STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS



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Appeal from Beaufort County

Jennifer B. McCoy, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JAMIE JERMAINE ROBINSON,

APPELLANT

APPELLATE CASE NO. 2018-002259

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# ANDERS BRIEF OF APPELLANT

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**Cases**

## STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in admitting Appellant's statement to law enforcement where Appellant unequivocally invoked his right to remain silent and law enforcement failed to scrupulously honor his invocation?

## STATEMENT OF THE CASE

On March 23, 2017, a Beaufort County grand jury indicted Appellant for murder and possession of a weapon during the commission of a violent crime. R. 506, R. 509. The state, represented by Kemberly Smith and Mary Jones, called the case to trial before the Honorable Jennifer B. McCoy and a jury on July 16-19, 2018. R. 1-2. Trasi Campbell represented Appellant. R. 2. The jury found Appellant guilty of the lesser-included offense of voluntary manslaughter and possession of a weapon during the commission of a violent crime. R. 477, ll. 11-20. Judge McCoy sentenced Appellant to thirty years for voluntary manslaughter and five years for the weapon. R. 489, ll. 15-25; R. 508, R. 511. Thereafter, Appellant filed a motion for a new trial and a motion to reconsider his sentence. R. 494, ll. 1-6; R. 495, l. 7 – R. 496, l. 1. Judge McCoy heard argument on the motions on December 17, 2018. R. 492. Judge McCoy denied the motion to reconsider the sentence. R. 497, ll. 13-18. Additionally, Judge McCoy denied the motion for a new trial. R. 498, l. 13 – R. 8, l. 3; R. 499, l. 25 – R. 500, l. 6; R. 501, ll. 7-16; R. 502, ll. 12-21.

On December 20, 2018, Appellant served his notice of appeal. This brief follows.

## STANDARD OF REVIEW

"The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made, requires an examination of 'the totality of the circumstances' surrounding the waiver." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990) (citing State v. Doby, 273 S.C. 704, 258 S.E.2d 896 (1979)). "On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." Id. (citing State v. Livingston, 223 S.C. 1, 73 S.E.2d 850 (1952)).

## ARGUMENT

The trial judge erred in admitting Appellant's statement to law enforcement where Appellant unequivocally invoked his right to remain silent and law enforcement failed to scrupulously honor his invocation.

**Relevant facts**

On October 29, 2016, two investigators with the Beaufort County Sheriff's Office interrogated Appellant shortly after his arrest. R. 92, l. 15 – R. 93, l. 9. At 2:30 a.m., the investigators advised Appellant of his constitutional rights, including his right to silence, which the investigators stated he could invoke at any time. R. 93, ll. 10-20; R. 94, l. 17 – R. 95, l. 7. The investigators indicated the interrogation ceased when Appellant informed them that he wanted a lawyer. R. 96, ll. 5-11. More precisely, one of the investigators explained that the interrogation ended when Appellant "made it clear" that he wanted counsel. R. 96, ll. 8-11. The other investigator did not recall Appellant's exact words during the interrogation, but he admitted Appellant said "something to th[e] effect" that he did not want to talk to the police anymore, but the interrogation continued. R. 103, ll. 9-15.

The audio recording of the interrogation made clear that Appellant requested to stop the inquisition, but the police refused. Court's Exhibit #37. In fact, Appellant told the police that he was tired of talking to them. Court's Exhibit #37 at 40:44. Appellant was emphatic that he was "finished talking." Court's Exhibit #37 at 40:45. Initially, the police told Appellant that it was "fine" that he no longer wanted to speak with them. Court's Exhibit #37 at 40:46. However, the police did not end the interrogation as required by law. Court's Exhibit #37. When the police persisted, Appellant begged to be left "the fuck alone." Court's Exhibit #37 at 41:30. Despite Appellant's insistence to end the interrogation, the investigators continued by confronting

Appellant with what his mother allegedly told them. Court's Exhibit #37 at 41:32. Thereafter, the interrogators continued to pepper Appellant with questions. Court's Exhibit #37. It was only when Appellant asked for a lawyer that the interrogation finally ended. Court's Exhibit #37 at 44:10.

