

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

ORIGINAL

Appeal from Pickens County

Honorable Letitia H. Verdin, Circuit Court Judge

RECEIVED

APR 18 2018

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LOGAN DRAKE MUNDY,

APPELLANT

APPELLATE CASE NO. 2017-000825

ANDERS BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief 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

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by admitting appellant's statement into evidence where the detective admitted lying to appellant about several matters to get him to confess that he had sex with the underage teenage girl, where appellant also testified he was highly intoxicated at the time the police interrogated him, since appellant's free will was impermissibly overcome given the totality of the circumstances?

STATEMENT OF THE CASE

Appellant was indicted by the Pickens County Grand Jury for the offense of criminal sexual conduct in the second degree. R. 288 – 289. This case was called to trial on March 27, 2017, before the Honorable Letitia H. Verdin, and a jury. John DeJong represented appellant. Chris Jones was the assistant solicitor. R. 1.

On March 29, 2017, the jury found appellant guilty. R. 277, ll. 11-15. Judge Verdin sentenced appellant to twelve years imprisonment. R. 285, ll. 14-17.

This appeal follows.

ARGUMENT

The court erred by admitting appellant's statement into evidence where the detective admitted lying to appellant about several matters to get him to confess that he had sex with the underage teenage girl, where appellant also testified he was highly intoxicated at the time the police interrogated him, since appellant's free will was impermissibly overcome given the totality of the circumstances.

Relevant facts

Detective Jonathan Hamby testified that he went to appellant's house on August 21, 2013, and that appellant agreed to come to the police station to talk with him. R. 42, l. 18 – 47, l. 24. Hamby testified that appellant signed a consent to search form so Hamby could search his cell phone. Hamby maintained he found pornography on the phone but nothing linking appellant to the teenage alleged victim, who said she had consensual sex with appellant. Hamby claimed he did not smell alcohol on appellant, and he did not think he was intoxicated. R. 48, l. 17 – 52, l. 12. Hamby said he interrogated appellant for two hours before appellant admitted he had consensual sex with the teenage girl. R. 52, ll. 13-17.

Appellant testified during the Jackson v. Denno¹ hearing that when Hamby came to his house: "I was really messed up that day." "I was drunk, stoned. I was just trying to forget my problems. It was just one of those days." Further, appellant only had a ninth grade education. R. 53, l. 9 – 56, l. 21.

Appellant said that Hamby threatened to charge him with possession of child pornography even though the pornography on his cell phone did not involve children. R. 59, l. 6

¹ Jackson v. Denno, 376 U.S. 368 (1964).

– 60, l. 23. Appellant testified that his statement admitting he had consensual sex was “a lie,” and appellant only confessed to avoid being charged with the crime of possession of child pornography. R. 64, l. 4 – 70, l. 14. In the presence of the jury, Hamby admitted he lied to appellant, and he also falsely told appellant that he had phone records to prove he and the teenage girl had exchanged photographs of one another on their telephones. R. 125, l. 22 – 126, l. 8.

Defense counsel argued that appellant was highly intoxicated when he was interrogated, and that the police coercion about what was on appellant’s cell phone made his statement involuntary. R. 72, l. 12 – 74, l. 18. The judge ruled appellant’s statement was given voluntarily and intelligently, and he admitted it into evidence. R. 74, l. 19 – 76, l. 7.

In his statement, appellant told Hamby that the teenage daughter’s mother told him that she was fifteen. The girl was actually thirteen. R. 134, ll. 6-17.

Discussion

Where a defendant was advised of his Miranda² rights, but still makes a statement to the police, the burden is on the state to prove by a preponderance of the evidence that his rights were voluntarily waived and that he gave a voluntary statement. State v. Washington, 296 S.C. 54, 370 S.E.2d 611 (1988); State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). The trial judge’s determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances including the background, experience, and conduct of the accused. Schneckloth v. Bustamote, 412 U.S. 218 (1982). A statement induced by a promise of leniency or by a threat is involuntary if the threat was the reason for the confession. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990).

² Miranda v. Arizona, 384 U.S. 436 (1966).

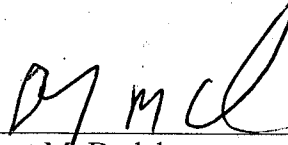
While the police can lie or give misinformation to a suspect to attempt to get him to confess, a false statement is still a consideration in determining whether a statement was coerced, and whether it was therefore involuntary. State v. VonDohlen, 322 S.C. 234, 471 S.E.2d 689 (1996).

Here, appellant was intoxicated on alcohol and drugs. The detective admitted he told appellant he had proof he was conversing with the teenage girl on her telephone. Appellant was also threatened that he would be charged with possession of child pornography -- also a lie -- if he did not admit to having sex with the teenage girl.

Under the totality of the circumstances, the trial court erred by finding appellant's statement was voluntarily and intelligently tendered, and not the result of coercion.

CONCLUSION

By reason of the foregoing argument, appellant's conviction should be reversed, and this case remanded to the Pickens County Court of General Sessions for a new trial.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2018.

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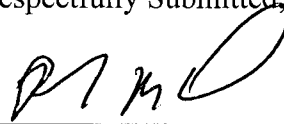
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Logan Drake Mundy states:

1. He is Chief 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 Letitia H. Verdin, which was held on March 27 - 29, 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 Logan Drake Mundy.

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 18th day of April, 2018.

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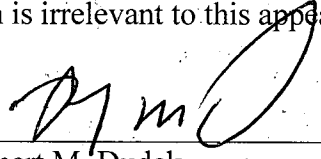
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment:
- (2) Entire trial transcript.

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

April 18, 2018



Robert M. Dudek
Chief Appellate Defender

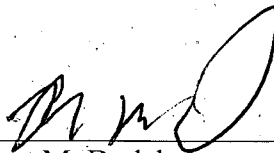
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CERTIFICATE OF COUNSEL

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."

April 18, 2018.



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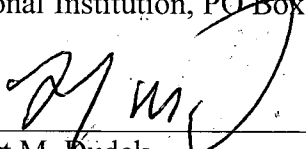
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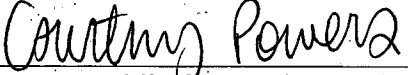
APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Anders 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 Anders Brief of Appellant and Designation of Matter have been served on Logan Drake Mundy, 363093, at Turbeville Correctional Institution, PO Box 252, Turbeville, SC 29162, this 18th day of April, 2018.


Robert M. Dudek
Chief Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of April, 2018.

 (L.S)
Notary Public for South Carolina
My Commission Expires: May 2, 2027.