

June 13, 2013

The State v. Douglas Gregg, III

Appellant Case number 2012-213545

Pursuant to orders of the Court, the appellant, Pro Se, submits this amended issue for appellant review according to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L.E. 2d 493 (1967). Appellant submits this issue to the best of his knowledge and understanding to the compliance of court rules & proceedings.

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Table of Authorities to Amended Issue:

CASES

<u>Schneekloth v. Bustamonte</u> , 112 U.S. at 224	4
<u>Malloy v. Hogan</u> , 378 U.S. 1, 7 (1964)	4
<u>Miranda v. Arizona</u> , 384 U.S. 436 (1966)	4
<u>Rose v. Clark</u> , 478 U.S. at 577, 578 n.6 ()	5

Statement of Issue on Appeal

II. Did the trial court err by allowing the video recorded confession of appellant as evidence during trial on basis of voluntariness precluding a Jackson v. Dennis hearing, where appellant's animation from excessive "crack cocaine" use could be clearly seen on the video during the interview. The influence of this "crack cocaine" negated his ability to waive his Miranda Rights, and therefore the introduction and admissibility of recorded confession.

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Argument

The trial court erred by allowing the video recorded confession of appellant as evidence during trial on basis of voluntariness precluding a Jackson v. Denno hearing, where appellant's animation from excessive "crack cocaine" use could be clearly seen on the video during the interview. The influence of this "crack cocaine" negated his ability to waive his Miranda Rights, and therefore the introduction and admissibility of recorded confession.

Appellant was charged with going on a crack cocaine crime spree to feed his addiction. Appellant was arrested on June 12, 2011 for the stabbing death of Levi Gregg and other charges related to the crime spree. At the time of Appellant's arrest, officers of the Darlington County Sheriff's Department "(D.C.S.D)" accosted Appellant at which time appellant continued to smoke crack cocaine "(crack)" in front of the officers while threatening to be shot if he didn't drop the can and raise his hands. Appellant in his severely drug induced psychosis state of mind, lifted the can filled with crack and proceeded to take another hit of the drug after smoking hundreds of dollars of the powerful drug approximately amounting to (28) twenty-eight grams in a matter of 3 to 4 hours. Appellant was subsequently arrested after being tackled to the ground, then taken to the Darlington County Detention Center "(D.C.D.C.)"

Due to appellant's known use of crack, subsequent to his arrest and at the time of his arrest no statement was taken. (TR.P. 2916 In. 23-25; 2917 In. 1). The next day, June 13, 2011 appellant was then taken to be interviewed by State Agents Lieutenant Eric Hodges and Investigator Peavy "heretofore" (State Agents) at D.C.D.C. During this time appellant contends he was still going through spells of sleep disturbance, aggression and excitement from his excessive use of "crack" just a few hours before this interview. Appellant was neither asked, tested or examined to see if he was still under the influence of crack to presume if he was mentally capable or competent to answer the questions of law enforcement agents. During this interview appellant was clearly animated (TR.P. 57 In. 14-25; 58 In. 1-6). State Agent was not present at the time of appellant's arrest on June 12, 2011 and therefore could not have competently or accurately testified to appellant's demeanor or the 13th of June 2011 to that of the 12th of June 2011 to render a fair judgement upon his demeanor or the influence the drugs had upon appellant. This incompetent testimony misled the Courts ruling based upon this testimony was error, when Investigator Peavy was present at both the arrest and interview and would have testified more accurately to appellant's drug induced state of mind on June 12, 2011 and saw the affects still upon appellant at the time of interview.

Appellant was denied his rights under the fifth, sixth, and fourteenth amendments, when he was coerced to make a statement while under the influence of "crack" and suffering from drug-induced psychosis and that statement (video confession) was admitted at trial, after a Denno hearing where the voluntariness of appellant's confession was indisputably before the Court as to the effects his drug use had on his ability to resist or assert his will against questions or waiving his Miranda Rights. It is known that crack cocaine is a powerful mind and mood altering drug that produces different states of psychosis and bears upon the will of its user. In this instance, the trial court failed to take into consideration the psychological side effects of crack cocaine inducement. It also failed to apply the penultimate totality of the circumstances test to determine whether the confession was involuntary or coerced as set forth in Schneckloth v. Bustamonte, 112 U.S. at 224, had the trial court applied the "but for" test, enunciated in Malloy v. Hogan, 378 U.S. 1, 1, (1964) in relation to appellant's being under the influence of drugs before waiving his rights under Miranda v. Arizona, 384 U.S. 436 (1966), the statements could not have been admitted in the totality of the circumstances, the trial court failed to focus on the primarily relevant facts that appellant was suffering from such a drug-induced

