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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Eugene C. Griffith, Circuit Court Judge

RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES ALTON MOREHOUSE,

APPELLANT

APPELLATE CASE NO 2017-000114

ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting appellant's statement to police because it was induced by implied promises of leniency for his wife, rendering it involuntary?

STATEMENT OF THE CASE

In December 2015, a Lexington County grand jury indicted appellant Charles Morehouse for murder, a weapons charge, possession of methamphetamine with intent to distribute, and criminal conspiracy. R. 1000-1007. On January 9, 2017, appellant was tried before the Honorable Eugene Griffith, Jr. and a jury. R. 1. Laura Suzanne Mayes and Lester McGill Bell represented the State. R. 1. John Hilliard represented appellant. R. 1. The jury acquitted appellant of PWID, but convicted him of the lesser included offense of possession. R. 962, ll. 14 – 22. The jury convicted appellant of murder, conspiracy, and the weapons charge. R. 962, ll. 14 – 22. Judge Griffith sentenced appellant to life imprisonment for murder and concurrent terms on the other charges. R. 985, l. 25 – 986, l. 7. This appeal follows.

ARGUMENT

The trial court erred in admitting appellant's statement to police because it was induced by implied promises of leniency for his wife, rendering it involuntary.

The State's theory of this case was inherently inconsistent. The State asked the jury to believe that appellant was a drug kingpin with multiple people in his employment who murdered the decedent because he suspected he was an informant. However, as defense counsel argued, appellant's actions the night of the decedent's death were not those of a sophisticated drug lord. R. 925, l. 6 – 927, l. 13. As defense counsel put it, had appellant planned to murder the decedent, he would not have texted and called him and would not have left the decedent's cell phone at the scene. R. 925, l. 6 – 927, l. 13. Had the trial judge not erroneously admitted appellant's statement which placed him at the scene of decedent's death, the result of this trial would have been different.

At approximately 11:30 PM on August 3, 2015, Keith Lytes was driving down a remote dirt road in Lexington County when he saw a white car and a body. R. 230, l. 13 – 232, l. 14. Lytes went to a nearby fire department and alerted the firemen who called 911 after Lytes took them to the body. R. 165, l. 15 – 168, l. 14. The 911 call was made at 11:42 PM. R. 157, ll. 5 – 24.

At the body's location, the police found a cigarette butt, shell casings for a .40 caliber gun, and the decedent's phone in his pocket. R. 645, l. 8 – 653, l. 13. The decedent also had $220.00 in cash in his pocket. R. 650, l. 11 – 651, l. 25. The decedent's pockets were not pulled out of his pants. R. 651, ll. 17 – 21. The police only found three shell casings. R. 659, ll. 2 – 4. The State's pathologist said the decedent's body had between 6 to 10 gunshot wounds. R. 837, ll. 9 – 19. The pathologist testified that the decedent's wounds were consistent with someone

standing over him firing downward. R. 844, l. 2 – 847, l. 20. The ground where the decedent was found was described as soft "sugar sand." R. 195, l. 20 – 196, l. 1. Despite the soft sand underneath the decedent's body, the police could not find any other casings despite the use of metal detectors. R. 676, l. 11 – 681, l. 22. The crime scene investigator speculated that the other casings could have been buried in the sand despite the exhaustive search. R. 676, l. 11 – 681, l. 22.

The police activated the decedent's cell phone and discovered calls and text messages in the hours leading up to the discovery of the body with a number they claimed belonged to appellant. R. 374, l. 10 – 381, l. 5. The police claimed appellant's cell phone number was stored in the decedent's phone as "A A King Chuck." R. 374, l. 10 – 381, l. 5. The text messages set up a meeting in Red Bank. R. 374, l. 10 – 381, l. 5. The decedent texted, "Turning on 302 end of lagoon." R. 374, l. 10 – 381, l. 5. The detective explained the "lagoon" is a pool formed by an old rock quarry near where the decedent's body was found. R. 374, l. 10 – 381, l. 5. The State's cell phone expert claimed appellant's phone showed communications with co-defendant Wiley Sisk and that cell towers likely placed appellant in the vicinity of the crime scene. R. 776, l. 20 – 803, l. 23.

Appellant gave a statement to the police and explained that the decedent's death was likely the result of an accidental shooting. State's Ex. 22. R. 876, l. 23 – 882, l. 22. Appellant admitted being at the scene when the decedent was shot, but explained that he and his co-defendant Sisk only intended to give the decedent a beating in retaliation for being a suspected informant and never intended to murder him. State's Ex. 22. R. 876, l. 23 – 882, l. 22. Sisk came out of the woods with a baseball bat and began fighting the decedent. State's Ex. 22. R. 876, l. 23 – 882, l. 22. Appellant fired his gun in an attempt to break up the fight, but due to

appellant's night blindness, could not tell what happened to the shots he fired.[1] State's Ex. 22. R. 876, l. 23 – 882, l. 22.

Prior to trial, the court held a hearing on the admissibility of appellant's statement pursuant to Jackson v. Denno, 378 U.S. 368 (1964). R. 69, l. 18 – 98, l. 5. Appellant argued that his statement was induced only by implied promises of leniency for any role his wife might have played in either the murder or the drug investigation. R. 92, l. 12 – 98, l. 1. Defense counsel argued that appellant "was led to believe that there was some benefit in his making this statement and as a consequence to that it's not free and voluntary, but was in anticipation of a reward." R. 92, l. 12 – 98, l. 1. Appellant renewed his objections when the statement was offered during the trial. R. 362, l. 15 – 363, l. 18. R. 390, ll. 20 – 24.

