STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County

Honorable William H. Seals, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ERICK MAURICE WILLARD,

APPELLANT

APPELLATE CASE NO 2017-002391

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress a purported statement made by Appellant claiming ownership of drugs when the purported statement was not recorded or corroborated by any other evidence other than the testimony of another agent?

STATEMENT OF THE CASE

In July of 2017, the Marion County Grand Jury indicted Appellant, Erick Maurice Willard, for trafficking cocaine, possession with intent to distribute cocaine base, possession with intent to distribute methadone and possession with intent to distribute marijuana, indictment #2017-GS-33-00322. On November 13, 2017, Appellant proceeded to jury trial before the Honorable William H. Seals, Jr. Vick Meetze and Franklin Chandler represented Appellant at trial. Fitzlee McEachin prosecuted the case. The jury returned verdicts of guilty as charged. Judge Seals sentenced Appellant to thirty (30) years for trafficking cocaine, thirty (30) years concurrent for possession with intent to distribute cocaine base, twenty (20) years concurrent for possession with intent to distribute methadone and ten (10) years concurrent for possession with intent to distribute marijuana. A timely notice of intent to appeal was served on November 16, 2017. This appeal follows.

STANDARD OF REVIEW

"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." State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); see also State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute an abuse of discretion." State v. Myers, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." State v. Asbury, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

ARGUMENT

The trial judge erred in refusing to suppress a purported statement made by Appellant claiming ownership of drugs when the purported statement was not recorded or corroborated by any evidence other than the testimony of another agent.

Prior to trial the judge held a hearing pursuant to Jackson v. Denno, 378 U.S. 368, 377, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). (R. pp. 27-42). Agent Mark Collins of the Marion County Combined Drug Team testified that during the execution of a search warrant of Appellant's home he took five individuals, including Appellant, into custody. (R. p. 28, lines 20-22). According to Agent Collins, he advised all five individuals of their *Miranda* rights. (R. p. 29, line 11 – p. 30, p. 31, lines 1-16). Agent Collins testified, "We advised them that we had located some narcotics drugs inside the house, outside the house, that's when Mr. Willard spoke up and said he was going to take responsibility of the drugs located inside the house and outside the house." (R. p. 31, lines 17-21). Agent Collins admitted that although the other four individuals agreed to waive their *Miranda* rights and speak with him, he did not ask them any questions. (R. p. 34, lines 5-14). Agent Collins admitted that the purported statement by Appellant was not recorded and was never reduced to a written statement. (R. p. 34, line 15 – p. 35, lines 1-25).

Agent Aurelius Cribb, also of the Marion County Combined Drug Team, testified that he heard Agent Collins advise the five individual of their *Miranda* rights. (R. p. 39, line 2 – p. 40, lines 1-5). Agent Cribb was asked what Appellant said after the advisement of rights and Agent Cribb testified, "He said he took ownership of all the items that we located." (R. p. 40, lines 7-8).

At the end of the hearing counsel for Appellant argued, "Judge, for the record, we would make the motion that the statement that attributes Mr. Willard be excluded. There's no

corroborating evidence in regard to that statement having been made with regards to any kind of audio or video recording or anything like that. No other statements from anybody else in the location. And based on that for the record, we object to it being entered as evidence." (R. p. 42, lines 7-14). The judge denied the motion stating, "I'm going to find that the defendant was properly *Mirandized* and he gave the statement freely and voluntarily. Certainly, you can cross-examine to the great detail in the regard." (R. p. 42, lines 15-18).

During the trial Appellant renewed the objection to the admission of the purported statement. (R. p. 98, lines 24-25). The judge overruled the objection. (R. p. 99, line 1). At trial Agent Collins testified, "Mr. Willard spoke up and said that he was taking ownership of everything in the house and outside of the house because he didn't want anybody else to go to jail[1]." (R. p. 99, lines 4-6). The trial judge erred in refusing to suppress the purported statement.

In State v. Parker, 381 S.C. 68, 75–76, 671 S.E.2d 619, 622 (Ct. App. 2008), the South Carolina Court of Appeals wrote:

> "A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Jackson v. Denno, 378 U.S. 368, 377, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964)), cert. denied, 552 U.S. 1314, 128 S.Ct. 1872, 170 L.Ed.2d 751 (2008). In State v. Miller, this court instructed:
>
> > The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. Jackson v. Denno, 378 U.S. 368, 376, 84 S.Ct. 1774, 12 L.Ed.2d 908 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. State v. Washington, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

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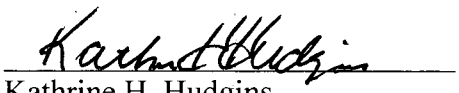
[1] There was no argument made that the statement was inadmissible as involuntary due to the implied threat that if Appellant did not take ownership of the drugs, all four other individuals would be arrested and taken to jail.

> Miller, 375 S.C. at 380, 652 S.E.2d at 448; Arrowood, 375 S.C. at 366, 652 S.E.2d at 442. See also Lego v. Twomey, 404 U.S. 477, 489, 92 S.Ct. 619, 30 L.Ed.2d 618 ("[T]he prosecution must prove ... by a preponderance of the evidence that the confession was voluntary."); State v. Smith, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977) ("It has been uniformly held, a confession may be introduced upon proof of its voluntariness by a preponderance of the evidence."); State v. Neeley, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978) ("[T]he burden is on the State to prove by a preponderance of the evidence that [these] rights were voluntarily waived.").

In the present case the judge should not have reached the issue of voluntariness when the State failed to establish that the statement was made by Appellant. The purported statement was not recorded and the only corroboration came from the testimony of another agent. In light of the fact that drugs were discovered in various places within the house including a jacket in a bedroom that did not belong to Appellant (R. p. 89, lines 10-14) and the fact that four other people were in the house at the time the search warrant was executed, the State needed additional corroborative evidence to show that Appellant made the statement before the judge could address voluntariness.

CONCLUSION

Based on the above argument, this Court should reverse the sentence and conviction and remand the case for a new trial.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 15th day of November, 2018.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Erick Maurice Willard 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 William H. Seals, which was held on November 13 - 15, 2017, 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 Erick Maurice Willard.

Respectfully Submitted,

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

This 15th day of November, 2018.

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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 and sentencing sheet;
(2) Trial Transcript;
(3) State's Exhibit #12 – Drug Analysis Report;
(4) Court's #1 – Note from jury;
(5) Court's #1 – Indictment #2014-GS-33-182;
(6) Court's #2 – Indictment #2015-GS-33-401;
(7) Court's #3 – Indictment #2004-GS-26-3033.

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

November 15, 2018

Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, SC 29211-1589
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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 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."

November 15, 2018.

Kathrine H. Hudgins
Appellate Defender

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CERTIFICATE OF SERVICE

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 J. Benjamin Aplin, 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 Erick Maurice Willard, 265040, at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 15th day of November, 2018.

Kathrine H. Hudgins
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 15th day of November, 2018.

_____ (L.S)
Notary Public for South Carolina
My Commission Expires: July 5, 2027.