

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JEFF CHESTNUT,

APPELLANT

APPELLATE CASE NO. 2012-213027

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS1

TABLE OF AUTHORITIES2

STATEMENT OF ISSUE ON APPEAL3

STATEMENT OF THE CASE4

ARGUMENT5

CONCLUSION9

PETITION TO BE RELIEVED AS COUNSEL10

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	6
<u>Mincey v. Arizona</u> , 437 U.S. 385, 398, 399 (1978).....	8
<u>Minnesota v. Murphy</u> , 465 U.S. 420, 427 (1984).....	8
<u>Miranda v. Arizona</u> , 384 U.S. 426 (1966).....	7
<u>State v. Arrowood</u> , 375 S.C. 359, 652 S.E.2d 438 (Ct. App. 2007)	7
<u>State v. Hook</u> , 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001).....	8
<u>State v. Moses</u> , 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010)	7
<u>State v. Osborne</u> , 301 S.C. 363, 392 S.E.2d 178 (1990)	7
<u>State v. Peake</u> , 291 S.C. 138, 352 S.E.2d 487 (1987).....	8
<u>State v. Rochester</u> , 301 S.C. 196, 391 S.E.2d 244 (1990).....	7

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting appellant's written statement when the evidence showed it was not knowingly and voluntarily made?

STATEMENT OF THE CASE

On July 18, 2012, appellant was indicted by a Richland County grand jury for three counts of kidnapping and four counts of armed robbery. On September 17 – 20, 2012, appellant was tried before the Honorable G. Thomas Cooper and a jury. R. 1. Joanna McDuffie, John Steadman, and Nicole Simpson represented the State. R. 1. Mathias Chaplin represented appellant. R. 1. The jury convicted appellant on all counts. R. 652, l. 21 – 653, l. 15. Judge Cooper sentenced appellant to concurrent terms of thirty years' imprisonment. R. 675, ll. 2 – 9. Appellant timely filed and served a notice of appeal. This appeal follows.

ARGUMENT

The trial court erred in admitting appellant's written statement when the evidence showed it was not knowingly and voluntarily made.

Relevant Facts

Jeff Chestnut ("Chestnut") testified in his own defense. Chestnut's girlfriend, Teidra Dennis ("Dennis"), worked at the Carolina Gold bingo parlor. R. 47, ll. 9 – 17. On a Friday night, "hot dog night," Chestnut went to the bingo parlor to take Dennis some cigarettes. R. 461, l. 12 – 462, l. 5. Chestnut's codefendant, Tyward Jordan ("Jordan"), drove Chestnut to the bingo parlor. R. 462, ll. 13 – 16. Chestnut did not enter the bingo parlor that evening. R. 464, ll. 24 – 25. Jordan and another one of Chestnut's friends went into the parlor and bought some hot dogs. R. 463, l. 19 – 464, l. 2.

On the following Sunday, May 23, 2010, two men robbed the bingo parlor. R. 278, l. 5 – 281, l. 16. The men were disguised with bandanas. R. 278, l. 5 – 281, l. 16. One of the employees identified Jordan as one of the robbers. R. 184, l. 13 – 185, l. 25. She remembered seeing Jordan at hot dog night. R. 184, l. 13 – 185, l. 25. The same employee testified that Dennis was making suspicious phone calls from other employees' cellphones before the robbery. R. 173, ll. 10 – 14. Dennis did not wait to speak with the police after the robbery and immediately left. R. 178, l. 2 – 179, l. 8.

Chestnut testified that the Sunday of the robbery, he caught a ride with Jordan to the Comedy House which was next door to the bingo parlor. R. 466, ll. 7 – 22. Jordan was on the telephone during the car ride. R. 466, l. 25 – 467, l. 2. Jordan was planning a

robbery. R. 467, ll. 3 – 12. His partner in the robbery was going to be a man named Quantis Sims (“Sims”). R. 467, ll. 10 – 22.

Chestnut initially asked Jordan whether he could join in the robbery, but later decided against it. R. 468, ll. 6 – 469, l. 7. Chestnut loaned his shirt and hat to Sims, but did not participate in the robbery. R. 469, l. 8 – 470, l. 2. Chestnut testified that by loaning his clothes to Sims, he was able to extricate himself from their robbery plan. R. 469, l. 8 – 470, l. 2. He was still at the Comedy House when he saw Jordan and Sims run back to their car and leave. R. 471, l. 19 – 472, l. 22. Chestnut did not leave with Jordan and Sims. R. 472, l. 18 – 473, l. 6. Chestnut later learned that Jordan spent that night with Dennis. R. 476, l. 20 – 477, l. 9.

Prior to trial, the court held a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). After Dennis implicated Chestnut in the robbery, the police arrested him when he reported to his probation officer. R. 47, ll. 9 – 17. On June 8, 2010, Chestnut was interrogated at the Richland County Sheriff’s Department by investigator Kevin Isenhoward (“Isenhoward”). R. 47, l. 22 – 48, l. 1. Isenhoward and Chestnut both testified at the Denno hearing.

