

State of South Carolina
IN the COURT OF APPEALS

Appeal from Barnwell County

Dayet A. Early Circuit Court Judge

The State Respondent

v.

Mr. Michael Paul Buckmon
Appellant

RECEIVED
MAR 12 2018
SC Court of Appeals

Michael Paul Buckmon
235058
Perry Correctional Institution
430 Oaklawn Road
Pelzer S.C., 29669

Table of Contents

Table of contents

Table of Authorities

Statement of issue on Appeal

Statement of case

Argument

The trial judge erred in denying
Motion of Direct Verdict

Table of Authorities

CASES. State v. Michael P. Buckman

State v. Lollis, *supra*, 343 S.C. 580, 541 S.E. 2d 254 (2001)

State v. McHoney, 344 S.C. 85, 544 S.E. 2d 30 (2001)

State v. Ballenger, 322 S.C. 196, 470 S.E. 2d 851 (1996)

State v. Martin 340 S.C. 597, 533 S.E. 2d 572 (2000)

Statement of Issue on Appeal

Did the trial judge err in Denying the Motion of direct verdict.....

STATEMENT OF THE CASE

ON October 17-19, 2016, the state represented by solicitor David Miller, call the case before the Honorable Judge Doyet A. EARLY III and a jury. Michael Chesser represented Appellate Michael Paul Buckmon.

The jury found Appellate guilty as charged.

Judge Early sentence Appellate to life imprisonment for Murder, thirty years imprisonment for Criminal Sexual Conduct, and thirty years for Arson.

All sentences is ordered to be ran concurrently.

On Oct. 28, 2016 Appellate serve his notice of Appeal.

Argument

DID THE TRAIL JUDGE ERRED IN
DENYING THE MOTION OF DIRECT VERDICT
ON OFFENCES OF MURDER, ARSON, AND CSC.....

Did the trial Judge error in Denying the direct verdict motion on offense of Murder

A defendant is entitled to a direct verdict when the State fails to produce evidence of the offense charge.

(MURDER)

In this particular case there is no other evidence tending to Murder, the cause of Murder/death of victim, only in this cause of death is Arson, (Smoke) causing victim to die from extreme large amount of soot found in victim while victim was alive breathing in soot, causing victim to die from smoke inhalation. In this particular case "Smoke" was the murder weapon.

In this particular case there is no factual evidence Appellant Buckner cause the actual death by Arson. It is evident that co-defendant Bolen told a lie that As far as he knew Appellant Buckner sought a fire Transcript 95 line 6-7, to then informing the courts with the truth that he Bolen actually did not know for sure if appellant actually sought a fire Transcript. pg. 114 line 19-22 stating to solicitor David Miller after Miller questioned him (Bolen) At this point you Bolen is not in the house and at this point you really do not know what Appellant Buckner is doing because he Bolen is not in the house, Bolen replied "yes" to the fact he did not know what Buckner was doing to positively say Buckner was in any type of act of setting a fire. Read other additional arguments:

MURDER & ARSON

Pg. 1

In this particular case victim died from smoke inhalation caused by a fire (Arson).

In results victim was murdered by smoke, smoke was the actual murder weapon in this case.

In a murder case the state must prove beyond a reasonable doubt that defendant/a person killed a human being.

In a murder trial, the Corpus delicti consists of two elements: (1) The death of a human being and (2) the criminal act of another causing the death.

In this case it was several said fact that victim died from smoke inhalation, from a person that's a criminal agency concerning Arson, such criminal act of Arson.

In this particular case the state failed to produce factual evidence if appellant Buckman was an actual participant to Arson (A criminal Agency) causing the death (Murder) by smoke inhalation (Arson) due to the testimony from Mathew Bolen.

During the testimony of Mathew Bolen he (Bolen) admitted to not positively knowing if appellant participated. While testifying Bolen stated to the courts "As far as he knew" appellant Buckman sought a fire Transcript 95, line 6-7, but Trans. 114 line 19-22, furthermore confirmed to the courts that he (Bolen) did not know what appellant Buckman was doing in the house to positively know if appellant Buckman sought such a fire that was located around the stove area, and another by a already lit candle on top of a piano.

Solicitor David Miller (prosecutor over the case) asked Bolen did he (Mathew Bolen) participated in the offense of Arson causing the death (murder) by smoke inhalation, Mathew Bolen

Replied "yes" Transcript pg. 95 line 8-10, ^{THAT?} he (Bolen) sought the fire.

Mathew Bolen was unable to assure the courts

As far as he knew Mr. Buckman (Appellant) ~~after~~ sought a fire after

Solicitor David Miller (Prosecutor) asked, Okay

So at this point Mr. Buckman is in the house

and you (Bolen) do not know what Appellant Buckman

is doing because you (Bolen) is not even in the house

Correct? Mathew Bolen Replied "yes sir" to the fact

that he do not know what Buckman was doing as

of any criminal activity, as in setting a fire ect. After Bolen stated he did

not know what Appellant was doing in the house then

Reviewing the testimony from trial Mathew Bolen only

stated he (Bolen) walked back in the house and notice

smoke in the air and a small fire by a stove. Transcript pg. 115 line

1-14, and Appellant only running out of the bedroom and not

in any type of acts of setting a fire. As of reviewing the testimony

it clearly states that Bolen did not see Appellant sought such

fire, Most importantly already telling the courts that he Bolen did not

actually know what Appellant was doing, which also shows the courts

that there was no type of prior knowledge that Appellant was going to

even set a fire. Due to Mathew Bolen testimony he did not

witness Appellant sought a fire in this case, which his (Bolen)

testimony leads to mere suspicion (Criminal Law) * when reviewing

A denial of a motion for a directed verdict based on evidence

merely creating a suspicion that the accused was guilty "Suspicion"

implies a belief or opinion as to guilt based upon facts or

circumstances which do not amount to proof. Criminal Law The

lower courts should not refuse a grant motion of direct verdict

when the evidence merely raises a suspicion that the accused

is guilty.

Due to Mathew Bolen's testimony there is no evidence that stated
from his (Bolen) testimony that at one point he seen Appellant Buckman

Pg. 2

pg. 3
leave out the victim's room sought a fire than entered the bedroom. There is no evidence at all from testimony of what actually took place of how such fire was even started, to say Appellant Buckmon was criminal Agency causing a fire (Arson) wilfully causing the death (Murder) by smoke inhalation.

Special Agent Mr. Seals

Mr. Seals spoke about Areas fires was found, And as of results he (Seals) informed the courts that Mathew Bolen is a factual participant (criminal Agency) causing Arson which killed the victim due to smoke inhalation, which also Mathew Bolen admitted a confession at trial that he (Bolen) participated in the act of Arson Transcript pg. 95 line 8-10, and with said Red t-shirt in the hallway bathroom where Mathew Bolen sought a fire Transcript pg. 185 line 5-12 Also Transcript pg. 180 line 19-22 Special Agent Seals speaks of more evidence of Mathew Bolen's participant as a criminal Agency concerning Arson. Most importantly again Transcript pg. 181 After ruling the three Areas of origin inside the house Transcript pg. 181 line 9-14, special agent Seals ruled that the most significant Area was the hallway bathroom, which is factual said in courts that it is the area Mathew Bolen sought, causing a great spread through the hallway, causing heavy smoke, killing (murder) the victim by smoke inhalation; AND NOT Appellant Mr. Michael P. Buckmon

Even though that it was two other areas origin, there is no fact from the testimony of co-defendant Mathew Bolen if Appellant actually sought such fire located by a stove (tissue) which was not ruled as a fire damage result, just some tissue that seem to catch a fire, that was located by the isle which was supposedly only set at it lowest level. In this particular case there is not a fact of how that tissue caught a fire that was given from Special Agent Seals, neither from the testimony of Mathew

1988 JUNE 15
1988 JUNE 15
Bolen in this particular case, concerning Bolen Appellant was supposedly in the room with victim, and not in any locations of any fires sought, also Most importantly Matthew Bolen admitted to the courts that he did not know what Appellant was really doing or if Appellant did anything concerning setting a fire Transcript pg. 114 line 19-22, Bolen previous comment to the courts As far as he knew if Appellant sought a fire was a lie, its an uncertain comment, and also said to be not factual because of the admitted truth that Bolen confessed to the courts that when being question to see for certain if he (Bolen) really knew when question by Solicitor David Miller Transcript pg. 114 line 19-22 Bolen admitted he did not know what Appellant was doing. No one in this case knows if Appellant actually participated in Arson, causing the death (Murder) by smoke inhalation

Pg 4

In this particular case the circumstantial evidence relied upon the state is not substantial and merely raises a suspicion of guilt, The key pieces of circumstantial evidence relied upon the state to see if Appellant Michael Paul Buckner was an actual participant to Arson was (1) The testimony of Matthew Bolen, and due to such testimony Matthew Bolen admitted to the courts that he (Bolen) did not witness Appellant Buckner igniting any of the fires. Most importantly Matthew Bolen was caught in a major lie as far as he knew Appellant sought a fire transcript pg. 95 line 6-7, to then informing the courts he (Bolen) did not even know what Appellant was doing in the house because he Bolen was not even in the house as to being an eye witness as if he seen Appellant participated in the act of Arson with him Bolen Transcript pg. 114 line 19-22. Due to admitted testimony of Bolen not factually knowing the state failed to produce substantial Direct evidence (solid evidence, solid information) as if Appellant sought a fire (Arson) causing the death (murder) by smoke inhalation. So even reviewing the circumstantial evidence in the light most favorable to the state, the testimony did not for sure, nor factual know Buckner sought a fire, it do not reasonably tend to prove real guilt against Appellant.

