

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

RECEIVED
MAY 24 2013
SC COURT OF APPEALS

THE STATE,

RESPONDENT,

v.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

ANDERS BRIEF OF APPELLANT

BREEN RICHARD STEVENS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES.....2

STATEMENT OF ISSUE ON APPEAL.....3

STATEMENT OF THE CASE.....3

ARGUMENT

The trial court reversibly erred by finding Appellant’s statement to law enforcement was voluntary and admissible where Appellant’s mother was taken to the hospital upon Appellant’s arrest, and Appellant gave a statement to law enforcement on the belief that if he signed the statement he could see his mother.....5

CONCLUSION.....10

PETITION TO BE RELIEVED AS COUNSEL11

TABLE OF AUTHORITIES

Cases

| | |
|--|---------|
| <u>Arizona v. Fulminante</u> , 499 U.S. 279, 111 S.Ct. 1246 (1991)..... | 8 |
| <u>Berghuis v. Thompkins</u> , 560 U.S. 370, 130 S.Ct. 2250 (2010)..... | 6 |
| <u>Dickerson v. United States</u> , 530 U.S. 428, 120 S.Ct. 2326 (2000)..... | 6 |
| <u>Jackson v. Denno</u> , 378 U.S. 368, 84 S.Ct. 1774 (1964)..... | 5, 8 |
| <u>Lego v. Twomey</u> , 404 U.S. 477, 92 S.Ct. 619 (1972)..... | 6 |
| <u>Mincey v. Arizona</u> , 437 U.S. 385, 98 S.Ct. 2408 (1978)..... | 7 |
| <u>Miranda v. Arizona</u> , 384 U.S. 436, 86 S.Ct. 1602 (1966)..... | 5, 6 |
| <u>State v. Broome</u> , 268 S.C. 99, 232 S.E.2d 324 (1977)..... | 7 |
| <u>State v. Miller</u> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007)..... | 6, 7, 8 |
| <u>State v. Moses</u> , 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010)..... | 5 |
| <u>State v. Peake</u> , 291 S.C. 138, 352 S.E.2d 487 (1987)..... | 7, 8 |
| <u>Withrow v. Williams</u> , 507 U.S. 680, 113 S.Ct. 1745 (1993)..... | 6 |

STATEMENT OF ISSUE ON APPEAL

Whether the trial court reversibly erred by finding Appellant's statement to law enforcement was voluntary and admissible where Appellant's mother was taken to the hospital upon Appellant's arrest, and Appellant gave a statement to law enforcement on the belief that if he signed the statement he could see his mother?

STATEMENT OF THE CASE

Appellant Juwan D. Lomax was indicted by the Greenville County grand jury for attempted murder, first degree burglary, armed robbery, and conspiracy. R. 81, line 16—R. 83, line 11; R. 591 (Indictments). The charges stemmed from Appellant's alleged complicity with others in the home invasion of an apartment wherein one of the occupants was shot. Appellant's case proceeded to trial, along with his codefendant De'nia Z. O. Dawkins (Dawkins), from April 9-11, 2012 before the Honorable G. Edward Welmaker and a jury. R. 1. Robert Ianuario (Counsel) represented Appellant, while Cassandra Gorton represented Dawkins. Katryna Salisbury represented the State. R. 1.

The jury found Appellant guilty on all charges. R. 559, lines 7-24. A sentencing hearing was held on July 11, 2012, where the trial court imposed the following concurrent sentences: 15 years incarceration for attempted murder; 15 years for first degree burglary; 15 years for armed robbery; and 5 years for conspiracy. R. 586, lines 12-16.

ARGUMENT

The trial court reversibly erred by finding Appellant's statement to law enforcement was voluntary and admissible where Appellant's mother was taken to the hospital upon Appellant's arrest, and Appellant gave a statement to law enforcement on the belief that if he signed the statement he could see his mother.

The trial court erred by determining Appellant's statement to law enforcement was freely and voluntarily given, and later allowing a statement to be admitted into evidence. At the Appellant was arrested in July 2011, his mother was transported to the hospital. While in custody and under interrogation, Appellant asked to see his mother; however, he was informed by law enforcement that he could not see her "right then." Appellant indicated that he signed the statement typed by law enforcement so that he could see his mother. Under these circumstances, Appellant's statement was not voluntarily made.

