STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Orangeburg County

Honorable Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DARRIN ANTHONY HOUSER,

APPELLANT

APPELLATE CASE NO 2019-001611

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether Appellant's statement given to police was involuntarily made where he initially refused to sign the Miranda rights waiver and only agreed sign the waiver after the interviewing officers prepared to leave and told him he would spend the rest of his life in prison if he did not talk to them, and where Appellant's subsequent statement was induced through threats and promises of leniency?

STATEMENT OF THE CASE

During its December 2015 term, Orangeburg County Grand Jury indicted Appellant for burglary in the first degree. R. 460. During the August 2019 term, stemming from the same incident, the Orangeburg County Grand Jury indicted Appellant for attempted armed robbery and possession of a handgun by a person who committed a crime of violence. R. 463-467.

On September 9, 2019, Appellant proceeded to trial for murder, burglary in the first degree, attempted armed robbery, and possession of a handgun by a person who committed a crime of violence before the Honorable Edgar W. Dickson, and a jury[1]. R. 1. Russel A. Blanchard and Charlie H. Williams III represented Appellant. Id. Thomas B. Scott III represented the state. Id.

Appellant was found guilty of burglary in the first degree, attempted armed robbery, and possession of a handgun by a person who committed a crime of violence. R. 450, l. 25 – 451, l. 13. Appellant was sentenced for twenty years' imprisonment for attempted armed robbery and burglary in the first degree. R. 454, l. 24 – 455, l. 25. Appellant was sentenced to five years' imprisonment for possession of a handgun by a person convicted of a crime of violence. Id.

This appeal follows.

[1] Appellant was also indicted for murder, but was found not guilty on that charge. R. 4, ll. 4 – 13; R. 451, l. 11 – 13.

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 given to police was involuntarily made where he initially refused to sign the Miranda rights waiver and only agreed sign the waiver after the interviewing officers prepared to leave and told him he would spend the rest of his life in prison if he did not talk to them, and where Appellant's subsequent statement was induced through threats and promises of leniency.

Relevant Facts

On August 26, 2015, a shooting occurred at 122 Greta Lane in Orangeburg County. R. 129, ll. 16 – 22. Anthony Patterson, the decedent, sold drugs out of his trailer and on the night of the incident multiple assailants broke into his home and shot him multiple times. R. 190, l. 11 – 191, l. 4. Patterson was pronounced dead at the scene. R. 133, l. 24 – 136, l. 21.

During Appellant's trial, Michael Dennis, decedent's roommate, testified that Appellant arrived at the trailer to buy drugs from Patterson shortly before the incident. R. 149, l. 20 – 157, l. 19. Dennis stated that he let Appellant in the trailer because he recognized him from earlier times Appellant came over to buy drugs. Id. Dennis claimed that after Appellant entered the trailer he stopped Dennis from closing the door. Id. According to Dennis, at that moment multiple assailants barged into the still opened doorway and pinned him to the floor. Id. Dennis did not see any of their faces and could not identify the other men who entered the trailer. Id. Patterson came out of his bedroom and after a short altercation he was shot several times. Id.

The men fled the trailer without taking anything. Id. Appellant also fled the trailer in fear for his life. Id.; R. 289, ll. 17 – 22.

Appellant was interviewed within two days of the incident by Officer James Shumpert on August 28, 2015. R. 275, l. 11 – 294, l. 15. Appellant was found by law enforcement in Washington D.C., and Shumpert went there to conduct the first interview. R. 9, ll. 1 – 14.

Appellant was in custody during the interview and was suffering from withdrawal symptoms. R. 35, l. 3 – 6; R. 276, ll. 15 – 16. Appellant went to the trailer on the night of the incident to buy drugs. R. 282, ll. 3 – 11. In a pretrial Jackson v. Denno, 378 U.S. 368 (1964) hearing, Appellant testified he was "shaking and shivering pretty much the whole [interview]," he had a "splitting headache," and stomach pains. R. 23, l. 23 – 34, l. 12. Appellant was having "difficulty with diarrhea" and lost sixteen pounds "in the last couple days" before the August 28 interview. R. 34, ll. 13 – 25.

Shumpert interviewed Appellant again on September 3, 2015, this time in Orangeburg. R. 16, ll. 1 – 23. Shumpert alleged that Appellant called his office to initiate the September 3 interview, but did not have any recollection or record of when Appellant allegedly called or with whom he spoke to set up the interview. R. 17, ll. 3 – 19; R. 37, ll. 9 – 17. Appellant denied calling to initiate the September 3 interview. R. 72, l. 18 – 73, l. 6.

