ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON WILL WILLIAMS,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to suppress appellant's statement to the police where it was undisputed appellant had been in a car accident and was injured prior to giving his statement, Detective Foster admitted he assumed appellant was under the influence, and appellant's testimony confirmed he was actually under the influence of meth and Oxycontin, he had blacked out from the accident, had not slept in a considerable time, and that he did not remember giving a statement due to damage to his head and from his drug use?

STATEMENT OF THE CASE

Appellant was indicted by the Spartanburg County Grand Jury for the offenses of armed robbery assault and battery of a high and aggravated nature (ABHAN), strong armed robbery, and failure to stop for a blue light. R. 275. Appellant's case was called to trial on February 1, 2011 before the Honorable J. Derham Cole, and a jury. J. Roger Poole represented appellant. Barry Joe Barnette was the solicitor. R. 1

On February 2, 2011 the jury found appellant guilty on all four counts. R. 263, l. 20 – 264, l. 6. Based on appellant's prior conviction for kidnapping, Judge Cole sentenced appellant to life imprisonment pursuant to South Carolina Code § 17-25-45, fifteen years imprisonment for common-law robbery, ten years imprisonment for ABHAN, and three years imprisonment for failing to stop for a blue light. R. 266, l. 13 – 269, l. 19.

This appeal follows.

ARGUMENT

The court erred by refusing to suppress appellant's statement to the police where it was undisputed appellant had been in a car accident and was injured prior to giving his statement, Detective Foster admitted he assumed appellant was under the influence, and appellant's testimony confirmed he was actually under the influence of meth and Oxycontin, he had blacked out from the accident, had not slept in a considerable time, and that he did not remember giving a statement due to damage to his head and from his drug use.

Relevant Facts

Prior to trial a Jackson v. Denno[1] hearing was held. During this hearing, Detective William Foster testified that he was investigating two robberies that occurred on March 8, 2010. R. 45, ll. 9-21. On that day a woman was robbed on her afternoon break at the Smile Makers. After the purse was stolen, the state's case was that the robber – it claimed was appellant – went by a church and robbed another man working there. R. 49, l. 25 – 51, l. 5.

A BOLO had been put out after the Smile Makers purse snatching and the truck was spotted. A high speed chase ensued, and the truck crashed and turned over. Appellant was taken to a hospital. Foster admitted appellant was "bruised and beat up . . . [although] I don't remember any major damage." R. 49, l. 25 – 51, l. 5.

Appellant testified he was under the influence of drugs, injured from the accident, sleep deprived seemingly because of the meth, and he could not remember what happened when the police wrote his statement for him. Detective Foster admitted he assumed appellant under the influence of drugs, but he claimed he thought this because appellant came directly from the hospital – where he thought he was sedated or given drugs, and

[1] 378 U.S. 368 (1964).

brought directly to the police station where he gave his statement. R. 72, ll. 3-14. The judge appeared deeply disturbed about appellant being on drugs, and questioned Foster about him thinking appellant was under the influence of drugs. The following occurred between the trial judge and Foster.

> THE COURT: Let me ask you this.
>
> You -- is it your testimony that the defendant was under the influence of some type of a drug?
>
> THE WITNESS: I would think he would be coming from the hospital, but he didn't appear that he was to anything. I mean, he was –
>
> THE COURT: Well, why – why would you think he'd be under the influence of a drug because he's coming from the hospital?
>
> THE WITNESS: Well, they generally sedate them when they work on them over there to some extent or give them some kind of pain medication.
>
> THE COURT: Well, do you know what kind of treatment he received at the hospital?
>
> THE WITNESS: No, sir.
>
> THE COURT: Well, when he came back why did you believe he was under the influence?
>
> THE WITNESS: That's generally, just coming form the hospitals what I took it to be.
>
> THE COURT: Well, what did you notice that caused you to think he was under the influence?
>
> THE WITNESS: Nothing. I mean, that's just my assumption that coming from the hospital and being in pain that he had taken some kind of pain medication. But he didn't act like there was any actions from him that – that would warrant that.
>
> THE COURT: That would warrant what?

THE WITNESS: Him being – being thought to be under the influence.

THE COURT: Okay. Have y'all got any other questions?

R. 73, l. 6 – 74, l. 9.

Detective Foster estimated appellant was read his Miranda[2] warnings at about 7:10 p.m. after he was brought from the hospital. Foster claimed appellant freely and voluntarily talked to the investigators and he later signed a written statement. R. 47, l. 10 – 48, l. 23.

Appellant testified during the Jackson v. Denno hearing that he was involved in an automobile accident on March 8, 2010 and he was "all beat up and banged . . . all I remember is being back in the back of the police car before they took me to the hospital." Appellant said "he had a head contusion. From the blow to his head there was damage to the soft tissue in his brain." The judge at this point sustained the solicitor's hearsay objection. R. 56, ll. 5-24.