The trial judge listened to appellant's recorded statement. R. 76, ll. 5 – 17. State's Ex. 22. At the very outset of the interrogation, the police asked appellant if he was worried about his family and he replied that he very much was. State's Ex. 22. The interrogator said if he had to guess who to be worried about with his family, it "would be that angle and not the one you were thinking." State's Ex. 22. Appellant asked whether he needed to be worried about his wife. State's Ex. 22. The police responded that there's a "good chance" that she would be charged. State's Ex. 22. Appellant responded, "For what?" and the police replied, "For the drugs." State's Ex. 22.

Appellant responded, "No sir, no sir." State's Ex. 22. The interrogator told him that his wife was keeping books for him. State's Ex. 22. Appellant denied it, but the police explained their evidence, then said they had already been in contact with his wife to let her know charges were likely. State's Ex. 22. The police then said they did that so the family could make

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[1] The trial judge refused appellant's request to charge the jury on the defense of accident. R. 876, l. 23 – 882, l. 22.

arrangements for appellant's children and they would not have to call DSS. State's Ex. 22. All of this discussion was prior to reading appellant his rights on the recording pursuant to Miranda v. Arizona, 384 U.S. 436 (1966).

Appellant immediately said he needed to explain about his wife and that she had no idea he was selling drugs. State's Ex. 22. Appellant became tearful and emotional. State's Ex. 22. Only then did appellant tell police Sisk killed the decedent. State's Ex. 22. Appellant said he did not know that Sisk planned to kill the decedent. State's Ex. 22.

The police then confronted appellant with the claim that witnesses told them appellant (and Sisk) burned their clothes and that appellant had cleaned himself with Ajax. State's Ex. 22. The interrogator told appellant, "This is what helps you." State's Ex. 22. Appellant then cries again and says, "Y'all can't charge my wife," and that the kids were "all she's got." State's Ex. 22. The police then told appellant he was "doing the right thing." State's Ex. 22. They reiterated that to clear his conscience and for his family, he was doing the right thing by giving a statement. State's Ex. 22. The interrogator then said if he told them everything, he promised appellant he would "live a better life." State's Ex. 22. Appellant's response was that he was not worried about his heart, but was worried about his family. State's Ex. 22. Appellant exclaimed that his wife would be charged for something in which she had no involvement. State's Ex. 22.

The police then backpedaled and said they did not know for sure whether appellant's wife would be charged. State's Ex. 22. They claimed the decision to charge her was out of their control. State's Ex. 22. Appellant begged the police, telling them his wife only thought he was gambling and she did not know about the drugs. State's Ex. 22. The police then told appellant he was lying and said they were going to take him back to jail. State's Ex. 22. After further discussion, appellant then again said his wife knew nothing. State's Ex. 22. The police later said

that if they knew the "exact truth," they "might can help" appellant. State's Ex. 22. The police told them they knew he loved his wife and that they were "soulmates." State's Ex. 22. They said appellant needed to help himself, his wife, and his kids. State's Ex. 22. Appellant ultimately admitted he and Sisk planned to beat the decedent and appellant fired the gun in an attempt to break up a fight. State's Ex. 22.

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) (emphasis added). 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).

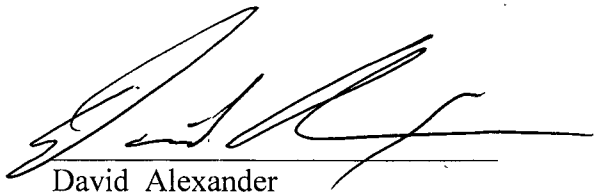
A statement induced by a promise is involuntary if it is "so connected with the inducement as to be a consequence of the promise." State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987). In Peake, the defendant's statement was induced by a "guarantee" from a police officer. Id. Defense counsel 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. 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.

From the totality of the circumstances surrounding appellant's interrogation, it is clear that his will was overborne because of his fear that his wife would be charged. See State v. Miller, 375 S.C. 370, 384-85, 652 S.E.2d 444, 451-52 (Ct. App. 2007). The police skillfully

played on appellant's fear and dangled the possibility that she would not be charged, repeatedly telling appellant that he was doing the right thing for himself and his family. The police implied they could help appellant if he gave a statement. The implied promises of leniency for appellant's wife rendered his statement involuntary. Without his statement, the State could not have convicted appellant. This Court should reverse.

CONCLUSION

For the foregoing reasons, this Court should reverse appellant's convictions and remand this case for a new trial.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2018.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Charles Alton Morehouse 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 Eugene C. Griffith, which was held on January 9 - 13, 2017, 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 Charles Alton Morehouse.

Respectfully Submitted,

David Alexander
Appellate Defender
ATTORNEY FOR APPELLANT

This 2nd day of January, 2018.

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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 indictments;
(2) Trial transcript;
(3) Court's Exhibits No. 2, 3, and 4;
(4) State's Exhibit No. 22 (to be transported)

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

January 2, 2018

David Alexander
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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 2, 2018.

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