The September 3 interview was recorded on video and Sergeant Stokes administered the Miranda v. Arizona, 384 U.S. 486 (1966) warning. R. 18, l. 6 – 19, l. 11. Appellant initialed and signed the Miranda rights warning but he did not initially sign the waiver of rights form. R. 19, ll. 12 – 18. Appellant only signed the waiver of rights form after Shumpert and Stokes ended the interview and Shumpert told Appellant he would spend the rest of his life in prison if he did not talk to the officers. R. 38, l. 13 – 40, l. 5.

Appellant testified during the Jackson v. Denno hearing as well. R 64, l. 12. He explained the withdrawal symptoms he was suffering through during both interviews. R. 70, l. 12 – 71, l.

22. Appellant stated that he refused to sign the waiver of rights form but was under the impression that he could still talk to the officers. R. 66, ll. 12 – 25. Appellant's mistaken belief that he could give a statement without signing the waiver of rights form evinced the fact that even after Stokes read him his Miranda rights, he did not understand what they meant. Id.

Appellant testified that Shumpert showed Appellant a photo of Shumpert's dead daughter and promised Appellant on his daughter that he would help Appellant with his charges and sentencing if he gave a statement. R. 68, l. 15 – 69, l. 5. As a means to get Appellant to give a statement, Shumpert told Appellant a story about another case where the triggerman "ratted" his codefendants out and got a lenient sentence, insinuating that he could help Appellant with sentencing if Appellant cooperated. R. 42, l. 8 – 45, l. 8. It was only after those promises of leniency that Appellant then gave a written statement during the September 3 interview. R. 370, ll. 14 – 24. Appellant stated that he only gave the written statement because of Shumpert's promises. R. 73, ll. 7 – 25.

Trial counsel argued that Appellant's statement from September 3, 2015 was not voluntarily given. R. 81, l. 13 – 82, l. 5. Appellant was suffering clear "physical problems." Id. Appellant did not understand his rights after they were read to him as shown by his belief that "there was a difference between talking to the officers versus waiving his rights and signing a statement." Id. Furthermore, Shumpert made promises to Appellant and used stories of defendants cooperating and being rewarded with leniency to compel Appellant to give a statement involuntarily. Id.

Discussion

Appellant's statement to police on September 3, 2015 was made involuntarily because Officer Shumpert used a combination of threats and promises of leniency to improperly induce Appellant to make a statement about the incident at 122 Greta Lane in Orangeburg County. Shumpert promised Appellant "on his dead daughter" that he would help Appellant with his charges and sentencing if he cooperated, and when Appellant did not cooperate threatened Appellant with a life sentence if he did not cooperate. R. 20, l. 22 – 21, l. 5; R. 68, l. 15 – 69, l. 5. Those threats were sufficient to overbear Appellant's will and coerce him into making an involuntary statement.

Our Supreme Court held in State v. Washington, 296 S.C. 54, 370 S.E. 611 (1988), where voluntariness of a statement is at issue, the trial court must make an initial determination based upon preponderance of the evidence.

In State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990), Osborne gave eleven inculpatory statements to police that the Court determined were made involuntarily. Osborne was read her Miranda rights prior to every statement. Osborne, at 364 – 65, 392 S.E.2d 178 – 79. Prior to giving her statements, each of the interviewing officers in all eleven interviews told her that if she did not give a statement she could be prosecuted for withholding evidence. Id. at 365 – 66, 392 S.E.2d at 179. "Although many officers testified that Osborne was repeatedly advised of her rights and that she was not threatened or coerced," the Court held "In essence, Osborne was told… she could remain silent, but [if she remained silent], she could be charged with a crime. Id. at 366 – 67, 392 S.E.2d at 179 – 80. Accordingly, Osborne's statements were involuntarily given as they were a product of coercion. Id. at 367, 392 S.E.2d at 180.

In State v. Corns, 310 S.C. 546, 426 S.E.2d 324 (Ct. App. 1992) Corns was arrested and charged with, among other allegations, possession of marijuana with intent to distribute. Corns, at 548 – 49, 426 S.E.2d at 325 – 26. Approximately four days to a week after his arrest, Corns requested to speak with the investigating officers Detective Roper and Captain Fowler. Id. Corns was read his Miranda rights and "although Detective Roper testified that he did not threaten or intimidate Corn's, he admitted that during the interview he told Corns his wife could be arrested and the Department of Social Services could take his children. Id. Corns then replied, "I'll plead guilty to the marijuana, just don't mess with my wife and kids." Id.

