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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

AUSTIN EPPERSON,

APPELLANT.

APPELLATE CASE NO. 2013-000289

ANDERS BRIEF OF APPELLANT

LARA M. CAUDY
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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in admitting Appellant's statement to law enforcement where the state could not prove by a preponderance of evidence that Appellant's statement was knowingly, intelligently, and voluntarily made since evidence suggested Appellant was under the influence of drugs and promised a lesser sentence if he cooperated?

STATEMENT OF THE CASE

An Oconee County Grand Jury indicted Appellant at the July 11, 2011 term of General Sessions for petit larceny and at the August 1, 2011 term for first degree burglary. R. 320. His case was called to trial on January 28, 2013 before the Honorable Alexander Macaulay, and a jury. Assistant Solicitor David Wagner appeared on behalf of the prosecution and Keith G. Denny represented Appellant. R. 1.

At the conclusion of the trial on January 30, 2013, the jury found Appellant guilty as indicted. R. 295, l. 18 – 296, l. 12. Judge Macaulay sentenced Appellant to thirty days for petit larceny and twenty-five years suspended to fifteen years imprisonment and five years probation for first degree burglary.

This appeal follows.

ARGUMENT

The trial judge erred in admitting Appellant's statement to law enforcement where the state could not prove by a preponderance of evidence that Appellant's statement was knowingly, intelligently, and voluntarily made since evidence suggested Appellant was under the influence of drugs and promised a lesser sentence if he cooperated.

Background Facts

Everett Stevens testified that every morning – seven days a week – he would leave his home around 6:15 am to drive to Ingles to pick up discarded vegetables and other produce to feed to his various farm animals. Stevens explained that it usually took him an hour round trip. On June 30, 2010, Stevens left his residence between 6:00 and 6:15 am to make his daily trip to Ingles. Upon his return from Ingles around 7:00 to 7:15 am, he saw a red pickup truck leaving his house. There were three people inside the vehicle. Stevens testified that he recognized Appellant as one of the passengers. Stevens had known Appellant since Appellant was about ten or eleven years old. R. 124, l. 3 – 126, l. 23.

Stevens explained that he assumed the occupants of the vehicle had dropped off a woman named Diana¹ who worked two to three hours a day for Stevens sometimes sorting through the rotten produce. However, Diana was not there, and upon entering his home, Stevens discovered that three guns, along with some prescription medication, were missing. R. 126, l. 24 – 130, l. 2. The guns were operable and loaded at the time they were stolen. R. 129, l. 20 – 130, l. 2.

Stevens recognized the red pickup truck that he saw leaving his home as belonging to Diana's mother so he drove to Diana's family's house to see if any of them knew what

¹ She is also sometimes referred to as Diane in the record.

happened, but the red truck was not there. R. 127, l. 20 – 129, l. 1. Stevens reported the burglary and theft to law enforcement sometime that same day. Neither Diana nor Appellant had permission to enter his home. The doors to the residence were locked when Stevens left that morning. There was no sign of forced entry. R. 130, l. 3 – 13', l. 6; R. 137, l. 23 -138, l. 22.

Stevens testified that several months later while he was in the parking lot of a bank, Appellant and several friends drove by and Appellant yelled, "hey, old man, hey, old man, hey, this is the old man that we ripped off, we got everything this time." R. 132, ll. 13-25.

Dennis Lance, who knew Appellant through his children, testified that Appellant admitted to him that he entered Everett Stevens' house and took cash and medication. "He didn't mention no guns." R. 157, l. 17 – 159, l. 2; R. 160, ll. 15-20.

Heather Hazelette testified that sometime in the summer of 2010 she was at Diana's parents' house when Appellant and Diana came to the residence. R. 215, l. 24 -216, l. 13; See R. 222, ll. 18-20. Hazelette heard Appellant say he and Diana had stolen guns from Everett Stevens. Appellant had a hand pistol and a rifle that had a scope. R. 216, l. 18 – 218, l. 3. Hazelette rode with Diana and Appellant to town where Appellant and Diana sold one of the guns to an older man in the parking lot of Ingles. R. 218, ll. 4-10; R. 218, l. 22 – 219, l. 3.