WMA 12/17/14
MOLE 1/1/15

The state failed to prove that Appellant Buckman was an criminal Agency, there is no evidence that it was an wilful act done by Appellant Buckman because due to the testimony of Mathew Bolen he confirmed the courts that he Bolen actually did not even know what appellant was doing in the house when questioned by Solicitor Transcript pg. 114 line 19-22, which assures the courts from previous statement As far as he knew Transcript pg. 95, 6-7 was a lie, Such

Pg 5

areas as of tissue being caught on fire which went out by a stove, an arator by a already lit candle, book by candle, it is possible it could have been done by a results of a natural or accidental cause. Most importantly overall there is no fact through the testimony of co-defendant Appellant Buckman sought a fire.

* Even reviewing the circumstantial evidence in the light most favorable to the state, the evidence does not reasonably tend to prove Appellant guilty. While Appellant Buckman was supposedly been (which is not a fact Appellant was in the house during the time Mathew Bolen committed offenses leading to murder) in the house it does not necessarily mean Appellant Buckman committed the offense of Arson, causing the death by smoke inhalation. Due to the testimony of Mathew Bolen even though he placed Appellant on the scene of the crime, Bolen admitted to the courts that his comment As far as he knew Appellant sought a fire transcript pg 95 line 6-7, was not true, due to the fact that furthermore Bolen admitted that he (Bolen) had no knowledge of what Appellant Buckman was doing in the house when questioned by the state, Solicitor Miller Transcript pg. 114 line 19-22 * And there was no prior knowledge of Appellant going to set fire.

Also During the testimony of Dr. Ross, Transcript pg. 209 line 7-15 she stated that injuries was occurred before the fire, which also contradicted the testimony of co-defendant

Due to several said facts from Dr. Ross the victim was well alive, and probably would still be alive, if victim would have not inhaled such large amount of smoke, concerning the offense of Arson, that killed (murder) the victim due to smoke inhalation, which Arson was caused by Matthew Bolen AS of the courts given factual details that Matthew Bolen was a real participant to Arson, and not factual details if appellant Buckman participated in Arson, only mere suspicion, and Again Matthew Bolen admitted to the courts that he (Bolen) did not know what appellant Buckman was doing in the house when questioned by the solicitor.

Page

7) Also the solicitor stated facts from reports that "the fire" killed victim, and The Hammer is not the murder weapon Transcript pg. 299 line 1-3

In this case victim was only passed out due to the hammer, and not actually dead / murdered.

In this particular case concerning the hammer use, Matthew Bolen admitted that he (Bolen) changed his story "3" times and was changing it during trial, whether he (Bolen) handed Appellant a hammer, or if Appellant grab it himself. Transcript pg. 136 line 24-25, and Transcript pg. 137 line 1-11

During Testimony Bolen admitted to lying about the hammer, and as stated in closing arguments the solicitor, Mr. David Miller, told the jury that should not think Bolen was credible in any way, shape or form.

In this particular case there was not a hammer found by sled from the where abouts Bolen told where hammer was supposedly at.

Also Sled Agent gave his aspect of Matthew Bolen could have been the person that actually struck victim with hammer instead of Appellant Buckner stating on Transcript pg. 189 line 16-19 Mr Chesser ask Olcay

Now, if Matthew Bolen hit victim (Donna Dempsey) in the head with the hammer, he Bolen would have expected blood splatter on his jeans, special Agent seats stated "yes", Do to the fact that it is possible Matthew Bolen hit victim with hammer Due to the fact the jeans with blood splatter belonged to Matthew Bolen and not Appellant Buckner,

As of Changing the story of the hammer use
8) through out the investigation, which was admitted
at trail by Bolan, and even changing his story
again even in trail, it is more than possible
that Bolan lied about Appellant striking victim,
and as stated by steel Agent Mr. Seal's Transcript pg.
189 line 16-19 it is possible Mathew Bolan hit
victim with hammer instead of Appellant Beckman

Also solicitor stated himself, Mathew Bolan is not
a good person and stated he (Bolan) had minimized
his involvement.

Even though the hammer in this case was not the
murder weapon, it is clear from testimony Bolan
could have lied about Beckman in use of a hammer
because Mathew Bolan admitted to changing his story
several times even concerning a hammer, and in this
particular case a hammer was never retrieved
by steel, or presented at court

{ Additional Argument } MURDER: ARSON

Discussion

OF

Page 1

No direct evidence was adduced at trial from the testimony of co-defendant Mathew Bolen concerning if Appellant Buckmon actually sought a fire. The state in this particular case depended on circumstantial evidence. Such testimony only raised circumstantial evidence pertaining to the offence of Arson in such particular case. Such evidence only raise mere suspicion, due to the fact, Mathew Bolen admitted to the courts that he Bolen "did not" know what Appellant Buckmon was doing in the house Transcript pg. 114 line 19-22, As to factually knowing or see Appellant Buckmon set a fire. With said this includes the fact that when during previously into testimony when Bolen stated "As for as he knew" Appellant Buckmon sought a fire Transcript pg 95 line 6-7 "was a lie", because when questioned by solicitor David Miller concerning events or what Bolen supposedly seen or actually knew, Bolen was asked by solicitor on Transcript pg. 114 line 19-22 that at this point you (Bolen) was outside, and at this particular point you (Bolen) do not know what Appellant Buckmon is doing, because you are outside correct, Mathew Bolen responded "yes" to the fact that he Bolen actually did not know what Appellant was doing in the house to say Appellant sought a fire or seen Buckmon sought a fire, and never stated he (Bolen) had prior knowledge that Appellant was going to participate in the acts of Arson.

The key pieces relied on from Mathew Bolen testimony was only assumptions, speculations, and only raise a suspicion of guilt, and not facts if Appellant Buckmon

2)

Sought fire because the comment made As far as he knew Appellant sought a fire Transcript pg. 95 line 6-7, was a lie, due to the "fact" Bolen furthermore stated he really did not know what Appellant was doing in the house Transcript pg. 114 line 19-22 to positively say Appellant Buckman sought such a fire.

In this particular case while Matthew Bolen testified he did not state for sure as if he really know if Appellant sought a fire, with said it only raises mere suspicion. No evidence was raise from testimony as of Bolen stating he actually saw Appellant sought a fire, there was no evidence raise from testimony as to prior knowledge of Appellant was going to set a fire. There was no evidence from testimony of Matthew Bolen actually knowing Appellant sought a fire, because Matthew Bolen told the courts that he (Bolen) did not really know what Appellant was doing in the house Transcript pg. 114 line 19-22; letting the courts know from the previous comment "As far as he knew" Appellant sought a fire Transcript pg. 95 line 6-7 was not true. Bolen did not know for sure what Appellant was doing. Bolen's previous comment was uncertain, and not factually knowing. Such evidence by the state using such part of that testimony concerning Arson is not substantial (not solid) and merely raises a suspicion of guilt.

In state vs. Buckman () All testimonies from that particular case only raised circumstantial evidence. The key pieces relied on was (1) Temotzius written statement that a comment was made the night of the murder was somebody mention something about getting some cheese (2) Walkers testimony he stated a comment was made about someone said getting or hitting a lick (3) the fact Appellant Sanders and Benning were together at least until they left Walkers home, and (4) Shirley Collins's testimony that she saw three people running towards the China Express, nevertheless she Collins informed the courts she (Collins) could not identify suspects/people.

WALKERS
BENNING

None of the evidence presented by the State placed Appellant at the scene.

3) Finally Officer Padgett testified that in written statement Benning said he went to the China Express, but had second thoughts and decided to leave. As he Benning was running away, "he heard" gun shots, and not actually seeing a person / Appellant shot victim causing murder in such case.

