STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

Honorable Carmen T. Mullen, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MICHAEL WIGGS,

APPELLANT

APPELLATE CASE NO 2019-001849

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether Appellant's statement to police was involuntarily made where Investigator Fraser misrepresented the law to induce Appellant into making an inculpatory statement when he falsely indicated to Appellant that if the minor consented to having sex then he would not be guilty of a crime?

STATEMENT OF THE CASE

During its April 2016 term, the Beaufort County Grand Jury indicted Appellant for criminal sexual conduct with a minor in the second degree. R.*.

Appellant proceeded to trial on June 17, 2019 before the Honorable Carmen T. Mullen, and a jury. Tr. 1. Traci Campbell represented Appellant. Id. Sara Rebekah Luttrell represented the state. Id.

Appellant was found guilty of the lesser included offense of assault and battery in the first degree. Tr. 403, l. 24 – 403, l. 11. Appellant was sentenced to seven years' imprisonment. Tr. 408, l. 13 – 413, l. 18.

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

Appellant's statement to police was involuntarily made where Investigator Fraser misrepresented the law to induce Appellant into making an inculpatory statement when he falsely indicated to Appellant that if the minor consented to having sex then he would not be guilty of a crime.

Relevant Facts

Appellant allegedly forced his first cousin Ca'Leshia Wiggs to have sex with him on three different occasions, while she was between the ages of eleven and fourteen. Tr. 112, l. 14 – 118, l. 24. On February 9, 2016, Appellant voluntarily entered the police station to give a written statement. Tr. 84, l. 15 – 86, l. 19; Tr. 89, l. 23 – 94, l. 7. Appellant's initial written statement denied all culpability. R.*. Lieutenant Brian Baird and Investigator Jeremiah Fraser then conducted interviews of Appellant. Tr. 85, ll. 15 – 25; Tr. 261, l. 18 – 262, l. 6; Tr. 281, l. 1 – 282, l. 24.

During a pretrial Jackson v. Denno, 378 U.S. 368 (1964) hearing, Baird testified that he did not promise or threaten Appellant during the interview. Tr. 88, ll. 14 – 21. Initially, Appellant denied any wrongdoing. Tr. 77, ll. 10 – 11. Appellant gave the inculpatory statement only after Fraser misrepresented the law by implying that it was not illegal to have consensual sex with Appellant's then minor niece because there was a "huge difference" between forcible sex and consensual sex with the minor. Tr. 301, l. 19 – 304, l. 9.

The state argued that Appellant's statement was voluntary because he came into the station on his own volition. Tr. 89, l. 23 – 94, l. 7. Appellant was also "not in custody" at the time of the statement and waived his Miranda[1] rights. Id. The state also argued that the

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

investigators did not "trick" Appellant into giving a statement because all they told him was "he should tell his side of the story" because the officers only heard the accuser's side of the story. Id.

Defense counsel argued that the statement was involuntary because the police officers lied about the law to Appellant. Tr. 94, l. 13 – 96, l. 12. She explained that police officers can lie about facts during an interrogation but not about the law. Id. Defense counsel specifically pointed to the moment in the interview where they told Appellant that it was okay to have sex with your minor cousin as long as you didn't force her and if "it wasn't forced, you're going to be okay." Id.

The state argued that law enforcement is allowed to lie about the facts of a case to induce a confession and cited State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009); State v. Rochester, 301 S.C. 196, 381 S.E.2d 244 (1990); State v. Register, 323 S.C. 471, 476 S.E.2d 153 (1996). Defense counsel responded that the lie in this case was not about facts or evidence, rather it was a misrepresentation of law such that the cases the state cited were not applicable. Tr. 94, l. 13 – 96, l. 12. The state argued that Fraser did not misrepresent the law because he did not say Appellant would not be charged if the sex was consensual. Tr. 96, l. 15 – 97, l. 7. Defense counsel pointed out that the misrepresentation of law was a novel issue in South Carolina. Tr. 97, ll. 15 – 24.

The trial court ruled that it was not sure whether Fraser's lie was a misstatement of law, but "since the questioning was not forceful" the statement was voluntarily made and admissible. Tr. 99, l. 3 – 100, l. 21.

Discussion

Misrepresentations *about the facts of a case* by law enforcement to induce a suspect to make a statement are usually not enough to render a statement involuntary. Goodwin, at 602, 683 S.E.2d at 507; Rochester, at 200, 391 S.E.2d at 246 – 47; Register, at 478 – 79, 476 S.E.2d at 158. However, officers lying about *the law* can render a statement involuntary because they use deceit to make a false promise not to convict a suspect if they give an inculpatory statement.

Here, Fraser's misrepresentation of the law was that there was a "huge difference" between Appellant having consensual sex with his niece and having forcible sex with her. R.*. That misrepresentation of law induced Appellant to make an inculpatory statement involuntarily because the lie was such that an innocent person would have "confessed" to conclude the matter and go home. Tr. 94, l. 13 – 96, l. 12. Misrepresentations of the law have a similar effect as a promise of leniency, in this case the ultimate promise of leniency, exoneration.