Detective Scott Arnold with the Oconee County Sheriff's Office was the lead investigator on the case. R. 168, ll. 10-24. He explained that the crime scene unit was unable to process the scene due to the number of cases the office handles and the necessity of prioritizing crimes. R. 170, ll. 15-23. As a result there was no physical evidence collected. At some point the home was fingerprinted, but no lifted prints matched

Appellant. R. 172, ll. 18-24. Arnold testified Appellant was a person of interest from the beginning, but that he was unable to locate him for questioning. After receiving written statements from Dennis Lance and Heather Hazelette, Arnold had enough probable cause to obtain warrants for Appellant. R. 171, ll. 15-24.

Appellant was eventually arrested in Pennsylvania and extradited to South Carolina. As soon as Appellant arrived at the Oconee County Detention Center, Arnold had him brought over to the law enforcement center to be questioned. R. 172, l. 25 – 173, l. 11. After being informed of his Miranda rights, Appellant provided a written statement implicating himself in the crime. R. 174, l. 2 – 181, l. 12. The first page of Appellant's statement was published to the jury with no objection from defense counsel. R. 181, l. 14 – 182, l. 2.

Jackson v. Denno Hearing

Prior to the start of trial, defense counsel requested a Jackson v. Denno hearing to determine the admissibility of Appellant's written statement obtained by law enforcement while Appellant was in custody. R. 38, ll. 6-12.

Detective Scott Arnold of the Oconee County Sheriff's Office testified that he had Appellant brought over to the law enforcement center from the detention center on April 8, 2011 in order to interview him. R. 41, ll. 9-16; R. 53, l. 25 – 54, l. 23. Arnold testified that before he began to question Appellant, he read Appellant his Miranda rights and reviewed a waiver of rights form with him. Arnold claimed Appellant appeared to understand his rights, initialed by each line, and signed the waiver of rights form. R. 41, l. 17 – 43, l. 20. No one else was present in the interview room besides Appellant and Arnold, and thus

Arnold was the only witness to sign the waiver of rights form. R. 42, ll. 21-23; R. 44, ll. 13-15; R. 50, ll. 8-9.

Arnold explained that Appellant did not appear to be under the influence of any drugs or alcohol at the time of the interview. R. 45, ll. 3-10. He repeatedly said Appellant appeared "fine." R. 57, ll. 19-23; R. 58, l. 23 – 59, l. 12. Arnold also claimed that he did not threaten Appellant, make any promises, or hold out any hope of a lesser sentence. R. 45, l. 18 – 46, l. 8; R. 47, ll. 21-25; R. 50, l. 21 – 51, l. 1. Appellant never requested an attorney. R. 45, ll. 14-17.

Arnold informed Appellant that he had spoken to witnesses and collected statements that indicated Appellant was involved in the burglary. R. 46, ll. 13-17. Appellant eventually wrote a three page statement in which he implicated himself in the burglary and theft of the weapons. R. 48, l. 4 – 50, l. 7.

On cross-examination, Detective Arnold repeatedly stated that no one else was present during the interview and that he did not recall allowing Appellant to use his telephone to call his mother. R. 51, l. 18 – 52, l. 1; R. 53, ll. 9-24. Arnold also denied promising Appellant that he would get him a "light sentence like eighteen months" or drug rehabilitation. R. 52, ll. 2-6. Arnold did not ask personnel at the detention center whether Appellant had been exhibiting any odd behavior or whether he had been given any medication that day. R. 54, l. 24 – 55, l. 8.

Arnold's written notes about the interview were four sentences long and included only basic information, specifically that he interviewed Appellant, read him his Miranda rights, and Appellant gave a voluntary statement admitting he stole the guns. R. 55, l. 19 – 57, l. 18. Arnold had a hard time remembering any details of the interrogation due to the

amount of time that lapsed between the interview and his testimony and repeatedly stated, "I do not recall."

Tammy Doyle, Appellant's mother, testified that she received a telephone call from Appellant on April 8, 2011. Appellant told her that he was being interrogated and that Detective Arnold had allowed him to use his cell phone to call her. Appellant requested that she come to the Oconee County Sheriff's Office.

When she got to the sheriff's office, Doyle met with Detective Arnold for approximately ten to fifteen minutes. Arnold explained to Doyle that Appellant was in the middle of writing a statement and "that he was cooperating and . . . he could possibly get some drug rehab or a lesser sentence." Doyle denied Arnold ever stated a specific sentence like "eighteen months," but he did specifically mention drug rehabilitation. R. 61, l. 5 – 62, l. 16.