psychosis on the day of arrest which was less than (at) twenty four hours from the time of interview and no testimony from a doctor or psychiatrist was produced to testify about the side effects and duration of such effects from crack cocaine inducement, or appellant's demeanor during video confession. Error was committed by the Court when this factor was relevant in determining whether appellant's will was "overborne" and appellant was mentally competent to waive his Miranda Rights. "The admission of the confession of one who was under the influence of drugs basically aburts the trial process and renders that trial fundamentally unfair." See Rose v. Clark, 478 U.S. at 577, 578 n.6. Furthermore it is apparent that Lieutenant Hodges didn't testify honestly during the Denno hearing (Tr.P. 57 In. 21-25; 58 In. 1-6). This Court should take note that during cross-examination of Lt. Hodges by trial counsel, Hodges testified opposite to what he stated during the Denno hearing. In which states appellant was calm. During Cross-examination (Tr.P. 300 In. 6-25) Hodges then testified that appellant was "animated" and by not previously having contact with appellant in a induced state of mind, his testimony as to why appellant may have been animated is opinionated and outside of his expertise to competently be put before the Court and is self-serving to State Agents need to produce a confession. Appellant suggest that being under the influence inhibits a valid waiver of the Fifth Amendment privilege against

self incrimination. It is stated throughout the transcript that appellant's crime spree was related to the effects of severe usage of "crack" that night, officer's of the Sheriff's Department were aware of appellant's crack usage and his history of usage with this drug. Appellant was in custody, without counsel, in a crack cocaine induced psychosis and State Agents knew of appellant's use of "crack" and it's affects and used that opportunity as a chance to commit "police-overreaching." The coercive police activity which is a necessary predicate to the finding that a confession is not voluntary is evident in the knowledge of State Agents knowing of appellant's very recent drug use prior to arrest. Appellant telling State Agents of his drug history and proceeding with video camera confession without an specific inquiry to that drugs affects on appellant at the time of confession or appellant's state of mind from the drugs use. This shows the self-serving nature of State Agents intentions for a confession rather than the protection of his constitutional rights and a clear showing of "over-reaching." Appellant admits on camera to smoking hundreds of dollars of crack cocaine, one would have reason to believe that appellant may still be under the affects of "crack" or not able to render proper judgement or gauge the seriousness of the consequences giving a statement would make. The prejudicial effect of

Allowing this video confession into evidence without competent testimony, expert testimony, or a full, truthfull, and accurate showing of the facts surrounding the taking of the video, outweighed it's probative value. This is clear when at the closing of the case as the jurors went to deliberate, the foreman sent a note to the Court asking to review the video confession again, the only evidence with over fifty (50) pieces submitted in the trial, (Tr. p. 375 ln. 9-25; 376 ln. 1-25) the jury asked to review. It is clear that this matter is preserved for review (Tr. p. 296 ln. 6-13). Furthermore, this video confession was not an accurate depiction of the interview, where several minutes of the interview were not shown or recorded and the video/audio feed ^{were} seven to (8) eight seconds behind real time of each other throughout it's showing to the jury. This video confession was also admitted to being of poor quality, leaving a lot to be desired, when appellant complained to trial counsel about things said by officers not on the tape (Tr. p. 296 ln. 18-25; 297-298 ln. 1-12).

Appellant's confession should be suppressed and conviction reversed.

CONCLUSION

Appellant's convictions should be reversed and confession suppressed.

Respectfully Submitted,

(S//: Douglas D. Gregg III.
Douglas D. Gregg III
Pro Se Appellant

This 13TH day of June, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Darlington County
Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

v.

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DOUGLAS GREGG, III.

APPELLANT **SC** Court of Appeals

APPELLANT CASE NO. 2012-213545

CERTIFICATE OF SERVICE

The undersigned Pro Se Appellant hereby certifies that the original Amended Issue To Anders Brief was deposited to mailroom staff at Lieber Correctional Institution's mailroom on June 14, 2013, to be sent to the South Carolina Court of Appeals at Post Office Box 11629, Columbia, S.C. 29211 to Jenny Abbott Kitchings, Clerk.

S/ Douglas D. Gregg III
DOUGLAS D. GREGG, III
PRO SE APPELLANT

SUBSCRIBED AND SWORN TO BEFORE ME
THIS _____ DAY OF _____.

NOTARY PUBLIC FOR SOUTH CAROLINA (L.S.)
MY COMMISSION EXPIRES: _____.