

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

JUN 28 2017

**RECEIVED**  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CURTIS TYRONE WILLIAMS,

APPELLANT

APPELLATE CASE NO 2016-001994

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INITIAL BRIEF OF APPELLANT  
\_\_\_\_\_

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**STATEMENT OF ISSUE ON APPEAL**

In this homicide by child abuse case, whether appellant's confession that he hit the child, which was made immediately after the interrogator stated, "we will guarantee that you see your family before they leave here" if appellant told them "what happened," was rendered involuntary and inadmissible by the police's promise?

## STATEMENT OF THE CASE

On May 4, 2015, a Charleston County grand jury indicted appellant for homicide by child abuse. R. \_\_. On September 12, 2016, appellant was tried before the Honorable Deadra L. Jefferson and a jury. Tr. 1. Debbie Herring-Lash and Shannon Elliott represented the State. Tr. 2. Mary Ford and Megan Ehrlich represented the State. Tr. 2. The jury convicted appellant. Tr. 686, l. 14 – 687, l. 9. Judge Jefferson sentenced appellant to thirty years' imprisonment. Tr. 708, ll. 1 – 5. This appeal follows.

## ARGUMENT

In this homicide by child abuse case, appellant's confession that he hit the child, which was made immediately after the interrogator stated, "we will guarantee that you see your family before they leave here" if appellant told them "what happened," was rendered involuntary and inadmissible by the police's promise.

### Factual and Procedural Background

On a Sunday afternoon, appellant and his two friends rushed the three-year old decedent ("Child") to the hospital. Tr. 192, l. 6 – 193, l. 8. A nurse saw appellant holding Child's limp body, pushing against the door, yelling for help. Tr. 133, ll. 6 – 18. Nurses grabbed the child and began performing CPR on a counter. Tr. 133, l. 19 – 134, l. 15. Child ultimately died from a lacerated spleen. Tr. 463, l. 2 – 465, l. 25. The laceration caused internal bleeding which led to organ failure. Tr. 506, l. 18 – 509, l. 8.

Appellant told the police officer who responded to the hospital that he had been caring for the child since his mother went to work at 9:00 AM. Tr. 142, ll. 16 – 23. They watched football in the morning and then around lunchtime, went to a community park for approximately thirty minutes. Tr. 142, ll. 17 – 23. Appellant lost sight of Child for about five minutes at the playground. Tr. 142, l. 16 – 143, l. 10. He saw Child sitting on a bench with his head down. Tr. 142, l. 24 – 143. Appellant took Child home, gave him a Tootsie Roll and a Capri Sun and they watched more football. Tr. 142, ll. 16 – 143, l. 10. At approximately 3:30 PM, Child defecated in his pants and appellant bathed and dressed him. Tr. 143, ll. 4 – 10. Appellant noticed Child acting strangely and that he was limp. Tr. 143, ll. 4 – 10. Appellant and his friends drove Child to the hospital. Transcript 143, ll. 4 – 10. Child stopped breathing on the way to the hospital. Transcript 143, ll. 11 – 16.

The police interrogated appellant at the police station at 6:00 PM the day after Child's death. Tr. 55, ll. 15 – 23. The police had the results of the autopsy. Tr. 63, ll. 2 – 10. During the Jackson v. Denno, 378 U.S. 368 (1964), hearing, the solicitor asked the interrogating officer, "Did you offer or promise him anything to give you your statement?" Tr. 58, ll. 13 – 14. The officer responded, "No." Tr. 58, l. 15. The officer then admitted that appellant asked to see his mother. Tr. 58, ll. 22 – 24. The police interrogation of appellant was video recorded. Tr. 56, ll. 5 – 8. (State's Ex. 72).

During the interrogation, appellant asked to see "the people I came here with." (State's Ex. 72, 26:00). The police told appellant that "Cooperation and honesty goes a long, long way, okay?" (State's Ex. 72, 32:00). They claimed neighbors saw appellant yelling at the child and that appellant was agitated. (State's Ex. 72, 31:00). The police accused appellant of not telling them everything and that what appellant had told them did not make any sense. (State's Ex. 72, 34:00). They postulated that appellant was mad because Child defecated in his pants and that appellant intimidated Child with a knife.<sup>1</sup> (State's Ex. 72, 36:00.)