No one in this particular case State vs. Buckner () saw Appellant shot the victim, with said now in such case concerning the testimony of co-defendant Mathew Bolen concerning Arson he (Bolen) never stated he (Bolen) seen Appellant Buckner sought a fire, and most importantly, Mathew Bolen inform the courts the truth that he (Bolen) really "did not" know what Appellant Buckner was doing in the house Transcript pg. 114 line 19-22 which prove that previous comment as far as he knew Appellant sought a fire Transcript pg. 95 line 6-7 "was a lie"

There is no evidence of said facts through testimony Appellant sought a fire. Bolen never stated he seen Appellant sought a fire as well, he never even gave prior knowledge Appellant Buckner was going to even set a fire. Bolen only testified to he (Bolen) came into the house and Appellant was supposedly running out the room with victim and not in NO ACTS of setting a fire at all in this case to be guilty of Arson causing the murder by smoke inhalation.

{ ARSON
Discussion from State }

In a Arson case The Corpus Delicti is an (1) A burned building or other properties; and (2)* Some criminal Agency which caused the burning. State v. Blocker, 205 S.C. 303, 31 S.E. 2d 908 (1944) In a Arson case the state

MAIL ROOM

must not only establish the fact that a building was burned, * but most importantly that the burning was done by the wilful act of some person* and not as a result of a natural or accidental cause.

State v. Blocker, 205 S.C. 303, 31 S.E. 2d 908 (1944)

Accord: State v. Williams 321 S.C. 381, 468 S.E.

2d 656 (1946); As stated concerning the corpus delicti of the burning, being done wilfully as of some criminal Agency which caused the burning, in such particular case as of Matthew Bolen Testifying

to an uncertain comment "As far as he knew" Appellant sought a fire, to then confirming the courts that he

Bolen did not know what Appellant was doing in the house Transcript pg. 114 line 19-22, the state

can not prove from such testimony concerning Arson that Appellant Buckman caused the burning being

A criminal Agency, the state can not prove it was wilfully done by Appellant Buckman. Co-defendant

Matthew Bolen never stated he seen Buckman sought such a fire to be a participant, co-defendant Bolen

admitted that he (Bolen) even did not have prior knowledge Appellant Buckman was going to set a fire

or have a reason to in trail. Buckman was supposedly in another room as to where fire expert Special Agent

Seals stated in such room where Buckman was there was NO signs of a fire being started. There is no

evidence linking Appellant Buckman to the areas as kitchen stove area where tissue was burned by the

isle, which stove was set on the lowest level, which tissue went out from flames, not even causing any

damage, And⁽²⁾ Nothing from testimony linking any

5.

Appellant Buckman around the piano area, where candles was supposedly lit, which somehow an accidental event happened, because there was no factual determination from testimony from co-defendant Matthew Bolen when he stated Appellant Buckman "was not" in any type of acts of setting fires when he entered the home, and most importantly Matthew Bolen confirmed to the courts that he really did not know what Appellant Buckman was doing in the house. Not only Matthew Bolen comment as far as he knew if Appellant Buckman sought a fire was very well uncertain which raises mere suspicion, but most importantly for the record Bolen stated that he don't even know if Appellant even started a fire. *The only evidence/knowledge evidence of a person setting a fire in this case being a criminal agency that wilfully started a fire was *Matthew Bolen*, which was ruled as the most significant fire damage area, along with sled obtaining Matthew Bolen red shirt in the same area (Hallway Bathroom) which was confessed against himself (Bolen) and confession to his (Bolen) acts of setting a fire was also confirmed by special agent seats. There is no evidence from testimony Matthew Bolen if Appellant participated with Matthew Bolen of Arson in such of a case. None at all.

MURDER CORPUS DELICTI

Murder In a murder trial, the corpus delicti consist of two elements: (1) the death of a human being; and (2) the criminal act of another causing the death.

In this particular case the victim had died from smoke inhalation caused by a fire (murder/arson) As stated the state had failed to prove Appellant Michael (Paul) Buckman committed the criminal act of (Arson) as of being criminal agency wilfully

6

Setting a fire, due to Mathew Bolens testimony, due to the fact Mathew Bolen was caught in a major lie as if he Bolen knew for sure if Appellant Buckman actually participated in the act of Arson *When questioned by Solicitor Transcript pg 114 line 19-22, according to Bolen he admitted to the fact that he (Bolen) did not know what Appellant was doing in the house to positively say he (Bolen) witness Appellant to be a criminal Agency to Arson causing the death (murder) due to smoke inhalation. As stated throughout the argument/briefing admitted to the courts of Appeal in the Appellant Mr. Michael P. Buckman's behalf concerning Arson, its repeatedly stated its no evidence of a true, and factual Adment of Appellant committing Arson causing the death by smoke inhalation. Again the state failed to prove if Buckman was a real participant to Arson concerning the testimony of Bolen. Bolen never stated he seen Buckman in any type of acts of Arson that would have cause the death as it was ruled By Dr. Ross cause of death was smoke inhalation in this case.

MURDER/ARSON

DR. ROSS
(Expert witness)
(Autopsy reports)

In this case Dr. Ross submitted to the several facts that victim was alive before the fire (ARSON) was starting, as to where victim in this particular case die (was murdered) by smoke inhalation.

- (1) DR. ROSS STATED ON TRANSCRIPT PG. 209 LINE 15-19 that victim "still alive" after other previous injuries
- (2) ON TRANSCRIPT PG. 207 LINE 17-22, SHE (DR. ROSS) INFORMED THE COURTS SOOT WAS INSIDE THE TRACHEA, AIRWAY, WHICH MEANS THE VICTIM WAS BREATHING DURING THE FIRE. IN ORDER TO GET SUCH LARGE AMOUNT OF SOOT THAT WAS FOUND, IN OTHER WORDS VICTIM DIED FROM SMOKE, SMOKE WAS THE MURDER WEAPON IN THIS PARTICULAR CASE, VICTIM WAS MURDERED BY THE CAUSE OF ARSON, SMOKE INHALATION.
- (3) ON TRANSCRIPT PG. 213 LINE 12-17 DR. ROSS STATED MANNER OF DEATH

in this case indicated that victim had large level of carbon monoxide which supported the manner of death, which means poisonous gas formed by incomplete combustions (From Arson)

Due to reports, determination given, cause of death (murder) was from smoke, smoke inhalation, cause by Arson.

7.

Pathologist Dr. Ross also stated injuries was caused before the fire Transcript pg 209 line 7, and further along stated to the courts victim was alive Transcript pg 209 line 16-19, which man victim did not die from.

Any type of assault issues in this particular case. Victim was not murdered by assault, or any other evidence found, actual evidence causing the murder/death was smoke inhalation. Smoke was the actual murder weapon.

CSC

Did the Trial Judge err in denying the motion of Direct Verdict on charges of criminal sexual conduct.....

In this particular case the judge erred in denying the motion of directed verdict on CSC by stating or relying on the testimony of co-defendant Mathew Bolen. The judge stated the testimony is evidence of CSC on Transcript pg. 254 line 16-25 * Supreme Court states

In reviewing a directed verdict motion the judge is to consider the existence of evidence, and not its weight.

Due to the testimony of co-defendant at trial such testimony consisted of the weight, and not existing evidence of rape relying on testimony of Bolen. During the testimony from co-defendant Mathew Bolen at trial, he (Bolen) never gave real details of any type of sexual contact being made in this case when Bolen entered the room, to say it was existing evidence that victim was being raped. Transcript pg. 112 line 1-22. On Transcript pg. 112 line 1-22 co-defendant Mathew Bolen only told the courts that he (Bolen) only heard moaning from the bedroom "is all heard".

There was no details stated giving existing that victim was being raped. During testimony concerning the offense of criminal sexual conduct during testimony co-defendant Mathew Bolen was not pertaining to an actual rape issue. Bolen exact words was when he (Bolen) entered the room

LEGAL MAIL
MAIL ROOM

28
2

Appellant Buckmon supposedly asked Mathew Bolen to tie up victim up Transcript pg. 112 line 3-22. During testimony Mathew Bolen never mention why Appellant Buckmon wanted victim tied up at all in the case as if it was ~~needing~~ needing her tied up to rape victim. As a matter of fact Mathew Bolen never even mention that Buckmon was in an act of raping victim. Hearing a victim moaning is all he (Bolen) heard. Such moaning does not mean victim was being rape. In this particular case the solicitor (David Miller) use a theory of what he (solicitor) believe, or thought what was going on in the room, but through the testimony from co-defendant Mathew Bolen, he never said anything about Appellant Buckmon actually raping victim. Further more Bolen testimony explain to the courts that he (Bolen) was not even in the room with Appellant Buckmon and victim to even positively clarify it was an rape issue in this hole particular case. Most importantly also the solicitor himself stated on Transcript pg. 291 line 8-15, that Mathew Bolen was stating it did not sound like Appellant was raping victim. Solicitor was stating Bolen never heard kicking and hollezing as if victim was being rape. In conclusion, there is no evidence relying on the testimony of co-defendant Mathew Bolen, as if victim was being rape, Bolen explain to the courts that he Bolen only heard moaning, Bolen never stated he was in the room with victim and Appellant and he Appellant was raping victim right in front of him. There is no fact that such event of rape occurred at all through such testimony given at trial.