Defense counsel moved to suppress the statement in light of Appellant's invocation of his right to silence. R. 104, l. 24 – R. 105, l. 12. Defense counsel argued Appellant made a "clear indication of his Fifth Amendment right" when he told police, "I don't want to talk no more." R. 105, ll. 3-6. As explained by counsel, Appellant made a "clear and unequivocal invocation of that right, which he had been advised of," and any statements after the invocation were inadmissible. R. 105, ll. 7-12. The solicitor argued that Appellant did not "unambiguously invoke his rights to remain silent." R. 106, ll. 6-7. In fact, the solicitor contended that it was "clear that he never clearly and unambiguously articulated his right to remain silent." R. 106, ll. 15-18. Further, according to the solicitor, after Appellant stated that he did not want to talk anymore, he continued to talk. R. 106, ll. 3-5.

After the judge ruled the statement was voluntarily made, the judge found that although Appellant invoked his right to silence, he "re-initiated the conversation after that." R. 108, ll. 11-15. Additionally, she found there really was not any questioning at that point. R. 108, ll. 15-16. When the state moved to introduce Appellant's statement, defense counsel renewed her objection to the statement. R. 223, ll. 13-14. The judge overruled the objection and permitted the jury to hear the recorded statement. R. 223, ll. 15-16.

**Discussion**

The United States Supreme Court held that "[i]f [an] individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.

... [A]ny statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise." Miranda v. Arizona, 384 U.S. 426, 473-474 (1966). If a suspect invokes his right to silence, the interrogators must scrupulously honor the invocation. Michigan v. Mosley, 423 U.S. 96, 103 (1975); State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261 (2001). A suspect invokes his right to silence by clearly articulating his desire to end the interrogation and must do so "unambiguously." Berghuis v. Thompkins, 560 U.S. 370, 381 (2010); Davis v. United States, 512 U.S. 452, 459 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998). Put another way, "before law enforcement officers are required to discontinue questioning, the suspect must clearly articulate his desire to end the interrogation." State v. Aleksey, 343 S.C. 20, 31, 538 S.E.2d 248, 253 (2000).

The first question is whether Appellant clearly articulated his desire to end the interrogation. The South Carolina Supreme Court held a defendant stating, "'That's all I've got to say,'" was not an unequivocal invocation of his right to end the interrogation. Aleksey, 343 S.C. at 31, 538 S.E.2d at 253. According to the Court, "the statement was ambiguous" due to the context. Id. At 31, 538 S.E.2d at 253-254. Based on the context, it was unclear whether the defendant wanted to end the questioning or whether he was simply remarking on the conclusion of his story. Id. At 31, 538 S.E.2d at 254. Appellant's statement to his interrogators was an unequivocal desire to end the interrogation. Initially, Appellant told the officers he was tired of talking to them. Next, he told the police that he was "finished talking." Eventually, he begged the officers to end the interrogation and even cursed when their questioning continued. Appellant's statements to police were not ambiguous and were a clear invocation of his desire to end the questioning.

However, determining Appellant invoked his right to silence does not end the inquiry. "[L]aw enforcement officers may certainly speak with a suspect who reinitiates communication subsequent

to an invocation of rights." Aleksey, 343 S.C. at 31, 538 S.E.2d at 253 (citing Edwards v. Arizona, 451 U.S. 477, 485 (1981)). According to the South Carolina Supreme Court, "[t]he principle underlying Michigan v. Mosley is that the suspect, rather than the police controls the time, duration, and subject matter of an interrogation." Id. At 31, at 254. Thus, "[o]fficers do not fail to 'scrupulously honor' an invocation of rights when they engage in conversation initiated by the suspect." Id.

Contrary to the trial judge's finding that Appellant re-initiated the conversation with the police, the audio recording of the interrogation demonstrated that the police continued with their questioning with little to no regard for Appellant's requests. Upon his initial statement that he was tired of talking to the police, the officers indicated that it was "fine" and offered beverages to Appellant. When Appellant refused their overtures, the officers informed Appellant that they merely "asked for the truth." Appellant again indicated his desire to end the questioning. However, the police merely changed tactics and confronted him with statements allegedly made by his mother. This tactic succeeded in its intended mission to get Appellant talking again. Thus, it was not Appellant who re-initiated the conversation; rather, the police never really ceased the interrogation.

