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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

HENRY LEE FELDER,

APPELLANT

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether appellant's statement to the police should have been suppressed because of promises of leniency made to him by the police?

STATEMENT OF THE CASE

On December 3, 2009, Henry Lee Felder was indicted for two counts of criminal sexual conduct with a minor, second degree. R. 246. On October 17 – 18, 2011, Felder was tried in Clarendon County before the Honorable Ralph F. Cothran and a jury. R. 1. T. Micah Leddy represented Felder. R. 1. Christopher R. DuRant represented the State. R. 1. The jury found Felder guilty on both counts. R. 232, ll. 5 – 12. Judge Cothran sentenced Felder to fifteen years' imprisonment on both counts to run concurrently. R. 244, ll. 1 - 7. On October 19, 2011, Felder filed and served his notice of appeal.

This appeal follows.

ARGUMENT

Appellant's statement to the police should have been suppressed because of promises of leniency made to him by the police.

Relevant Facts

Felder was charged with having sex with a fifteen year old girl on two occasions. R. 246. Prior to the commencement of the trial, the court held a Jackson v. Denno, 378 U.S. 368 (1964) hearing concerning a videotaped statement given by Felder to the police. R. 28, l. 1 – 43, l. 2. During the statement, Felder admitted to having sex with the girl in a van, but denied having sex with her in a hotel room. R. 40, ll. 1 – 13. The trial judge viewed the statement and took testimony from the investigating officer, Thomas Ham. R. 28, l. 1 – 43, l. 2. Officer Ham read Felder his Miranda rights on the videotape. R. 31, l. 3 – 33, l. 4. While Officer Ham testified that no promises of leniency were made to Felder, he admitted telling him “[Y]ou tell me the truth, I can help you out as much as I can.” R. 33, ll. 5 – 10. Officer Ham further explained that he would “try to help him out, try to talk with the solicitor to see, you know, what kind of deal we could work out.” R. 33, ll. 13 – 18. He denied promising any deals. R. 33, ll. 19 – 20.

Defense counsel argued that that these statements by Officer Ham were promises of leniency in exchange for cooperation that rendered his statements involuntary. R. 36, l. 22 – 38, l. 21. The State argued that Officer Ham's statements constituted only an offer to attest to the defendant's cooperation. R. 39, ll. 17 – 25. The State also argued that the statements made by Officer Ham occurred after Felder confessed to having sex with the girl in the van and that Felder made no incriminating statements after Officer Ham's promises. R. 40, ll. 1 – 17.

The trial court found that Felder's statements were "freely and voluntarily given." R. 42, l. 23 – 43, l. 2. Judge Cothran found that Officer Ham only told Felder that he would notify the solicitor and the court if he cooperated. R. 42, ll. 4 – 6. Judge Cothran found that Felder made no incriminating statements after the promises made by Officer Ham. R. 42, ll. 4 – 10. The court also found that the officers did not threaten Felder "in any way." R. 42, ll. 11 – 22.

Discussion

In order to introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). See also State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). "Further, the confession may not be extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of improper influence." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) (internal quotations omitted). "Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion." State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007).

The trial judge likely relied on the following statement in Arrowood to conclude that Felder's statements were voluntary: "Under precedent emanating from South Carolina jurisprudence, the officers' offer to attest to Arrowood's cooperation did not constitute promises of leniency." Id. at 368, 652 S.E.2d at 443; Tr. 42, ll. 23 - 25. This reliance was in error. The police officer's statement in Arrowood was far more specific about what was being promised. Id. at 364, 652 S.E.2d at 441. The officer said that he

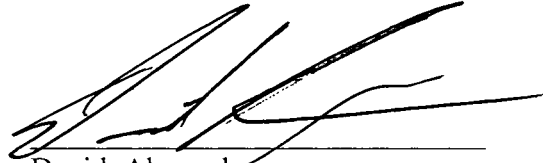
told Arrowood he would help him in the courtroom if he cooperated and would say that Arrowood cooperated. Id.

Here, Officer Ham's promise to "help [Felder] out" was vague could have been construed by Felder as promising a deal on his charges. In State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 487 (1987), the Supreme Court reversed a conviction because the investigating officer told the defendant that he could guarantee he would not get the death penalty if he confessed. Under the "totality of the circumstances," the State did not prove that Felder's statement was voluntary in light of Officer Ham's promise of leniency. Id. Therefore, Felder's conviction should be reversed, the videotaped statement suppressed, and Felder should be granted a new trial.

CONCLUSION

For the above-stated reasons, appellant should be granted a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Clarendon County

Ralph F. Cothran, Circuit Court Judge

THE STATE,

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V.

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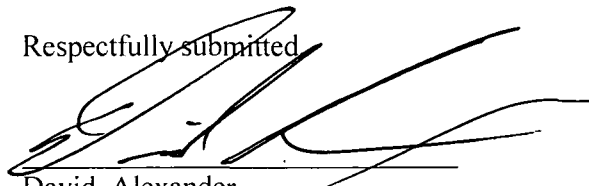
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Henry Lee Felder states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Ralph F. Cothran, which was held on October 18, 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 Henry Lee Felder.

Respectfully submitted



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January, 2013.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability 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."

January 2nd, 2013

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line.

David Alexander
Appellate Defender

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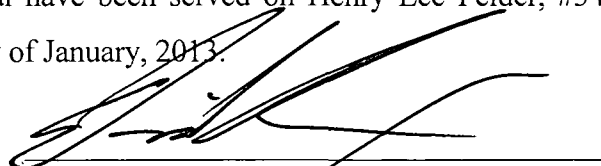
V.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Record on Appeal have been served on Henry Lee Felder, #348313 at Lieber Correctional Institution, this 2nd day of January, 2013.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of January, 2013.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: August 23, 2014.