LEGAL MAIL
MAIL ROOM

pg. 3

Art Trail only admitted sex was only concerning consensual sex. Appellant admitted to only having consensual sex prior to leaving to pick up some cocaine, while leaving co-defendant Matthew Bolen and victim alone, which co-defendant Bolen admitted Transcript pg. 100 line 7-14, line 15-19, Bolen stated First all three of us went to Ms. Dempsey's house, Bolen stated line 18-19 of Trans. pg. 100, that Appellant Buckman did leave to pick up cocaine. Even though Bolen never stated victim and Appellant had consensual sex before hand, Appellant admitted it was consensual sex before leaving to pick up cocaine, during his (Appellant interview) Most importantly interview from Nov 11th 2nd portion should not have been admitted into evidence, due to the fact officers over the case Glenn Rice & Sled Agent Mr. Seals violated Appellant 5th & 14th Constitutional Right.

Due to this particular case the state relied on the testimony of Matthew Bolen concerning CSC, and due to such testimony there was no details as if victim was being rape during the time when other crimes was committed later that night. There is no evidence of what actually took place in the room because Bolen testimony shows he was not in the room, and all he heard was moaning, and when Bolen entered the room, he (Bolen) never stated victim was in any type of sexual act or contact with victim, All Bolen stated Appellant supposedly wanted victim tied up, but there was no explanation why Appellant supposedly wanted victim tied up. Bolen admitted he (Bolen) was unable to tie victim up as well, and even after the fact Bolen never stated Appellant begin to rape victim. Read Transcript pg. 112 line 1-20.

(264) In this particular case concerning CSC. The state relied on a theory of what they believe took place in the room, but not facts of what actually took place as if victim was actually being raped. The state relied on the testimony of Bolen what supposedly took place concerning CSC, but during the testimony Bolen only stated all he (Bolen) heard was some moaning coming from the room, and he (Bolen) not actually being in the room. Transcript pg. 112 line 1-22. There is no evidence of what took place in the room concerning sexual contact/rape. Bolen was only explaining appellant wanted him (Bolen) to tie up victim, and again Bolen never gave explanation why appellant would victim tied up. Bolen never stated Appellant was raping victim, with Bolen being in the room, the state does not know what took place as if victim was being raped, or what ever happen in the room.

Such evidence leads to mere suspicion of guilt, and concerning to Supreme courts, a trial judge should grant a direct verdict motion when the evidence merely raises a suspicion the accused is guilty. State v. Lollis 343 S.C. 580, 541 S.E.2d 254 (2001). See also State v. Ballenger, 322 S.C. 196, 470 S.E.2d 851 (1996) (trial court should grant direct verdict motion where jury would be speculating as to guilt of accused or where evidence is sufficient only to raise mere suspicion of guilt." Suspicion" implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof. State v. Lollis, supra. Again the state does not know what actually happen in the room before Bolen entered, there is nothing stated if appellant had sex with victim during such particular time, concerning the testimony of Matthew Bolen. Transcript pg. 112 line 1-22.

(5)

Dr. Ross and expert opinion concerning CSC.

During testimony expert witness Dr. Ross stated it could be different explanations of why abrasions could have been found around the vagina area in this particular case, and not it just being consistent with CSC. In other words its more explanation instead of victim probably being rape, and not rape in this case. During cross examination with lawyer Michael Chesser Transcript pg. 214 line 3-14.

Also abrasions could have been caused by co-defendant Matthew Bolen because he (Bolen) admitted to having sex with victim, and victim for what ever reason wanted to stop having sex with him (Matthew Bolen) while they was alone Transcript pg. 141 line 1-25., On Trans

pg. 211 line 1-14, Dr. Ross explain to the courts abrasions could have come from rough sex, and such discomfort with a female, a female would want to stop having sex, just as Matthew Bolen admitted victim want to stop having sex with him Transcript pg. 141 ~~line~~ line 1-25, and not appellant Buckman.

There is no factual evidence if appellant Buckman cause abrasions

Most importantly Dr. Ross stated clarified to the courts that abrasion has other explanations instead of victim being rape and ~~and~~ ^{not} its a definite rape issue in this case Transcript 214 line 4-10

Also there was no D.N.A presented at trial against appellant Buckman From Dr. Ross

(c)

Due to the state not having facts of my type of rape issue concerning the testimony of Matthew Bolen because he Bolen admitting is all he heard is moaning from the room, and when entering the room Bolen never state appellant was in any type of sexual contact with victim, and the state not knowing what happen in the room pertaining sex, as of relyin on testimony of Bolen, Appellant respectfully ask for the court Appeals to Acquitt the charge of CSE.

Important Additional Argument CSC...

The first element of Criminal sexual conduct the state must prove that beyond a reasonable doubt is that the defendant engaged in a sexual battery. Sexual Battery means sexual intercourse, coodling, fellatio, anal, any intrusion into the genital or anal openings of another person's body. The judge actually stated at trial If you find the state has not shown beyond a reasonable doubt that a sexual battery occurred, you should stop deliberating and your verdict would be not guilty.

As the judge instructed the jury should have stop deliberating on such offense of CSC due to the fact that the state/jury was undetermined if sexual battery occurred because of the testimony of Matthew Bolan.

Due to Matthew Bolan testimony he (Bolan) never stated that he walked in on appellant Michael P. Buckner was in any type of sexual act with victim. Due to the testimony Bolan never even been in the room with victim and appellant which was stated when Bolan said he only heard moaning coming from the bedroom Transcript pg. 112 line 6-7 In this particular case there was nothing said from Bolan that appellant was in an act of raping victim. Even when entering the room Bolan only stated appellant Buckner supposedly wanted co-defendant to tie up victim, there was not even an explanation that was said from Bolan in this particular case of why appellant wanted victim tied up. Without knowing what actually happened in the room before Bolan come in, it is impossible to know if sexual battery occurred. There is nothing said from Bolan testimony Transcript pg. 112 line 1-22 that sex occurred.

In this particular case the trial Judge erred in denying the motion of Directed Verdict due to the fact that the

State is undetermined if sexual Battery even occurred. The jury should have stop deliberating due to such matter as instructed, and find Appellant Buckman not guilty. Also when evidence was admitted concerning Appellants interviews, it was admitted as of only consensual sex consented from victim, which Appellant explain it was prior to leaving to get cocaine. When it came to the consensual sex admitted, it was not during the commission of other crimes. As of Matthew Bolen testimony even due to the commission of other crimes the state is undetermined if sexual Battery occurred, as the state relied on such testimony and do to such testimony there was nothing said that a sexual act was occurring when Bolen entered the room. While he Bolen was in acts of other crimes.

In this case the trial Judge erred in denying Directed Verdict motion of CSC. It is very much evident that the judge erred because due to the testimony, which the state relied on Matthew Bolen never stated sexual Battery occurred, or any sexual act when entering the room.

Due to such matter Appellant Buckman again respectfully ask for an acquittal of offense charge CSC.

Due to the testimony Bolen never stated sex occurred, while the state based their case due to the testimony there is no evidence to determined sexual Battery occurred, Bolen stated he heard moaning only, which leads to mere suspicion of what even took place in the room. There is no evidence of A rape/sex being made in the commission of other crimes that was being done by Matthew Bolen.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Barnwell County

Doyet A. Early, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL PAUL BUCKMON,

APPELLANT

APPELLATE CASE NO 2016-002257

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

ARGUMENT

The trial judge erred in admitting Appellant’s statement where the police violated Appellant’s rights pursuant to the Fifth and Fourteenth Amendments by interrogating him a second time within minutes after he invoked his right to silence about the same crime.3

CONCLUSION.....17

PETITION TO BE RELIEVED AS COUNSEL.....18

TABLE OF AUTHORITIES

Cases

Berghuis v. Thompkins, 560 U.S. 370 (2010)..... 12

Davis v. United States, 512 U.S. 452 (1994)..... 12

Edwards v. Arizona, 451 U.S. 477 (1981)..... 12

Jackson v. Denno, 378 U.S. 368 (1964) 2

Michigan v. Mosley, 423 U.S. 96 (1975) 12, 13

Miranda v. Arizona, 384 U.S. 426 (1966) 11, 12

State v. Aleksey, 343 S.C. 20, 538 S.E.2d 248 (2000) 12, 13

State v. Benjamin, 345 S.C. 470, 549 S.E.2d 258 (2001)..... 12, 14

State v. Reed, 332 S.C. 35, 503 S.E.2d 747 (1998)..... 12

Look cases up for results

EXPLAIN how he erred as what effect it had

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting Appellant's statement where the police violated Appellant's rights pursuant to the Fifth and Fourteenth Amendments by interrogating him a second time within minutes after he invoked his right to silence about the same crime?

