, the officer responsible for conducting the searches also conceded that if Black never had a driver's license he would not appear in the databases. R. 304, l. 2 - 305, l. 5. The State also presented testimony that Appellant had been drinking earlier in the night. R. 328, l. 22 - 329, l. 21.

The State stressed O'Donnell's interrogation again in closing arguments. Solicitor Meadors devoted a substantial portion of his time in front of the jury to reviewing Appellant's version of events in minute detail. R. 357, l. 17 - 368, l. 10.

Discussion

The Fifth Amendment provides that no person shall be compelled to be a witness against himself in a criminal matter. U.S. Const. amend. V. The Fourteenth Amendment secures against state invasion of the same privilege that the Fifth Amendment guarantees against federal infringement. *Malloy v. Hogan*, 378 U.S. 1, 84 S.Ct. 1489 (1964).

"[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." *Jackson v. Denno*, 378 U.S. 368, 376 (1964). 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); *see also State v. Von Dohlen*, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996).

The waiver has two distinct dimensions. It must be "**voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception**," and

it must be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421, 106 S.Ct. 1135, 1140 (1986)(*emphasis added*).

Courts 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). "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.'" *State v. Miller*, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007)(quoting *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)).

For example, in *State v. Corn*, 310 S.C. 546, 426 S.E.2d 546 (Ct. App. 1992), this Court held that the **defendant's statement to law enforcement admitting that marijuana found in his house belonged exclusively to him was inadmissible after police threatened to arrest his wife and have DSS take custody of their children**. The Court determined that "[a] reading of the record as a whole . . . leads us to the conclusion that, at the very least, the officers coerced Corns confession on the marijuana by means of veiled threats against his family. 310 S.C. at 551, 426 S.E.2d at 327.

Moreover, in *State v. Osborne*, 301 S.C. 363, 392 S.E.2d 178 (1990), the Court held that the sheriff's admission that Osborne would be charged with withholding information or giving the police officer a false statement if she was not forthcoming mandated suppression of her confession. Osborne was told "you don't have to say anything, but if you withhold evidence, you can be charged with a crime." *State v. Osborne*, 301 S.C. at 366, 392 S.E.2d at 179.

In *State v. Rochester*, the Supreme Court held that a confession "may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by

the exertion of improper influence." *Rochester*, 301 S.C. 196, 391 S.E.2d 244 (1990) (internal quotations omitted). There, the Court found that a polygraph examiner telling the defendant it would be in his best interest to tell the truth was neither a threat nor a promise. This was nonetheless a factor to consider when determining whether appellant's statement was a knowing, intelligent, and voluntary tendered confession under the totality of the circumstances.

Finally, in *State v. Hook*, this Court held that the defendant's statement to his probation officer was inadmissible because his agent expressly threatened to revoke the defendant's probationary sentence unless he told the truth. *Hook*, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001). This Court noted that statements given pursuant to threats or under inherently coercive circumstances are not admissible. *See Mincey*, 437 U.S. at 398- 399, 98 S.Ct. at 2416-2417; *Minnesota v. Murphy* 465 U.S. 420, 427, 104 S.Ct. 1136, 1142 (1984).

Appellant's case is, in all material respects, identical to *State v. Corns*, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992). Trooper O'Donnell unambiguously threatened to have SCDSS take custody of Appellant's children if Appellant did not confess to driving her car at the time of the collision. R. 17, l. 6 - 47, l. 2; R. 26, l. 19 - 28, l. 1; (State's Exhibit 114 at 1:18:00 - 1:19:56; (State's Exhibit 114 at 1:36:58 - 1:39:06).

Even more egregiously, in a final effort to have Appellant confess, he offered to intervene on her behalf and to keep her children out of SCDSS custody if she confessed, "I'll have to talk to the other officers and see what the options are. Unfortunately that's where you are, they won't let me start giving considerations and things when you're not giving consideration for the circumstances that you're in." (State's Exhibit 114 at 1:36:58 - 1:39:06).

He repeatedly predicated keeping her children out of SCDSS custody on her confessing to the crime. To keep the pressure on Appellant, O'Donnell refused her multiple requests to smoke a

cigarette and often stressed that Appellant's sister and family were "suffering" because she would not admit to driving the car. (State 's Exhibit 114 at 1:33:05- 1:36:50); *see Moses*, 390 S.C. at 513, 702 S.E.2d at 401 (factors that may be considered in the totality of the circumstances analysis such as: length of custody or detention; police misrepresentations; threats of violence; direct or indirect promises, however slight); *see also Hook*, 348 S.C. 401, 559 S.E.2d 856.

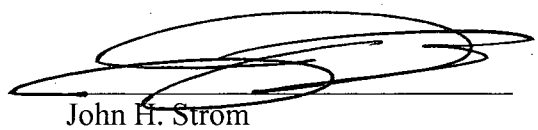
In addition to threatening to place Appellant's children with DSS, O'Donnell threatened to arrest her live-in boyfriend as an accessory. He also continually referenced Appellant's bi-polar condition and her use of prescription drugs to treat it as possible mitigating circumstances.

As our Supreme Court made clear in *Corn*, threats to remove children from a parent's custody are different that other aggressive interrogation tactics. 310 S.C. at 551-552, 426 S.E.2d at 551-552. As a matter of law, such threats render any resulting statements involuntary and inadmissible. *Id.* at 552, 426 S.E.2d at 327. Appellant also faced threats to arrest her boyfriend in combination with promises of leniency and access to her children if she confessed.

Accordingly, the trial court reversibly erred in admitting Appellant's statements extracted as a result of O'Donnell's threatening to have her children placed with SCDSS and have her boyfriend arrested unless she confessed to driving the car at the time it collided with Dennis.

CONCLUSION

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



John H. Strom
Appellate Defender

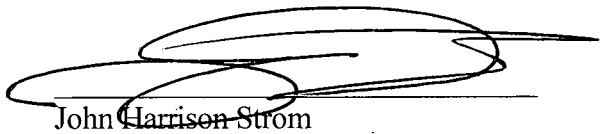
ATTORNEY FOR APPELLANT

This 17th day of April, 2017.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

April 17, 2017



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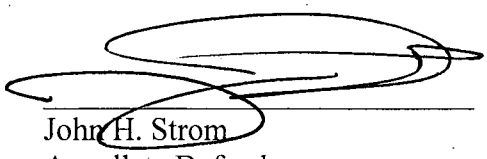
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 17th day of April, 2017.



John H. Strom
Appellate Defender
ATTORNEY FOR APPELLANT

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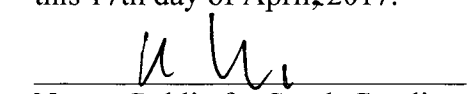 (L.S)

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