"[A] defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." Jackson v. Denno, 378 U.S. 368, 84 S.Ct. 1774 (1964). This fundamental principle applies "even though there is ample evidence aside from the confession to support the conviction." Id. Additionally, "[e]ven absent the accused's invocation of the right to remain silent, the accused's statement during a custodial interrogation is inadmissible at trial unless the prosecution can establish that the accused in fact knowingly and voluntarily waived [Miranda] rights when making the statement." State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 400 (Ct. App. 2010). Therefore, "[i]n order to introduce a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona." Id. 390 S.C. at 512, 702 S.E.2d at 400; see also

Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 627 (1972) (“[T]he prosecution must prove at least by a preponderance of the evidence that the confession was voluntary.”).

The United States Supreme Court specified two distinct dimensions of inquiry regarding the waiver of Miranda rights: (1) that the waiver was “voluntary in the sense that it was the product of free and deliberate choice rather than intimidation, coercion, or deception;” and (2) that the waiver was “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” Id. 390 S.C. at 513, 702 S.E.2d at 401 (quoting Berghuis v. Thompkins, 560 U.S. 370, 130 S.Ct. 2250, 2260 (2010)). Whether these dimensions of inquiry are satisfied is distilled to the test of whether the defendant’s will was overborne by the totality of the circumstances surrounding the confession. Id.

“The test of voluntariness is whether a defendant’s will was overborne by the circumstances surrounding the given [statement]. The due process test takes into consideration the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007) (quoting Dickerson v. United States, 530 U.S. 428, 434, 120 S.Ct. 2326 (2000) (internal quotation marks omitted)). The potential circumstances to consider include “the crucial element of police coercion,” location and length of interrogation, its continuity, as well as the defendant’s maturity, education, physical condition, and mental health. Id. 375 S.C. at 385, 652 S.E.2d at 452 (quoting Withrow v. Williams, 507 U.S. 680, 693-94, 113 S.Ct. 1745 (1993)).

Although “[c]oercive police activity is a necessary predicate to finding a statement is not voluntary,” it is “determined from the perspective of the suspect.” Miller, 375 S.C. at

386, 652 S.E.2d at 452. Moreover, “the blood of the accused is not the only hallmark of an unconstitutional inquisition.” Mincey v. Arizona, 437 U.S. 385, 401, 98 S.Ct. 2408, 2418 (1978) (internal quotations and citations omitted). Rather, “[d]etermination of whether a statement is involuntary requires more than a mere color-matching of cases. It requires a careful evaluation of all the circumstances of the interrogation.” Id. (internal quotations and citations omitted). For example, “[a] statement may not be extracted by any sort of threats or violence, *or obtained by any direct or indirect promises*, however slight, or obtained by the exertion of improper influence.” Miller, 375 S.C. at 386, 652 S.E.2d at 452 (internal quotations omitted) (emphasis added). Further, “[a] statement induced by a promise of leniency is involuntary only if it is so connected with the inducement as to be a consequence of the promise.” State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) (citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977)).

Given the totality of the circumstances in the case at bar, Appellant’s confession was obtained under circumstances of direct or indirect promises. Specifically, Appellant testified that he “asked them . . . if I signed [the statement] could I go see my mama.” R. 72, lines 1-2. He further stated that the officers responded as follows:

[T]hey told me that we’ll see depending on how things are.
But later down they told me that they were going to let me go
see my mom.

R. 72, lines 4-6. In short, Appellant was improperly induced into signing the confession typed¹ by law enforcement due to representations by officers that he could see his mother if he signed.

¹ R. 61, lines 4-7.

This understanding from the perspective of the accused was at least partially corroborated by testimony at the Denno hearing from Investigator Michael Eugene Fortner (Fortner), of the Greenville County Sheriff's Office. Fortner acknowledged that when Appellant was arrested, Appellant's mother was taken to the hospital:

She had a, I believe, like a panic attack of some sort. She was transported by EMS to the hospital.

R. 64, lines 20-22. Fortner further admitted that, after purportedly indicating he would like to give a statement, Appellant was brought to a room in the basement of the Law Enforcement Center and interrogated for three hours in the presence of up to five police officers while handcuffed. R. 54, line 11—R. 55, line 2; R. 63, line 12—R. 64, line 6. Finally, Fortner admitted that Appellant stated “a desire to see his mother,” and was told “he couldn't see her *right then* because he was under arrest.” R. 64, line 23—R. 65, line 10 (emphasis added).