STATEMENT OF THE CASE

On November 17, 2014, a Barnwell County grand jury indicted Appellant for criminal sexual conduct in the first degree (2014-GS-06-359). R. 393-394. On July 18, 2016, the grand jury indicted him for arson (2016-GS-06-205) and murder (2016-GS-06-210). R. 396-397; R. 399-400. On July 19, 2016, the state, represented by David Miller and Wilder Harte, called the case for a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964), before the Honorable Robert E. Hood. R. 1. Michael Chesser represented Appellant. R. 1. At the conclusion of the hearing, Judge Hood ruled all three statements given by Appellant were admissible. R. 40, l. 3 – R. 41, l. 11; R. 42, l. 9 – R. 43, l. 11.

Subsequently on October 17-19, 2016, the state, represented by Miller, called the case to trial before the Honorable Doyet A. Early, III, and a jury. R. 57. Chesser represented Appellant. R. 57. The jury found Appellant guilty as charged. R. 374, l. 23 – R. 376, l. 15. Judge Early sentenced Appellant to life imprisonment for murder, thirty years' imprisonment for criminal sexual conduct, and thirty years' imprisonment for arson. R. 384, ll. 11-17; R. 395; R. 398; R. 401. He ordered all sentences to be served concurrently. R. 384, l. 18; R. R. 395; R. 398; R. 401.

On October 28, 2016, Appellant served his notice of appeal. This brief follows.

ARGUMENT

The trial judge erred in admitting Appellant's statement where the police violated Appellant's rights pursuant to the Fifth and Fourteenth Amendments by interrogating him a second time within minutes after he invoked his right to silence about the same crime.

Relevant facts

On October 31, 2013, Donna Dempsey stayed home while her fiancé, Loy Mitcham, went to spend Halloween with his grandson. R. 113, ll. 14-15; R. 114, ll. 5-17. Mitcham left Dempsey's home around 6 p.m. R. 114, ll. 22-25. The two spoke to each other "[j]ust before midnight." R. 115, ll. 16-18. The following morning shortly after 10 a.m., Mitcham, Mitcham's son, the son's common law wife, and Mitcham's grandson went to Dempsey's home. R. 116, ll. 17-23; R. 117, ll. 15-18; R. 121, ll. 21-23.

Mitcham knocked on the front door, but got no answer. R. 118, ll. 3-8. Mitcham noticed a smell like gasoline. R. 119, ll. 1-5. After ensuring the grill on the porch was off, Mitcham returned to the door where he noticed "a black soot streak at the corner of the trim." R. 119, ll. 5-16. Mitcham yelled for his son to join him in the back yard because Mitcham planned to enter through the doggy door. R. 119, ll. 18-21. However, Mitcham was able to enter through the unlocked back door. R. 120, l. 7 – R. 121, l. 6. Mitcham was greeted by dark bellowing smoke. R. 121, ll. 12-17.

"Everything was completely black." R. 122, ll. 11-12. Mitcham found Dempsey. He "saw her legs with her long skirt on." R. 123, ll. 4-6. He "saw her legs and her panties to her knees." R. 123, ll. 7-8. He called for his son to call 911. R. 123, ll. 9-11. Mitcham tried to lift her, but was unable to do so. R. 123, l. 21 – R. 124, l. 3.

Later, Mitcham informed law enforcement of some items that were missing from Dempsey's home, including a large black drum set, several laptops, and a keyboard. R. 125, ll. 1-7.

The police charged Appellant and Matthew Bolen with Dempsey's murder and accompanying crimes. R. 139, ll. 9-19; R. 191, ll. 4-24. The state's entire case against Appellant was Bolen's testimony. Bolen claimed that on October 31, 2013, he and Appellant were visiting with their friend Keem Mixon when Dempsey arrived. R. 152, l. 8 – R. 153, l. 7. Later in the evening when Appellant and Bolen were behind Appellant's mother's house, Dempsey showed up again. R. 153, ll. 16-22. The trio left to buy alcohol and get money from the ATM. R. 154, l. 8 – R. 155, l. 9. Bolen and Dempsey went to Dempsey's house and engaged in sexual intercourse until Dempsey requested Bolen stop. R. 156, l. 20 – R. 157, l. 19; R. 196, l. 24 – R. 197, l. 25. Thereafter, Dempsey performed oral sex on Bolen. R. 198, ll. 8-11. When Dempsey passed out in the bathroom, Bolen and Mixon went to Appellant's mother's house. R. 158, l. 3-8.

Later, according to Bolen, he, Appellant, and CeeLo went to Dempsey's house and stole items, including a television and laptop. R. 162, ll. 1-13. Appellant, Bolen, and two women then went to play cards at a friend's house. R. 162, l. 14 – R. 163, l. 19. Thereafter, the two women went home and Bolen and Appellant returned to Appellant's mother's house. R. 164, ll. 1-13. Bolen and Appellant decided to return to Dempsey's house to steal a drum set. R. 164, ll. 18-23.

According to Bolen, Appellant saw that Dempsey was asleep in her bedroom. R. 165, ll. 10-13. After getting the drum set out of the house, Bolen claimed Appellant "said he was going to go in the room and try to have sex" with Dempsey. R. 167, ll. 14-16. Bolen allegedly busied himself with loading up the drums during this time. R. 167, ll. 17-19. Bolen claimed he told

solicitor admitted that Bolen did not give
Real details
as if
it was
?
the vector
in this
case

Appellant he needed help, but all he heard was "some moaning from the bedroom." R. 168, ll. 3-7. The second time Bolen wanted help, he "poked" his head in the bedroom. R. 168, ll. 8-10. Bolen claimed Appellant invited him in and asked him to help tie up Dempsey using a belt. R. 168, ll. 10-14. Bolen was unsuccessful and went back to loading the drums. R. 168, ll. 23-25.

Bolen claimed he walked back into the house later saw what "looked like something burning on the stove." R. 171, ll. 7-11. He further claimed he saw Dempsey run from her bedroom followed by Appellant. R. 171, ll. 12-14. Appellant then put Dempsey in a chokehold and the pair fell to the floor. R. 172, ll. 1-15. Dempsey went slack. R. 172, l. 24. When Dempsey began to move, Appellant punched her in the chest and put her back in a chokehold. R. 173, ll. 21-22; R. 174, ll. 4-11. When Dempsey went slack again, Appellant grabbed a hammer from the "stove countertop area" and hit Dempsey on the head with the hammer. R. 174, ll. 16-21.¹

Bolen claimed Appellant placed the hammer in his waistband and pulled out a gun, which he placed in Bolen's face, telling him to keep his mouth shut. R. 175, ll. 14-21. Bolen also claimed Appellant told him to "finish burning this shit down." R. 176, ll. 19-24. Bolen saw a fire on top of a piano in the living room. R. 177, ll. 2-4. Some books near a candle were on fire on top of the piano. R. 177, ll. 6-16. Bolen took off his shirt, grabbed the book and threw it into a bathtub. R. 177, ll. 17-24. In the bathroom, Bolen observed hanging over a towel rack with a candle underneath. Although it was not on fire, he threw it in the bathtub as well. R. 178, ll. 5-9.

Bolen and Appellant then left. R. 179, ll. 7-10. Appellant was upset when he realized Bolen had not loaded the stolen items into the car. R. 179, ll. 19-25. The two "started heading to Columbia" when Bolen "kind of blacked out." R. 183, ll. 18-19. When Bolen woke up at a rest

¹ No hammer was ever found. R. 187, l. 16 – R. 188, l. 8.

area, he took over the driving duties. R. 184, ll. 7-20. Bolen drove to Piedmont where his grandparents had a trailer. R. 185, ll. 1-5. They pawned the drums at a pawnshop in Easley on November 1, 2013. R. 185, ll. 14-25; R. 186, ll. 23-25.