The police then told appellant that accidents happened and "an accident can be explained." (State's Ex. 72, 38:00). They said that the longer appellant put off telling them what happened, the more it made it look like he was hiding something. (State's Ex. 72, 39:00). They told appellant there are "two different types of people. One's a monster, and one's a normal person who made a mistake." (State's Ex. 72, 40:00). Appellant protested that the police did not believe him and they responded that his story "can't explain any of these injuries that [Child] has sustained." (State's Ex. 72, 42:00).

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<sup>1</sup> Appellant used a knife to cut off Child's soiled clothing before bathing him. (State's Ex. 72, 10:00). The State did not allege that appellant ever used the knife to inflict any physical injury on child.

The police continued to press appellant and he said, "I just have one request." (State's Ex. 72, 47:00). He said, "I just want to speak with the people that I came here with. That's it." (State's Ex. 72, 47:00). Appellant went to the police station with his mother, his two nephews, and Child's mother (appellant's live-in girlfriend). (State's Ex. 72, 47:00). The police asked appellant "What do you want to see them about?" (State's Ex. 72, 47:00). Appellant replied that he wanted to know if they were "cool" because "you're sitting here telling me . . . I'm a monster." (State's Ex. 72, 47:00). The interrogators responded with an analogy regarding a girlfriend who suspects her boyfriend of cheating and then told him "So all we want to know is the truth. Just put an end to all this speculation and everything else. Just the truth. That's it. Nothing more, nothing less. The whole truth. Why is that so hard?" (State's Ex. 72, 49:00).

Appellant replied, "I don't see why (inaudible) to see my family." (State's Ex. 72, 49:00). The interrogator said, "Why? Why won't you just be able to leave with them?" (State's Ex. 72, 49:00). The other interrogator said:

How about this? **If**, for some crazy reason, **you end up telling us what happened** and it turns into a situation where you don't leave, **we will guarantee that you see your family before they leave here.** That's what you're worried about. You're worried that you won't get to see them because you don't think you're going to be able to leave.

(State's Ex. 72, 50:00) (emphasis added). Appellant responded, "I didn't kill that little kid," and began crying. (State's Ex. 72, 50:00). The police told him, "All you've got to do is open your mouth, man. Just let it come out." Appellant continued to cry, twice asked to see his family, then put his head on the table. (State's Ex. 72, 50:00).

The police continued to press appellant and he said, "Now, I did spank him." (State's Ex. 72, 57:00). Appellant ultimately admitted hitting Child with a closed fist. (State's Ex. 72, to

1:07:00). After admitting that he told the police everything and that he felt badly, appellant asked, “But were you guys gonna really let me see my family?” (State’s Ex. 72, to 1:08:00).

The interrogator admitted at the Denno hearing they did not allow appellant to see his family until after they finished questioning him. Tr. 60, l. 4 – 61, l. 1. He admitted appellant was emotional and cried multiple times during the interview. Tr. 61, ll. 2 – 21.

After the officer testified, defense counsel argued that appellant was in a distressed state of mind and that his statement was rendered involuntary because of the bargain that appellant could see his family after telling the police what they wanted to hear. Tr. 63, l. 22 – 65, l. 25. The court asked whether the officer had “any duty to let him see his family.” Tr. 65, ll. 21 – 22. Judge Jefferson then deferred ruling until she could watch the video. Tr. 66, ll. 11 – 16.

When the officer took the stand during the trial, the court excused the jury before the video was played and ruled on its admissibility. Tr. 315, l. 15 – 320, l. 22. The trial judge first stated there was “no indication” that appellant was made any promises. Tr. 319, ll. 15 – 21. In dispatching appellant’s argument, Judge Jefferson stated, “I would note for the record that the State has no constitutional obligation to allow him to see his family and they had more than protected interests in not letting him see his family. . . .” because of the chance appellant would “collude.” Tr. 319, l. 22 – 320, l. 8. Judge Jefferson ruled that the interrogator’s discussion about seeing his family was not “collusive” and did not cause appellant duress. Tr. 320, ll. 9 – 16. The court held, “In fact, the statements made by the police seemed to reassure him that once they are done, he would be allowed to see his family and that, that right will not—that right or that desire, that request will not be denied to him.” Tr. 320, ll. 9 – 16.