As a result, evidence in the record shows that Appellant received a promise of leniency in exchange for his confession; the officer's statements to Appellant during interrogation allowing Appellant to see his hospitalized mother in exchange for his statement constitutes an improper inducement, thus rendering the statement involuntary. See, e.g., Peake, 291 S.C. at 139, 352 S.E.2d at 488; Miller, 375 S.C. at 386, 652 S.E.2d at 452.

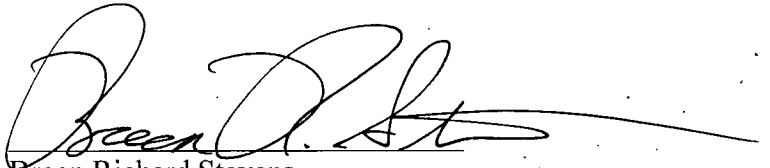
Moreover, Appellant was prejudiced by the trial court's error. See, e.g., Arizona v. Fulminante, 499 U.S. 279, 295, 111 S.Ct. 1246, 1257 (1991) (holding admission of involuntary confessions is a trial error, and that a federal constitutional error is reversible if the error was harmless beyond a reasonable doubt). After the trial court ruled that Appellant's statements were “freely and voluntarily given,” and that it would “allow them

into evidence,” Appellant’s statement was indeed entered into evidence during the trial itself. R. 75, lines 14-23; R. R. 318, line 24—R. 11; R. 590 (State’s Exhibit #13). Further, after admitting the statement into evidence, the State published the document to the jury by having Fortner read the contents of the confession aloud during his testimony. R. 320, line 21—R. 321, line 19. Finally, the State leveraged the improperly admitted confession in its closing argument to the jury. For example, at one point, the State expressly reminded that jury that it “heard from [Appellant’s] own statement, we were going to do a lick.” R. 516, lines 3-12. Accordingly, the error was not harmless beyond a reasonable doubt because it could reasonably have affected the result of the trial.

CONCLUSION

For the foregoing reasons, Appellant Juwan Lomax respectfully requests reversal of his conviction, and remand for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2013.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

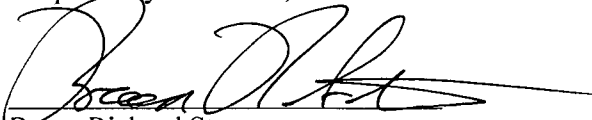
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Juwan Darnell Lomax states:

1. He is an 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 G. Edward Welmaker, which was held on July 11, 2012, 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 Juwan Darnell Lomax.

Respectfully submitted,


Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of May, 2013.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

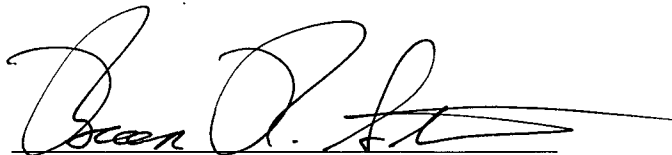
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictments;
- (2) Trial Transcripts (April 9 – 11, 2012);
- (3) Sentencing Hearing Transcript (July 11, 2012);
- (4) Sentencing Sheets;
- (5) State's Exhibit #13 (Statement of Lomax).

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

May 24th, 2013



Breen Richard Stevens
Appellate Defender

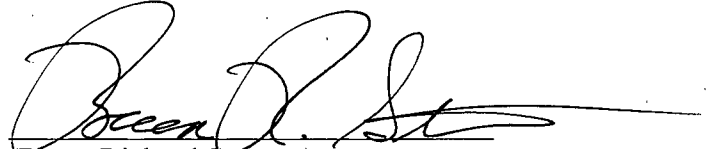
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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 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."

May 24, 2013

A handwritten signature in black ink, appearing to read "Breen R. Stevens", with a long horizontal flourish extending to the right.

(Breen Richard Stevens)

Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

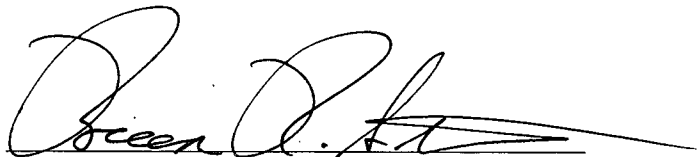
JUWAN DARNELL LOMAX,

APPELLANT

APPELLATE CASE NO. 2012-212485

CERTIFICATE OF SERVICE

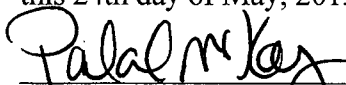
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Juwan Darnell Lomax, #351537 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 24th day of May, 2013.



Breen Richard Stevens
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 24th day of May, 2013.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: July 24, 2022.