Recognizing the weakness in the case as it rested entirely on Bolen, the solicitor cautioned the jurors in his opening statement that Bolen was not on trial that day, but that he would “have his time.” R. 108, ll. 13-19. In closing, the solicitor was even more direct. According to the solicitor, the star witness, Bolen, was “a piece of trash.” R. 337, l. 2. No one who ever had a conversation with Bolen “went away from that conversation” thinking Bolen was “a pretty nice guy.” R. 337, ll. 3-7. Bolen was not a good guy, but, in the words of the solicitor, either he was brilliant, which the solicitor “didn’t see from that stand,” or he was “telling the truth.” R. 337, ll. 8-13. Later, the solicitor contradicted himself by telling the jurors they should not think Bolen was “credible in any way, shape or form.” R. 351, ll. 15-16. However, the solicitor implored the jurors to trust Bolen now because “[h]is story matched the evidence. His story matched what [the police] could see. His story matched what [the police] knew.” R. 352, ll. 2-6. According to the solicitor, “all of the facts, all of the evidence line[d] up” with Bolen’s testimony. R. 353, ll. 24-25. Yet, Bolen, who was “not a good person,” minimized his involvement. R. 354, ll. 1-4.

Motion to suppress statement to police

Prior to trial, the parties convened before Judge Hood to determine the admissibility of three statements made by Appellant to law enforcement. During the hearing, it was revealed that Appellant gave three statements to law enforcement. The first statement occurred on November 10, 2013. The second statement occurred on November 11, 2013. The final statement occurred on February 18, 2014. Appellant challenged the admissibility of the second portion of the

November 11, 2013, statement as violating his rights pursuant to the Fifth and Fourteenth Amendments because he invoked his right to silence, but law enforcement did not scrupulously honor his request.

First statement

SLED Agent Craig Collier and Detective Brian Owens interrogated Appellant on November 10, 2013. R. 5, ll. 10-20. This interrogation occurred at the Barnwell County Sheriff's Office and lasted over two hours. R. 6, ll. 3-8. According to Collier, he advised Appellant of his rights at 3:13 p.m. R. 7, ll. 5-15; R. 51. Collier claimed Appellant waived his rights, indicating he wanted to speak to him. R. 7, ll. 13-14. Pursuant to SLED policy, the statement was not audio or video recorded. R. 8, l. 22 – R. 9, l. 6. Nevertheless, Appellant handwrote a statement for law enforcement. R. 9, ll. 13-16; R. 52-54. Additionally, Appellant handwrote answers to questions written by Collier. R. 9, ll. 17-24; R. 52-54.

Second statement

On November 11, 2013, the day after Collier and Banks interrogated Appellant, SLED Agent Sterling Seals responded to the Barnwell Police Department so that he could interrogate Appellant. R. 17, ll. 3-8; R. 18, ll. 6-8. Detective Glen Rice from the Barnwell Police Department was also present for the interrogation. R. 17, ll. 15-21; R. 31, l. 13 – R. 32, l. 6. This interrogation lasted “just short of two hours.” R. 18, ll. 15-18; R. 25, ll. 23-25. Appellant was in handcuffs and wearing prison clothes. R. 26, ll. 1-6.

During the interrogation, Seals advised Appellant of his constitutional rights using a form. R. 19, l. 16 – R. 20, l. 25; R. 55. Additionally, although it was against SLED's policy, this interrogation was audio and video recorded. R. 21, ll. 7-13; Court's Exhibit #4.

During the interrogation, Appellant indicated "he wanted to stop questioning." R. 21, ll. 18-22; R. 26, ll. 23-25. Seals "ended the interview and stopped it at that point." R. 21, ll. 23-25. Seals, Rice, and Appellant left the interrogation room. R. 22, ll. 17-19; R. 27, ll. 4-7. Rice and Appellant were in a hallway together. R. 27, l. 11. Rice spoke "briefly" with Appellant. R. 22, l. 20; R. 27, l. 11. Rice had no recollection of what was said "off camera." R. 33, ll. 12-15; R. 35, ll. 7-9. Despite have no recollection of the off camera discussion, Rice claimed he did not make any threats or promises to Appellant. R. 33, ll. 16-22. Rice did not remember if Appellant requested to return to the interrogation room. R. 33, l. 23 – R. 34, l. 4. In fact, when asked if he could testify that Appellant requested to have the interrogation continue, Rice testified that he could not say what the two talked about off camera. R. 35, ll. 10-13. However, Rice claimed Appellant tried "to keep talking to [him] after [he] had walked out of the interview room with [Appellant]." R. 34, ll. 5-7.

Then, Rice informed Seals that Appellant wished to speak to him again. R. 22, ll. 21-22; R. 27, ll. 12-13; R. 29, l. 25 – R. 30, l. 1. Everyone reentered the interrogation room and continued the interrogation. R. 22, ll. 22-23; R. 27, ll. 14-18.

Seals was a skilled interrogator, having been trained in various interrogation techniques, including "the Reid Technique." R. 27, l. 22 – R. 28, l. 12. Using these techniques, it was not uncommon for Seals to lie to a suspect regarding the evidence. R. 29, ll. 10-17. Rice told Appellant that he was going to talk to the co-defendant, Matthew Bolen, in the case after completion of Appellant's interrogation. R. 33, ll. 3-7. Rice told Appellant the interrogation was his chance to talk and say what he knew because the police were going to get the other side of the story from Bolen. R. 33, ll. 8-11.

Rice explained that when a suspect invokes his right to silence, Rice “can still talk to” the suspect “unless” the suspect “specifically ask[s] for a lawyer.” R. 35, ll. 14-18. Only when a suspect requests a lawyer does Rice terminate an interrogation. R. 35, ll. 18-19. Rice was certain Appellant did not request a lawyer during the interrogation. R. 35, ll. 20-22. When asked if he continued the interrogation after Appellant asked to stop, Rice responded that Appellant talked to him in the hallway, but Rice did not “know exactly what the conversation was.” R. 35, l. 23 – R. 36, l. 1. When asked if Appellant requested for the interrogation to continue, Rice responded, “He may have, he may not have, I don’t recall.” R. 36, ll. 3-5.

The video recording revealed that after the police had been interrogating Appellant for almost an hour, Appellant said, “I already know. I’m ready to go. I’m ready to go.” Court’s Exhibit #4 at 56:23. He further stated that he knew the police were protecting Bolen, not Appellant. Court’s Exhibit #4 at 56:23. Appellant was shackled and his chains made a horrible racket when he moved to leave from the room. Appellant told Rice, “Glen you can come talk to me tomorrow.” Court’s Exhibit #4 at 56:40. Although muffled and indecipherable, the audio captured the police continuing to speak to Appellant off camera. Court’s Exhibit #4 at 57:07 – 59:00. After a few minutes, Appellant re-entered the interrogation room with the police and the interrogation resumed. Court’s Exhibit #4 at 59:00.

Third statement

Seals and Rice interrogated Appellant a third time on February 18, 2014 at the Barnwell County Sheriff’s Office. R. 17, ll. 13-21; R. 18, ll.12-14; R. 32, ll. 7-9. This final interrogation lasted “about an hour.” R. 18, ll. 19-20. Seals advised Appellant of his constitutional rights during this interrogation as well. R. 23, l. 4 – R. 24, l. 8; R. 56. This interrogation was audio and video recorded as well. R. 24, ll. 14-17; Court’s Exhibit #6. Appellant’s attorney was

present for this interrogation, and Appellant never indicated he wanted to stop the questioning.

R. 25, ll. 4-12.

Argument on the Motion

Trial counsel moved to suppress the portion of the interrogation from November 11, 2013, subsequent to Appellant's invocation of his right to terminate the interrogation. R. 36, ll. 20-23. Trial counsel argued that law enforcement had an obligation to terminate the interrogation, but instead, the police "disregarded his invocation of his right to silence and they continued to question him and then they brought him back in the interview room and continued this interview." R. 36, l. 23 – R. 37, l. 3.

The prosecutor argued the recording of the interrogation, which had not been published at that time, revealed Appellant said he would still talk to Rice. R. 37, ll. 10-25. According to the prosecutor, this occurred after Appellant left the interrogation room and was no longer visible on the video footage. R. 37, ll. 23-25. The prosecutor claimed it was "clear from the surrounding circumstances" on the video that Appellant wanted to continue the interrogation. R. 38, ll. 1-7. Further, the prosecutor argued there was "absolutely no evidence that they took him and forced him or coerced him into continuing with his statement." R. 38, ll. 17-19. Without any evidentiary support, the prosecutor "submit[ted] that was what was going on during that period of time, was that he was explaining that he needed to get back on the camera." R. 38, l. 24 – R. 39, l. 2.

Ruling on the Motion

Judge Hood found all three interrogations were custodial requiring advisement of Miranda warnings. R. 40, ll. 11-16. He also found that Appellant was informed of his rights. R. 40, ll. 16-17. As to the November 10 and February 18 interrogations, Judge Hood determined

the state had proven by a preponderance of the evidence that Appellant voluntarily waived his rights. R. 40, ll. 18-22. He concluded these two statements were given “knowingly, intelligently, and voluntarily without any threat, coercion, force, intimidation, or pressure, that his will was not overborne considering all of the circumstances.” R. 40, l. 22 – R. 41, l. 11.