## Discussion

Appellant's statement was not admissible because the police procured it by promising appellant he could see his family if he confessed and this, combined with their intense questioning, overwhelmed appellant's will. The Fifth Amendment guarantees citizens the right not to incriminate themselves. U.S. Const. amend. V. "[A] confession, in order to be admissible, must be free and voluntary; that is, must not be extracted by any sorts of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence." Bram v. United States, 168 U.S. 532, 542-43 (1897) (internal citations and quotations omitted.) See also Hutto v. Ross, 429 U.S. 28, 30 (1976) (quoting the above principle from Bram); State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (quoting the above principle from Bram and Hutto). The police in this case made not only a promise—they made a **guarantee** that appellant could see his family if he told them what they wanted to hear.

A statement induced by a promise is involuntary if it is "so connected with the inducement as to be a consequence of the promise." State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987). In Peake, as in this case, the defendant's statement was induced by a "guarantee" from a police officer. Id. Defense counsel in Peake asked the officer, "you told Allen Peake that if he would give you a statement that you would **guarantee** to him that you would not seek the death penalty." Id. (emphasis added). The officer replied, "That's what I told him." Id. The Court held the officer made a promise to the defendant that rendered his statement involuntary and reversed. Id. The same language used by the officer in Peake was used in this case. The officer guaranteed appellant he could see his family if he gave a statement.

Appellant's statement was a direct consequence of this guarantee. After continually pressing appellant, he asked to see his family. He continued to ask to see them because he

wanted them to know he was not the “monster” described by the police. It was only after the interrogator made a bargain with appellant that he could see his family if he gave a statement that appellant gave the highly incriminating statement that he hit the child.

Appellant’s behavior shows that the police overcame his will with the promise to see his family. He sobs and begs to see his family. The officers tell him they want the truth. He again sobs and begs to see his family. Appellant, who had been standing against the wall with his head out of the frame, leans forward and puts his head in his hands on the table. He then sinks to his knees in the corner of the room. (State’s Ex. 72, 51:00). Shortly afterwards, appellant incriminates himself. The police successfully bargained with appellant to obtain his confession, therefore rendering it involuntary.

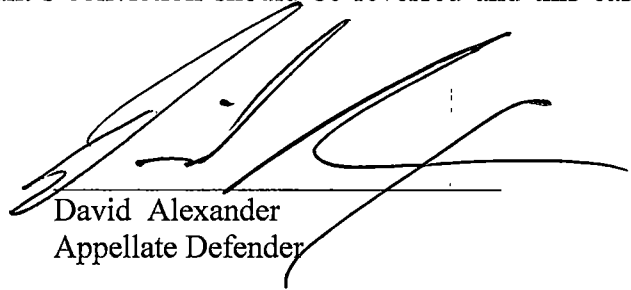
The trial judge’s ruling inexplicably recognized that the police’s promise induced and were connected to appellant’s statement. Judge Jefferson stated that “the statements by the police seemed to reassure him that once they are done, he would be allowed to see his family and that, that right will not—that right or that desire, that request will not be denied to him.” Tr. 320, ll. 9 – 16. The trial judge recognized the effect this promise had on appellant. Unfortunately, the trial judge failed to recognize that this effect is not allowed by the Fifth Amendment.<sup>2</sup> Bram at 547 (stating that confessions obtained “by the flattery of hope, or by the impressions of fear, however slightly the emotions may be implanted” are not admissible). This error cannot be harmless and this Court should reverse and remand for a new trial.

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<sup>2</sup> The trial judge’s statement that the officers were under no constitutional obligation to allow him to see his family has no bearing on this analysis, except that it magnifies the error committed. The presence or lack of a constitutional duty simply has no relevance to a promise that induces a confession.

**CONCLUSION**

For the foregoing reasons, appellant's conviction should be reversed and this case remanded for a new trial.



David Alexander  
Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of June, 2017.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Honorable Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

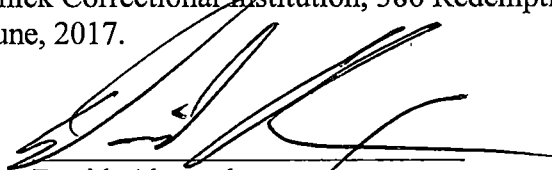
V.

CURTIS TYRONE WILLIAMS,

APPELLANT

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 J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Curtis Tyrone Williams, #369781, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 23rd day of June, 2017.



David Alexander  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 23rd day of June, 2017.

Mark Mercedes (L.S)

Notary Public for South Carolina

My Commission Expires: July 3, 2023