Appellant elaborated that following the accident: "I don't hardly remember anything from the wreck other than I remember them getting me out of the police car because I done passed, I mean, blacked out in the car . . . a lot of it's fuzzy. It's like I been . . . like I been asked like a lot of it don't make sense . . . I mean a lot a lot of it don't make sense." R. 56, l. 25 – 57, l. 25.

Appellant said he did not remember signing a statement or giving a statement where he admitted his involvement in the crimes that occurred that day. R. 58, ll. 11-16. Appellant's statement was later introduced during the trial. R. 273.

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

Appellant also said he did not remember making a statement to the media, and he only remembered some mention of the media and being told about "helicopter stuff, just talking about something like that, running people off the road and stuff."[3] R. 59, ll. 3-24.

Appellant said he remembered telling a reporter he was sorry because he had been told that he had run "somebody off the road and stuff." R. 61, l. 10 – 62, l. 2. Appellant added that he only remembered bits and pieces of what occurred and, in addition to his head injuries, he had not slept in a week and he was using meth amphetamines and Oxycontin that day. R. 62, l. 1 – 67, l. 25. Appellant said he was "totally incoherent" at the time he talked to the police, and he did not know what occurred. R. 68, ll. 11-17.

The state called William Foster as a reply witness and, as seen, Foster admitted appellant appeared under the influence of drugs, but he denied appellant appeared "totally incoherent." R. 69, ll. 10-11.

The state then called Investigator Lorin Williams. Williams said he spoke with appellant at the crash site. He maintained that appellant was coherent, and appeared to understand what was happening. R. 75, l. 7 – 77, l. 17. Williams claimed: "He (appellant) understood everything that was going on. R. 77, ll. 21-24. Williams also claimed appellant did not appear to be under the influence of drugs before or after going to the hospital. R. 81, ll. 22-25. The judge took the matter under advisement.

The judge then ruled after considering the testimony, and viewing the videotape of appellant, that he found by preponderance of the evidence that appellant's statement was voluntarily tendered to the police. R. 88, l. 16 – 89, l. 21.

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[3] There would later be evidence a police helicopter was involved in the chase. The truck

Jury In

Investigator William Gary testified he heard a BOLO on March 8, 2010 for a "black truck with a stripe down the side and a tailgate down and a gas can in the back of the truck." R. 107, l. 9 – 108, l. 17. Gary opined that it sounded like someone had been on a robbery spree. R. 108, ll. 18-23.

Gary testified he spotted the vehicle matching the dispatch, and he pulled the truck over. Gary said when he started to get out of his unmarked police car to approach the truck that the driver sped off. During the chase that followed, "at one point we were doing in excess of a hundred miles an hour on Cannons Campground." R. 109, l. 10 – 111, l. 20.

Gary said he realized a police helicopter was overhead. Going around a steep curve he heard that the truck the driver "had wrecked the vehicle on Hammett Road, which is almost in Cherokee County." R. 110, l. 8 – 113, l. 1. Gary identified appellant as the driver of the truck that crashed and overturned. As will be seen infra, some proceeds of the robberies were recovered. R. 113, ll. 15-19.

Anita Smith worked at the Smile Makers on March 8, 2010. She was taking her afternoon break around 1:15 when she remembered that a black or dark blue truck with a stripe on the side pulled up next to their picnic table. Smith recalled that a masked man approached them, swung a hammer at her, and ran away with her purse. R. 125, l. 13 – 127, l. 6. She testified that her credit cards and about eighty-five dollars in cash, her driver's license and marriage license were all stolen with her purse. R. 127, ll. 13-25.

Tammy Forrest was sitting with Smith on her break when this man approached, swung a hammer and stole Smith's purse. She identified appellant as a man who stole the

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overturned when it crashed.

purse, asserting: "I'll never forget those eyes because they were so soulless." R. 135, l. 19 – 137, l. 5.

Randall Seay was working at a nearby church when a man walked in asking for the preacher. Seay told him it was Monday, the preacher's day off, and it would be difficult to locate him. However, Seay gave the man a bulletin with the preacher's phone number on it. He recalled that the man then came up behind him when he returned to working on the inside of the church, robbed of his wallet, and told him he would kill him if he did not give him his PIN#. R. 140, l. 11 – 142, l. 25.

Crime Scene Investigator Jeremy Taylor testified that when the truck was wrecked a black mask was found in the truck along with a hammer and other proceeds of the robberies. Investigator Jeremy Taylor identified photographs of the stolen items that fell out of the truck when it overturned. R. 152, l. 12 – 157, l. 21.