After watching the recording of the November 11, 2013, interrogation, Judge Hood found the statement was “freely, voluntarily, knowingly, and intelligently made after his advice of Miranda warnings; that he was without any threat, coercion, force, intimidation, or pressure.” R. 42, ll. 9-13. During the middle of the interrogation, Appellant “basically” said he was “ready to go, something of that nature.” R. 42, ll. 13-16. Reminiscent of Rice’s testimony on this point, Judge Hood stated Appellant did not “say anything about wanting a lawyer” or that he would not talk without a lawyer. R. 42, ll. 16-18. In Judge Hood’s view, the police complied with Appellant’s request to terminate the interrogation. R. 42, l. 19. Judge Hood could “clearly” hear Appellant say to Rice “you can come back and talk to me, something of that nature where he wishes to continue the interview at that time.” R. 42, ll. 21-24. Approximately two minutes later, Appellant re-entered the interrogation room and sat down. R., ll. 24-25. Judge Hood noted that Appellant did not re-invoke his right to silence at that point because he did not say, “I don’t want to be here” or “I don’t want to have anything to do with this” or “I don’t want to talk.” R. 43, ll. 1-3. Thus, Judge Hood found the entirety of the statement admissible. R. 43, ll. 6-11.

Discussion

The United States Supreme Court held that “[i]f [an] individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. ... [A]ny statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.” Miranda v. Arizona, 384 U.S. 426, 473-474 (1966). “Without

the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.” Id. In Michigan v. Mosley, 423 U.S. 96, 101 (1975), the Court confronted “under what circumstances, if any, a resumption of questioning is permissible.”

The Court explained that “[t]o permit the continuation of custodial interrogation after a momentary cessation would clearly frustrate the purposes of Miranda by allowing repeated rounds of questioning to undermine the will of the person being questioned.” Id. at 102. However, the Court was unwilling to establish “a blanket prohibition against the taking of voluntary statements or a permanent immunity from further interrogation, regardless of the circumstances.” Id. If a suspect invokes his right to silence, the interrogators must scrupulously honor the invocation. Id., at 103; State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261 (2001). “Through the exercise of his option to terminate questioning he can control the time at which questioning occurs, the subjects discussed, and the duration of the interrogation.” Mosley, 423 U.S. at 103-104. “The requirement that law enforcement authorities must respect a person’s exercise of that option counteracts the coercive pressures of the custodial setting.” Id. at 104.

A suspect invokes his right to silence by clearly articulating his desire to end the interrogation and must do so “unambiguously.” Berghuis v. Thompkins, 560 U.S. 370, 381 (2010); Davis v. United States, 512 U.S. 452, 459 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). The South Carolina Supreme Court explained that “before law enforcement officers are required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation.” State v. Aleksey, 343 S.C. 20, 31, 538 S.E.2d 248, 253 (2000). Additionally, “law enforcement officers may certainly speak with a suspect who reinitiates communication subsequent to an invocation of rights.” Id. (citing Edwards v. Arizona, 451 U.S. 477, 485 (1981)).

The South Carolina Supreme Court concluded a suspect's statement "'That's all I've got to say,' was not an unequivocal invocation of his right to discontinue questioning." Aleksey, 343 S.C. at 31, 538 S.E.2d at 253. The Court determined the state was "ambiguous" in the context. Id. at 31, 538 S.E.2d at 253-254. The suspect's statement could have indicated a "desire to discontinue questioning or simply the end of his story." Id. at 31, 538 S.E.2d at 254. The Court issued an alternative ruling – "even if the statement [were] interpreted to be an invocation of [the suspect]'s right to remain silent, it is uncontroverted that [the suspect] himself reinitiated conversation with the agents after the tape recorder was turned off." Id. The Court concluded that "[o]fficers do not fail to 'scrupulously honor' an invocation of rights when they engage in conversation initiated by the suspect." Id.

In Mosley, the Supreme Court held his "'right to cut off questioning' was fully respected." Mosley, 423 U.S. at 104. Prior to the initial interrogation, the police advised Mosley of his rights, which he stated he understood. Id. When Mosley indicated he did not want to discuss the robberies, the detective immediately stopped the interrogation and did not try to resume questioning or attempt to persuade Mosley to reconsider. Id. More than two hours later, a different officer at a different location questioned Mosley about a different crime after advising Mosley of his rights. Id. According to the Court, "[t]he subsequent questioning did not undercut Mosley's previous decision not to answer" the first detective's questions. Id. at 105. Critically, the second officer did not resume the interrogation about the robberies, but instead focused on a different crime – "different in nature and in time and place of occurrence." Id. Based on these facts, the Court concluded "[t]his [was] not a case ... where the police failed to honor a decision of a person in custody to cut off questioning, either by refusing to discontinue the interrogation upon request or by persisting in repeated efforts to wear down his resistance and make him change his mind." Id. at 105-106.

Our state supreme court noted with approval that other courts have set forth five factors to analyze to ascertain whether the defendant's right to cut off questioning was scrupulously honored. The first is whether the police warned the defendant of his Miranda rights at the first interrogation. The second is whether the police immediately stopped the interrogation when the defendant indicated he did not want to answer questions. The third is whether the police resumed questioning only after passage of a significant period of time. The fourth is whether the police provided a second set of Miranda warnings prior to the second interrogation. Finally, the fifth factor is whether the second interrogation was restricted to a crime that had not been the subject of the earlier interrogation. Benjamin, 345 S.C. at 476-477, 549 S.E.2d at 261. These "factors provide a framework for determining whether, under the circumstances, an accused's right to silence was scrupulously honored." Id. at 477, 549 S.E.2d at 261.

In Benjamin, the South Carolina Supreme Court agreed with other courts that a second interrogation on the same subject matter is not rendered unconstitutional automatically. Id. at 477, 549 S.E.2d at 262. After Benjamin was arrested, he was not advised of his Miranda warnings and told the questioning officer that he did not want to talk to him. Id. at 475, 549 S.E.2d at 261. Approximately one hour later, a SLED agent interrogated Benjamin. The SLED agent advised him of his rights and Benjamin agreed to waive those rights and speak. Id. In deciding that the statement was admissible, the Court noted that the initial officer did not advise Benjamin of his right to silence, that the officer immediately ceased talking to him, and there was no immediate resumption of questioning. Id. at 478, 549 S.E.2d at 262. The Court explained that "[w]hat is paramount is that police, under the totality of the circumstances, 'scrupulously honor' the suspect's right to remain silent." Id.

Applying the factors to the case presented, it is clear the judge erred in admitting the statement and finding the police scrupulously honored Appellant's invocation of his right to silence. Appellant clearly and unequivocally invoked his right to silence approximately one hour into the interrogation on November 11, 2013, when he said he was "ready to go" twice. Both officers understood Appellant wanted to end the questioning as the officers began gathering their things and exiting the interrogation room. Nevertheless, according to the video and the testimony, at least one officer – Rice – continued to question Appellant. While the substance of the conversation was not decipherable on the video, it was clear there was a conversation between Appellant and the police. Although Appellant stated that Rice could talk to him the following day, he was not re-initiating the interrogation. According to the Supreme Court, the requirement that the police scrupulously honor the invocation is that the suspect may control the interrogation. Appellant expressed that he may be willing to talk to Rice the following day. By forcing Appellant to continue with the interrogation, the police were violating Appellant's right to control the interrogation and failed to scrupulously honor his Fifth Amendment right to silence.

Although the police warned Appellant of his rights during the first interrogation, the police did not provide a second warning prior to the second interrogation on November 11, 2013, after Appellant invoked his right to silence. Additionally, the police did not wait for the passage of a significant period of time. The second interrogation began within minutes of the invocation. Frankly, the interrogation never ended as the officers continued to talk to Appellant even after everyone understood Appellant had invoked his right to silence. While the police appeared to have stopped the interrogation, the police continued to question Appellant. This was corroborated by Rice's testimony. According to Rice, when a suspect invokes his right to

silence, Rice "can still talk to" the suspect "unless" the suspect "specifically ask[s] for a lawyer."

R. 35, ll. 14-18. Rice only terminates an interrogation when a suspect requests a lawyer, and he

was certain Appellant did not request a lawyer. R. 35, ll. 18-22. Rice was certain Appellant did

not request a lawyer during the interrogation. R. 35, ll. 20-22. Conveniently, Rice did not

"know exactly what the conversation was" in the hallway "off camera." R. 35, l. 23 - R. 36, l. 1.