Although the question of whether a misrepresentation of the law renders a statement involuntary has not been determined in South Carolina, other jurisdictions have ruled on the issue. See State v. Reynolds, 145 A.3d 1256 (Vt. 2016) (holding the confession was involuntarily made where the detective implied that Reynolds would face treatment or complete absolution if he confirmed the "mistake" theory while signaling that harsher consequences would follow a determination that he intentionally touched the child); Baptiste v. State, 179 So. 3d 502, 506 – 07 (Fla. 2015) (A misrepresentation of law is much more likely to render a confession involuntary compared to a misrepresentation of facts); State v. Arrington, 470 N.E.2d 211, 217 (Oh. Ct. App. 1984) (Officers' statements constituted "direct or indirect promises" of leniency or benefit; however, their other statements regarding the possibility of probation "*were misstatements of the law*" such that the defendant's statement incriminating statements, not being freely self-

determined, were improperly induced, were involuntary and were inadmissible as a matter of law.)(emphasis added); Johnson v. State, 268 So.3d 806, 808 – 09 (Fla. 2019) (officer's comments to Johnson that if he used the defense of self-defense in second degree murder case, he would be immune from prosecution constituted a misrepresentation of law that rendered Johnson's statement involuntary); State v. Masumoto, 452 P.3d 310, 316 (Hi. 2019) ("deliberate falsehoods extrinsic to the facts of the alleged offense, which are of a type reasonably likely to procure an untrue statement or to influence an accused to make a confession regardless of guilt, will be regarded as coercive per se").

Our courts have provided guidance for whether promises of leniency render confessions involuntary, and misrepresentations of law should be treated in a similar manner as they induce involuntary confessions like promises of leniency, with the added taint of deceit and trickery.

In State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1986), Peake was convicted of murder and sentenced to life imprisonment. Peake, at 139, 352 S.E.2d at 488. The officers in that case questioned Peake and induced him to make an inculpatory statement by promising him leniency. Id. The investigating officer testified that he "made a suggestion to [Peake] that the State would not ask for the death penalty in this case and that [he] would call the Solicitor and have him put it in writing to that effect." Id. at 139, 352 S.E.2d at 488. Directly after the officer's false promise, Peake made an inculpatory statement. Id. Our Supreme Court held that the officer's promise rendered Peake's statement involuntary as "the statement was connected with the inducement as to be a consequence of the promise." Id.; citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977).

The issue of promises of leniency rendering statements involuntary was litigated in the PCR context as well. In Shirley v. State, 306 S.C. 241, 411 S.E.2d 215 (1991) Shirley appealed

the denial of his post-conviction relief application where he alleged plea counsel failed to inform him that the self-incriminating statements he made to police could have been suppressed as they were induced by the investigating officer's promise of a four-year sentencing cap. Id. at 244, 411 S.E.2d at 216.

Shirley was arrested for forgery by uttering a forged instrument. Id. at 243, 411 S.E.2d at 216. After a preliminary hearing, the investigating officer offered Shirley an opportunity to negotiate a plea, and he agreed. Id. The investigating officer offered a four-year cap on sentencing in exchange for Shirley's full cooperation. Id. Shirley consequently met with the investigating officer and made self-incriminating statements. Id.

As a result of Shirley's statements, he was charged with additional counts of forgery, one count of accessory before the fact and one count of accessory after the fact of a felony (burglary). Id. Shirley then pled guilty to accessory before the fact of felony burglary and seven counts of forgery by uttering a forged instrument. He was sentenced to fifteen years' imprisonment for the charge of accessory before the fact and to seven years' imprisonment for each of the counts of forgery, to run concurrently. Id. at 243, 411 S.E.2d at 216.

Our Supreme Court held that plea counsel provided ineffective assistance of counsel for failing to inform Shirley, prior to the guilty plea, that his statements to law enforcement could have been suppressed. Shirley, at 244, 411 S.E.2d at 217 – 18. The Court determined that there was a reasonable likelihood Shirley's statements would have been able to be suppressed because the officer's promise leniency caused them to be involuntarily made. Id.

In this case Officer Fraser's misrepresentation of the law during Appellant's interview was a false statement which gave Appellant the impression that "consent" made sexual contact with his minor niece a non-crime or that Appellant had an absolute defense. That deception

induced Appellant to make an inculpatory statement because a reasonable person's will would likely have been overborne into making an involuntary incriminating statement. Tr. 94, l. 13 – 96, l. 12.

Notably, prior to Fraser's misrepresentation, Appellant made a written statement where he denied all culpability. R.*. Appellant only made the inculpatory statement directly after officer Fraser told him there was a "huge difference" between having consensual sex versus forcible sex with his minor niece implying to Appellant if his minor niece consented to sexual contact, he would not be guilty of a crime. R.*. After hearing Fraser's misrepresentation of law, an innocent person would have reasonably "confessed" to what they believed was lawful behavior in order to end the matter. Accordingly, Appellant's statement in this case was involuntarily made because it was so connected to Fraser's misrepresentation of law it could not relied upon as voluntarily given. Peake, at 139, 352 S.E.2d at 488; citing State v. Broome, 268 S.C. 99, 232 S.E.2d 324 (1977).

CONCLUSION

By reason of the forgoing arguments, Appellant's conviction should be reversed, and this case remanded to the Beaufort County Court of General Sessions for a new trial

Victor R. Seeger
Appellate Defender

ATTORNEY FOR APPELLANT

This 26th day of August, 2020.

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Initial Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Michael Wiggs, #380545, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 26th day of August, 2020.

Victor R. Seeger

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ATTORNEY FOR APPELLANT