Investigator Williams testified that after appellant was released from the hospital, he was immediately taken to the Sheriff's Department and interviewed. Williams said he did not know whether or not appellant was given drugs at the hospital. Williams acknowledged no photo lineups were shown to the victims in this case. R. 183, l. 8 – 186, l. 9. Williams denied that appellant was lying on the floor at the police station, although it was undisputed he was shirtless, and he said the statement was written for appellant – rather than by appellant -- because appellant requested that it be written for him. R. 186, ll. 7-25.

Appellant's girlfriend, Crystal Hensley, was living with appellant. The truck that wrecked that day belonged to her, and she said she was aware appellant often let his friend, Philip Young, borrow and keep the truck. R. 200, l. 17 – 203, l. 4. Hensley said she often argued with appellant about him letting other people drive her truck. R. 203, ll. 5-8.

Hensley said that on March 8, 2010, appellant let Philip Young keep the truck once again. Hensley argued about appellant lending Young her truck and she went to bed without appellant. When she awoke the next morning the truck was not there, and she was not sure if appellant was still in the house, but she assumed he was home. R. 204, l. 4 – 206, l. 19.

Appellant's mother, Delores Spurling, also testified that appellant often let Philip Young drive the truck. Spurling testified that on March 8, 2010, appellant came to her house with Young. She was sick and appellant was surprised to see her still in bed that late. Appellant and Young left shortly after 2:15 p.m. Appellant said he had to leave because he needed to drive Young to the store. R. 210, l. 5 – 212, l. 12.

In the statement written by the police that appellant acknowledged he signed, appellant admitted – the statement read -- that he stole a pocketbook and rode around and went to a church because he was "feeling bad for what I did to those women." R. 273. The statement said appellant saw the church worker's wallet, he held him on the ground, and told the man he was not going to hurt him. He said he took the man's wallet and ran. The police got behind him, he got scared, sped away, and wrecked his truck. R. 273. The statement was completed on March 8, 2010 at 8:26 p.m. R. 274.

Discussion

A confession is not admissible unless it is voluntarily made. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Childs, 299 S.C. 471, 385 S.E.2d 839 (1989). A determination of whether a statement is voluntarily and intelligently given "requires an examination of the totality of the circumstances. State v. Von Dohlen, 471 S.E.2d at 694-95.

A statement should be suppressed where the defendant's will was overborne or his capacity for self-determination was critically impaired. See, State v. Crawley, 349 S.C. 459,

562 S.E.2d 683 (Ct. App. 2002); State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 241, 246 (1990). Here, Investigator Foster readily admitted that he assumed appellant was under the influence of drugs at the time he allegedly gave his statement to the police. Appellant confirmed that he was on methamphetamines and Oxycontin and that he had not slept for days. It was undisputed appellant had been in a car accident, and had been injured. Appellant further testified he suffered a head injury and he did not recall what occurred when he spoke with the police.

This case is distinguishable from State v. Crawley wherein the Court of Appeals held that even if Crawley was in withdrawal from alcohol and drugs, she knew what she was doing when she talked to the police, and her statement was knowingly, voluntarily, and intelligently given. Here, it was essentially undisputed appellant was under the influence of drugs. That is much different than suffering drug withdrawal. While it was apparent the judge was very concerned about Investigator Foster knowing appellant was under the influence of drugs, he nonetheless failed to suppress appellant's confession. Cf. Bright v. State, 265 Ga. 265, 455 S.E.2d 37 (1995).

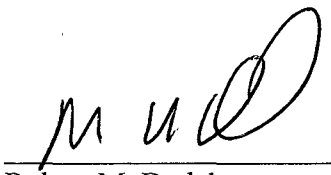
Given the totality of the circumstances appellant's statement was not voluntarily given because he had been in a car accident and been injured, his testimony that was on drugs had been corroborated by Foster, and appellant testified he remembered almost nothing of what occurred at the police station that day when the police wrote his statement for him. Appellant also had been sleep deprived from his drug use, and suffered a head injury from the accident. The judge should have suppressed appellant's statement since appellant's capacity for self-determination was critically impaired at the time he gave his statement. See, S tate v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 241, 246 (1990);

Schneckloth v. Bustamonte, 412 U.S. 218 (1973). Appellant should be granted a new trial because his statement to the police was not voluntarily and intelligent tendered under the totality of the circumstances. State v. Rochester, Schneckloth v. Bustamonte, supra.

CONCLUSION

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

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of April, 2012.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

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JASON WILL WILLIAMS,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jason Will Williams 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 J. Derham Cole, which was held on February 1-2, 2011, 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 Jason Will Williams.

Respectfully submitted,

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 30th day of April, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at P.O. Box 50666, Columbia, SC; and a true copy of the Final Anders Brief of Appellant and the Record on Appeal in the above referenced case on Jason Will Williams, #298412 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899 this 30th day of April, 2012.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of April, 2012.

(L.S.)
Notary Public for South Carolina

My Commission Expires: May 16, 2021 .