This Court held that the officers "coerced Corns's confession on the marijuana by means of veiled threats against his family." Corns, at 552, 426 S.E.2d at 327. This Court further determined, "The testimony of the officers amounted to an exertion of improper influence rendering Corns's statement involuntary." Id.

In State v. Hook, 348 S.C. 401, 558 S.E.2d 856 (Ct. App. 2001), Hook was arrested for driving under the influence after he was involved in a car accident with Roger Smith of the Williston Police Department, while Smith was "operating a police department control car." Id. at 406, 558 S.E.2d at 858. Hook and Smith sustained injuries, Hook had a ruptured spleen and required both narcotic and non-narcotic pain killers. Hook, at 406 – 07, 558 S.E.2d at 858 – 59. On the day after the incident Hook's probation agent, Judy Brown, requested that he take a drug test, and a separate probation agent, Marshall Bunch, administered the test. Id. at 407, 558 S.E.2d at 858 – 59. Neither of the probation agents advised Hook of his Miranda rights. Id. Hook tested positive for cocaine and, according to the agents, then admitted to using cocaine on the night before the accident. Id.

This Court determined that probation Agent Brown went to the jail, in her capacity as a probation officer, for the purpose of determining whether Hook was in compliance with the terms of his probation sentence prohibiting drug use. Hook, at 413, 559 S.E.2d at 862. It was only after Hook denied using drugs, that Brown ordered a drug test. Id.

Probation Agent Bunch, who administered the drug test, also went to the jail in his capacity as a probation agent. Id. After administering the test, Bunch told Hook that a probationer must answer the questions posed to him by probation officers and that refusal to take the drug test would constitute a violation of his probation. Id.

This Court held, "Although there is no evidence the probation agents expressly threatened to revoke Hook's probationary sentence if he failed to answer their inquiries truthfully, the timing of the interview, the custodial atmosphere, and the other attendant circumstances *unquestionably raised the implication [that probation] revocation would result from any refusal to cooperate.*" Hook, at 414, 559 S.E.2d at 862. (emphasis added) Accordingly, Hook's statement to the probation agents, under the totality of circumstances, was a product of "coercion egregious enough to render any statement involuntary," and thus inadmissible. Id.

Here, many of the factors present in Hook that caused his confession to be involuntary are present in this case as well. Id. Appellant was suffering from withdrawal symptoms at the time he gave the coerced statement. R. 23, l. 23 – 35, l. 6. Appellant initially denied to speak to the officers as did Hook where he initially denied using drugs before being coerced into giving a statement. Id.; Hook, at 413, 559 S.E.2d at 862. In this case, it was only after the officers told Appellant that he would "spend his life in prison" if he did not talk to them, that he acquiesced to their threats and gave the inculpatory statement. R. 38, l. 13 – 40, l. 5. Furthermore, even though the officers did not specifically guarantee Appellant that they could ensure he would go to prison

for the rest of his life if he did not speak to them, the veiled threat implying they could influence his sentencing if he did not cooperate was such that a reasonable person's will would be overborne. Corns, at 552, 426 S.E.2d at 327.

Furthermore, Shumpert also made promises of leniency if Appellant cooperated and misrepresentations about the strength of evidence they had against Appellant. R. 49, l. 17 – 19; R. 73, ll. 7 – 13. Specifically, Shumpert promised Appellant "on his dead daughter" that he would help Appellant get a more lenient sentence if Appellant gave a statement. R. 68, l. 15 – 69, l. 5. Hutto v. Ross, 429 U.S. 28, 30 (1976) ("The test is whether the confession was " 'extracted by any sort of threats or violence, (or) obtained by any direct or implied promises, *however slight,* (or) by the exertion of any improper influence.'") (emphasis added) It was only after the promise of leniency in sentencing that Appellant gave his statement. State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) ("A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise.")

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).

Accordingly, the trial court erred when it admitted Appellant's statement because it was a product of coercion and promises of leniency by the interviewing officers such that it was involuntarily given, and thus inadmissible. State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246 (1990) citing Hutto v. Ross, 429 U.S. 28, 30 (1976); also citing State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987).

CONCLUSION

By reason of the foregoing arguments, Appellant's convictions 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 23th day of December, 2020.

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CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Final Brief of Appellant complies to the best of my ability 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."

Respectfully Submitted,

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ATTORNEY FOR APPELLANT

This 23rd day of December, 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 Final Brief of Appellant in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 23rd day of December, 2020.

Victor R. Seeger

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