Our state supreme court noted with approval that other courts have set forth five factors to ascertain whether the defendant's right to cut off questioning was scrupulously honored. The first is whether the police warned the defendant of his Miranda rights at the first interrogation. The second is whether the police immediately stopped the interrogation when the defendant indicated he did not want to answer questions. The third is whether the police resumed questioning only after passage of a significant period of time. The fourth is whether the police provided a second set of Miranda warnings prior to the second interrogation. Finally, the fifth factor is whether the second interrogation was restricted to a crime that had not been the subject of the earlier interrogation. Benjamin, 345 S.C. at 476-477, 549 S.E.2d at 261. These "factors provide a framework for determining whether, under

the circumstances, an accused's right to silence was scrupulously honored." Id. at 477, 549 S.E.2d at 261.

In Benjamin, the South Carolina Supreme Court agreed with other courts that a second interrogation on the same subject matter is not rendered unconstitutional automatically. Id. at 477, 549 S.E.2d at 262. After Benjamin was arrested, he was not advised of his Miranda warnings and told the questioning officer that he did not want to talk to him. Id. at 475, 549 S.E.2d at 261. Approximately one hour later, a SLED agent interrogated Benjamin. The SLED agent advised him of his rights and Benjamin agreed to waive those rights and speak. Id. In deciding that the statement was admissible, the Court noted that the initial officer did not advise Benjamin of his right to silence, that the officer immediately ceased talking to him, and there was no immediate resumption of questioning. Id. at 478, 549 S.E.2d at 262. The Court explained that "[w]hat is paramount is that police, under the totality of the circumstances, 'scrupulously honor' the suspect's right to remain silent." Id.

Applying the five-factor test to Appellant's interrogation demonstrates the police failed to scrupulously honor Appellant's invocation of his right to end the questioning. While the police warned Appellant of his constitutional rights prior to initiating the interrogation, and, thereby satisfying the first factor, the other four factors weigh heaving in Appellant's favor that the police failed to scrupulously honor his invocation. The police failed to immediately stop the interrogation when the defendant indicated he did not want to answer questions. Instead, the police simply changed tactics by first offering Appellant beverages, then trying to justify the questioning as a quest for the truth, and finally by confronting Appellant with statements allegedly made by his mother. Turning to the third factor, the police did not await any amount of time before resuming questioning of Appellant. There was not a significant passage of time; instead, as demonstrated by the audio

recording, the interrogation resumed within seconds of the invocation. The police did not provide a second set of Miranda warnings prior to the second interrogation as the second interrogation continued seamlessly from the first as if the numerous invocations never even occurred. Finally, the second interrogation concerned the same crime for which the police were initially questioning Appellant – the shooting of his girlfriend, Eulia Moon. Consideration of these factors requires a conclusion that the trial judge erred in admitting Appellant's statement to law enforcement because the police failed to scrupulously honor his unambiguous request to cease questioning.

## CONCLUSION

Appellant respectfully requests this Court reverse his convictions and remand for a new trial.

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of October, 2019.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Jamie Jermaine Robinson states:

1. She is an 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 Jennifer B. McCoy, which was held on July 16-19, 2018, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. Pursuant to Anders v. California, 386 U.S. 738 (1967), she has briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Jamie Jermaine Robinson.

Respectfully Submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

This 2nd day of October, 2019.

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

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

(1) Trial transcript dated July 16-19, 2018;
(2) Post-trial hearing transcript dated December 17, 2018;
(3) State's Exhibit #36 (Miranda form);
(4) State's Exhibit #37 (CD);
(5) Indictments; and
(6) Sentence sheets.

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

October 2, 2019

Susan B. Hackett
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## 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 April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

October 2, 2019.

Susan B. Hackett
Appellate Defender

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CERTIFICATE OF SERVICE

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The undersigned 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 William M. Blitch, 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 have been served on Jamie Jermaine Robinson, 377145, at Perry Correctional Institution, 430 Oaklawn Road, Pelzer, SC 29669, this 2nd day of October, 2019.

Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of October, 2019.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: October 26, 2019