Doyle was able to visit Appellant while he was giving his written statement. Doyle testified that Appellant was "upset" and "subdued." The only other times she had seen Appellant in a "subdued state" was when he was under the influence of drugs. Doyle's past experiences with Appellant while he was under the influence of drugs were consistent with his demeanor that day. R. 63, l. 23 – 64, l. 23.

At the end of the testimony, defense counsel objected to the admission of Appellant's written statement arguing that the statement was not voluntarily given because the evidence indicated that Appellant was under the influence of drugs. Appellant's mother testified that Appellant was "subdued" and appeared to be under the influence at the time of his interrogation. R. 72, l. 20 – 73, l. 15.

The court denied Appellant's motion to suppress the statement finding that Appellant was fully advised of his rights under the Fifth and Sixth Amendments and did knowingly and intelligently waive those rights and that when considering the totality of the circumstances, the statement was given freely and voluntarily. R. 77, l. 24 – 81, l. 2.

Discussion

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that “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.” 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). State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007). In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; ***physical condition and mental health***; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; ***direct or indirect promises***, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (emphasis added).

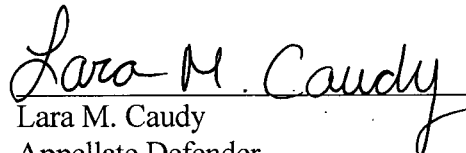
An examination of the totality of the circumstances reveals Appellant did not provide a knowing, voluntary, and free statement to law enforcement. There was evidence that Appellant suffered from drug addiction and was under the influence of drugs at the time that he gave his statement. There was also evidence that Detective Arnold promised Appellant a lesser sentence if he cooperated and provided a statement.

Appellant's "subdued" condition suggesting he was under the influence coupled with the officer's offer of drug rehabilitation and a lesser sentence for Appellant rendered his statement unknowing, involuntary, and compulsory. Thus, the lower court erred in finding the statement admissible.

CONCLUSION

Appellant's convictions should be vacated and this case remanded to the Oconee County Court of General Sessions for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

This 21st day of October, 2013.

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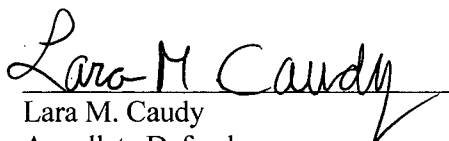
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Austin Epperson states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Alexander S. Macaulay, which was held on January 28-30, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Austin Epperson.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT.

This 21st day of October, 2013.

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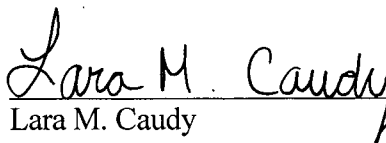
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

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

- (1) True-billed indictment(s);
- (2) Entire trial transcript dated January 28-30, 2013;
- (3) State's Exhibit 1 (waiver of rights form)
- (4) State's Exhibit 2 (appellant's statement page 1)
- (5) State's Exhibit 2A (appellant's statement page 2)
- (6) State's Exhibit 2B (appellant's statement page 3)

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

October 21st, 2013



Lara M. Caudy
Appellate Defender

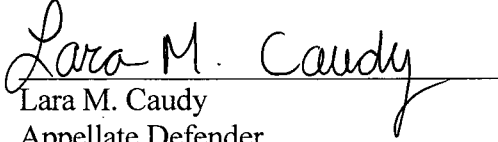
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Attorney for Appellant

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."

October 21, 2013


Lara M. Caudy
Appellate Defender

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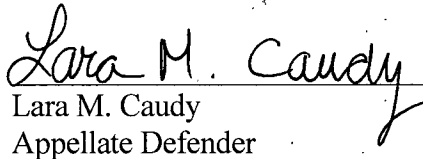
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AUSTIN EPPERSON,

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CERTIFICATE OF SERVICE

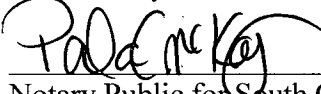
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Austin Epperson, #354157 at Lee Correctional Institution, 990 Wisacky Highway, Bishopville, SC 29010, this 21st day of October, 2013.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of October, 2013.

 (L.S.)

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