When specifically asked if Appellant requested for the interrogation to continue, Rice responded,

"He may have, he may not have, I don't recall." R. 36, ll. 3-5. Rice's understanding of the Fifth

Amendment and his recollection of what transpired during the interrogation of November 11,

2013, corroborates the video that Rice failed to scrupulously honor Appellant's invocation.

Finally, there can be no question but the police interrogated Appellant concerning the same

crime as was the subject of the earlier interrogation. Appellant invoked his Fifth Amendment right

to silence on this subject, and law enforcement erred by re-initiating questioning. The trial judge

compounded this error by admitting the statement into evidence at the trial.

Police did not
clarify
the record
nor

If such evidence was not brought into trial, it would have not cause any bad effect. The solicitor use evidence against me (testimony) for conviction when evidence was not suppose to be brought forth do to the fact my fifth Amendment was violated when I specifically told law enforcement that I did not want to continue interview

CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 25th day of July, 2017.

Due to inadmissible evidence, (testimony/video from Nov. 11th 2nd portion), the trial judge compounded the error by admitting such statement into evidence at trial

As of violating the 5th & 14th Admendment and allowing evidence that was very much inadmissible due to the fact the five factors Supreme court noted to analyze to ascertain whether the defendant right to cutt off was scrupulously honor, Evidence should not have been admitted into trial. The police did not provide a second warning prior to second interrogation, police did not wait for a passage of time. 2nd interrogation began within minutes, and the police interrogated Appellant Buckman concerning the same crime from earlier interrogation. All factors noted by Supreme court was violated.

Argument

Such error became very much prejudicial in the behalf of Appellant, and was tremendous harmless error against Appellant Buckman due to the fact evidence was use at trial, and Solicitor David Miller used such inadmissible evidence during closing arguments to persuade jury guilt of Appellant Buckman. For example Transcript pg. 289 line 23-25, solicitor stated, All throughout in every one of his statements every single one of the statements, throughout he (Appellant) is teasing the victim.

Such commit from solicitor is persuading the jury that Appellant doesn't care if ~~the~~ victim

was killed, setting a mind frame to have the jury find appellant guilty of all offenses.

* As of matter of fact throughout the hole closing argument, (Review Closing arguments) inadmissible evidence was used.

Such compounded error was harmless due to the fact other evidence at trial, which was only the testimony of co-defendant Matthew Bolen, such testimony lead to mere suspicion of guilt. Evidence of Arson was not direct, or substantial evidence due to the fact Bolen confirm to the courts that he Bolen did not know exactly what appellant Buckman was doing in the house when questioned by solicitor David Miller Transcript pg 114 line 19-22 as of not knowing for sure Appellant being a real participant to Arson causing the death by smoke inhalation, from previous comment stating as far as he knew Appellant probably sought a fire Transcript pg. 95 line 6-7. There is no factual determination if Appellant sought a fire. There was no prior knowledge given from testimony of Bolen as if Appellant was going to set a fire, or have a reason too. None at all. Also concerning the offense of CSC the state use the testimony of Bolen, and as stated from testimony Bolen only stated he heard moaning coming from the bed room. There was nothing said from testimony at trial that Appellant was actually rapping victim, read transcript pg. 112 line 1-22. There was no details given as of Bolen stating he entered the room and he witness sexual acts. With said from testimony no one knows what actually happen in the room pertaining to sex. The state only use a theory of what they believe happen, but no fact of what happen concerning rape. Also Bolen never gave explanations of why appellant supposedly wanted victim tied up. Nothing was said as of needing him (Bolen) to tie victim up so he (Appellant) could rape victim during trial.

So it is very much evident that error was compounded by

The judge by allowing the inadmissible evidence of 2nd portion of Nov 11th video, anything harshly said pertaining to such video had on bad effect on the innocence of Appellant Buckner at trial, which was unfair

Patologist

Dr. Ross stated cause of death was smoke inhalation. No other evidence caused the death (murder) of the victim. In this case smoke was the weapon, (Arson) smoke killed the victim, and as stated from testimony Bolon stated he did not know what Appellant was doing in the house as if he knew Appellant really sought a fire. Bolon only state he entered the house and notice a small fire by a stove, which sled agent Mr. Seals stated it was only tissue that somehow caught a fire, which stating no one knew how, which tissue went out, and in this particular case it was not ruled as a fire result, nor fire damage causing the death of victim, and two motor fire on top of a piano, books that was supposedly by a lit, already lit candle, and there was no details of how books caught a fire, not at all in this particular case. In this particular case sled Agent Mr. Seals assure the courts that Matthew Bolon was a real participant causing the death by smoke inhalation, by igniting a fire willingly with such tissue, and his (Bolon) t-shirt (t-shirt recovered off crime scene) which was actually ruled as the most significant fire area, causing a great spread through the home, causing the victim to die from smoke, murdering the victim due to Arson. No other evidence was the cause of death. None at all.

Using the inadmissible ^{evidence} from violating 5th; 14th Amendment Rights, solicitor use it to further more persuade the jury guilt of Appellant.

Dear Judge or Judges of Appeals Court of S.C.,

I have submitted to you my innocents to you and how my life was ruin by a lie. As stated throughout this journey I have written to several judges that I'm sorry for what happen to the victim. What have kept my head up is the fact the victim family has kept in there heart that I did not participated in such harsh offenses, due to the fact they know me well enough. The daughter of the victim has been a good support in going by my mothers house while I was in jail, and she (Tracey Dempsey) is hoping I will see my kids again. I personally and alot of others know I did not due this, and most importantly I would never ever burn a house up where I grew up in before the Dempsey family moved in. This situation became a story the world should know. My rights have been violated, and I did not have a fair trail. The prosecutore over this case allowed his witness to commit perjury, Riddle V. Ormint issue. I had a tough time with law enforcement as well because of officer Glenn Rice personal vendetta of my past, and with my past I have not did crimes that I was accused of. Its just people coming along my path that is not taking full responsibility of their charge. My co-defendant Matthew Bolen got a break on the charges he (Bolen) confessed to doing. The people left hurt is me, my family, and victim family Tracey Dempsey. Some-time people comes between others life and ruin everything and I became a victim of that. During trail, everyday the victim daughter Tracey Dempsey came faithfully everyday with my baby mother Ashley Rountree in hopes of me not recieving a death sentence nor the tremendously

time that was given. We all knew Matthew Bolton committed those offenses, even the solicitor stated he Bolton minimized his other statements. My lawyer did not present evidence of DVD with Bolton stating he did not see me have sex with victim as of a rape and Bolton stating clearly he did not see me sought a fine. Also D.V.D. evidence of Glenn Rice coaching Matthew what to say on written statement, and one officer even stating he did not care about the black guy, in this case. I submit to you my child is by a white female, which I love with all my heart, and it hurts me to go through something like this. I'm not a perfect person but I am not a murderer nor a rapist. I ask my lawyer Ms. Susan Hackett to help me with my pro-se brief concerning the directed verdict issue ect, but I did not get any professional assistance needed, so I was left to try it to the best of my legal ability which is not fair. What I have submitted to the courts is how Matthew Bolton admitted to telling the courts that he actually did not see me commit Arson causing the death and another fact that he did not say I rape victim nor see me in a act of rape, which I would never do. I know I can not bring Tracey her mother back, but if I could do anything one day just to make sure she is able to take care of herself & kids then I will, to show appreciation in her wanting to see my kids again as well. I had a tough time with law enforcement all my life, and whether I was innocent they still made it hard for me. Again I'm very sorry for this and I hope I can just receive some help. I'm innocent!

Michael P. Bolton

RECEIVED

MAR 12 2018

SC Court of Appeals

"Courts of Appeal"

PRO SE BRIEF

Appeal from the County of
Beaufort S.C. 29812

Honorable Judge Doyet Early

RECEIVED

MAR 12 2018

SC Court of Appeals

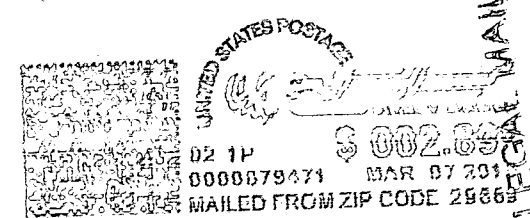
Michael P. Buckman
#235058

Perry Correctional Inst.

430 Oaklawn Rd.

Pelzer S.C. 29669

Mr. Michael PAUL Buckman - 235058
Perry Correctional Institution
430 Oaklawn Road
Pelzer S.C. 29669



RECEIVED
MAR 07 2018
P.C.I. MAILROOM

RECEIVED
MAR 12 2018
SC Court of Appeals

S.C. Court of Appeals
(CLERK) Jenny A. Kitchings
P.O. BOX 11629
Columbia S.C. 29211