Chestnut testified that Isenhoward did not read him his rights at the beginning of the interview. R. 80, l. 23 – 81, l. 9. Isenhoward promised that if he gave a statement, Chestnut would receive a low bond and would only be charged with one count. R. 81, l. 14 – 82, l. 2. Isenhoward threatened that he could charge Chestnut “for every person in the building.” R. 81, l. 22 – 82, l. 2. Instead of allowing Chestnut to handwrite a statement, Isenhoward presented a typed document and told him to sign it. R. 81, ll. 10 – 13.

The statement contained several serious inaccuracies. The statement falsely claimed that Chestnut told Isenhoward he was “a lookout.” R. 86, ll. 2 – 7. As Chestnut pointed out, from his position at the Comedy House, he would have been a useless lookout. R. 484, ll. 12 – 18. R. 86, ll. 4 – 7. The statement also falsely claimed that Chestnut told Dennis he had planned to do the robbery and was “involved” in the robbery. R. 86, ll. 14 – 17. Despite Chestnut’s testimony, the trial judge ruled that the statement was admissible. R. 182, l. 21 – 104, l. 21. Trial counsel lodged a contemporaneous objection when the State introduced the statement during the trial. R. 389, l. 22 – 390, l. 23.

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).

In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), the Court held that law enforcement’s admission that the defendant would be charged with withholding information or giving the police officer a false statement if she was not forthcoming mandated

suppression of her confession. The defendant was told “you don’t have to say anything, but if you withhold evidence, you can be charged with a crime.” Osborne, at 366, 392 S.E.2d at 179.

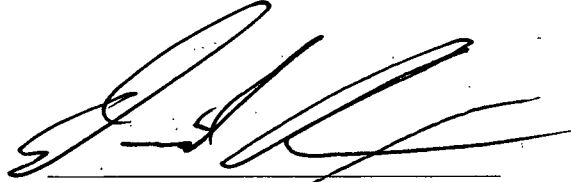
In State v. Hook, 348 S.C. 401, 559 S.E.2d 856 (Ct. App. 2001) this Court held that a defendant’s statement to his probation officer was inadmissible because his agent expressly threatened to revoke Hook’s probationary sentence unless he told the truth. This Court noted that statements given pursuant to threats or under inherently coercive circumstances are not admissible. See Mincey v. Arizona 437 U.S. 385, 398, 399 (1978); Minnesota v. Murphy 465 U.S. 420, 427 (1984).

Here, Chestnut was under arrest and in custody. He was alone with Isenhoward. Isenhoward promised to only charge Chestnut with one count and promised to obtain a low bond for him. Chestnut’s statement was induced by these promises. Had Isenhoward not made these promises, Chestnut would not have given a statement and the highly prejudicial inaccuracies in the statement would not have existed. 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 Chestnut’s statement was voluntary in light of Isenhoward’s promises. Id. The trial judge also failed to consider the explicit threat that Isenhoward would separately charge Chestnut for each person present in the bingo hall. Therefore, Chestnut’s conviction should be reversed, his statement suppressed, and Chestnut should be granted a new trial.

CONCLUSION

For the foregoing reasons, appellant's convictions should be reversed and he should be granted a new trial.

Respectfully submitted,

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

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2013.

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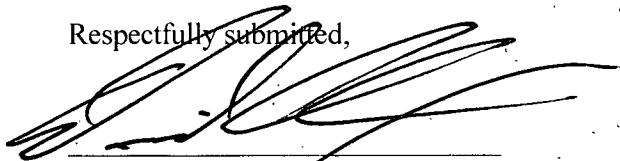
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Jeff Chestnut 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 G. Thomas Cooper, which was held on September 20, 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 Jeff Chestnut.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of August, 2013.

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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(s);
- (2) Trial Transcript;
- (3) State's Exhibits 1 and 2.

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

August 20th 2013



David Alexander
Appellate Defender

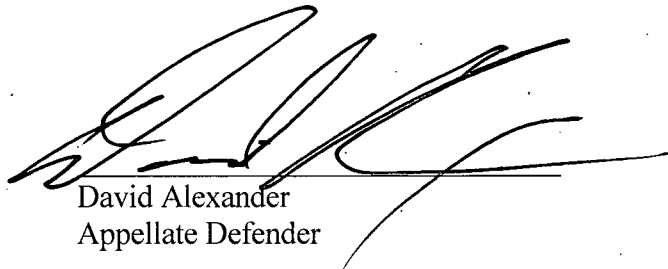
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PO Box 11589
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Attorney for Appellant

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."

August 20, 2013

A handwritten signature in black ink, appearing to read "David Alexander", written over a horizontal line. The signature is stylized and cursive.

David Alexander
Appellate Defender

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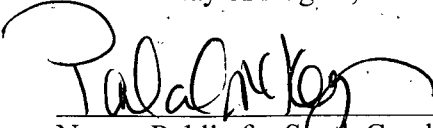
CERTIFICATE OF SERVICE

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 Jeff Chestnut, 304420 at McCormick Correctional Institution; 386 Redemption Way McCormick, SC 29899 this 20th day of August, 2013.


David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of August, 2013.



Notary Public for South Carolina
My Commission Expires: July 24, 2022.

(L.S.)