STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Honorable William A. McKinnon, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

QUINCY LAKEITH HEMPHILL,

APPELLANT

APPELLATE CASE NO 2019-001807

ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
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ATTORNEY FOR APPELLANT

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[2] Batson v. Kentucky, 476 U.S. 79 (1986).

STATEMENT OF THE CASE

Appellant Quincy LaKeith Hemphill was found guilty per trial by a jury on the offenses of trafficking in crack cocaine, trafficking in cocaine, possession with intent to distribute marijuana, possession with intent to distribute methamphetamine, and possession of a weapon during the commission of a violent crime during his trial held at the October, 2019 term of the York County General Sessions Court before Judge William McKinnon. Appellant was sentenced to imprisonment for an aggregate ten-year term. Darren Haley represented appellant at trial, and Assistant Solicitor Blaine Pleming appeared on behalf of the state.

Appellant appealed his convictions and sentences. This petition follows.

STANDARD OF REVIEW

In criminal cases, the appellate sits to review errors of law only, and is bound by the trial court's factual findings unless those findings are clearly erroneous. State v. Edwards, 384 S.C. 504, 682 S.E.2d 820 (2009). Thus, the appellate court is limited to determining whether the trial court abused its discretion. State v. Edwards, Supra. An abuse of discretion occurs when the court's decision is unsupported by the evidence or controlled by an error of law. State v. Black, 400 S.C. 10, 732 S.E.2d 880 (2012). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence. State v. Edwards, supra.

"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).

QUESTION I

The trial judge erred in denying appellant's Batson[3] motion because the state used a peremptory challenge in a discriminatory manner during the selection of the jury in the case.

A search warrant was executed at a residence where appellant was located inside on February 24, 2016, and the following drugs were found inside: crack cocaine, cocaine, marijuana, and methamphetamine. R. 90, l.18-p. 128, l.7.

After the selection of the jury, counsel entered a Batson Motion in response to the striking of an African American who was a potential juror not seated on the petit jury due to the solicitor's strike against him. R 25, l.4-15.

The solicitor explained that this African American juror (# 41) had prior convictions[4] and that his run in with law enforcement and each of those arrests meant something with respect to how this affected his view of the police officers who were set to testify at trial. R 25, l.17-26, l.6. The solicitor admitted that there were two potential jurors whom he did not strike and were seated who had prior criminal records for DUI, but this did not indicate a lack of respect for police. R. 26, l.11-p.27, l.3. The trial judge denied the motion. R 27, l.7.

Clearly, the solicitor's strike in question was discriminatory because not all potential jurors who had criminal records were struck during the jury selection process held prior to trial. The Equal Protection Clause of the Fourteenth Amendment prohibits the striking of a potential juror based on race or gender. Batson v. Kentucky, 476 U.S. 79 (1986); State v. Evins, 373 S.C. 404, 645 S.E.2d 904 (2007). When one party strikes a member of a cognizable racial group or gender, the trial court must hold a Batson hearing if the opposing party requests one. State v.

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[3] Batson v. Kentucky, 476 U.S. 79 (1986).

[4] Disorderly conduct, DUI, trespassing, assault and battery, resisting arrest, DUS (five counts) and resisting arrest and fraud (employment) R. 25, l.19-24.

Haigler, 334 S.C. 623, 515 S.E.2d 88 (1999). The opponent must make a prima facie showing that the challenge was based on race. If a sufficient showing is made the proponent must provide a race neutral explanation for the challenge, and the trial court must determine if the challenge was purposefully discriminatory. State v. Giles, 407 S.C. 14, 754 S.E.2d 261 (2014).
The reason for the strike need not be persuasive, or even plausible, but it must be clear and reasonably specific such that the opponent of the challenge has a full and fair opportunity to demonstrate pretext in the reason given; and the burden is on the opponent to show that the race or gender neutral explanation was mere pretext, which generally is established by showing that the party did not strike a similarly-situated member of another race or gender. See State v. Steward, 413, S.C. 308, 775 S.E.2d 416 (2015). Similarly situated jurors who were not struck became the issue here. In Steward, supra, the Court reversed where there was a Batson challenge and held that the solicitor struck two African American potential jurors who had priors for domestic assault and possession of cocaine, but did not strike Caucasian potential jurors who had priors on ABIW and bounced check charges.

In the case at bar, the same scenario existed where an African American was struck because of his priors but two non-African Americans were not struck because of their priors. The trial judge erred in denying appellant's Batson[5] motion because the state used a peremptory challenge in a discriminatory manner during the selection of the jury in the case.

[5] Batson v. Kentucky, 476 U.S. 79 (1986).

QUESTION II

The trial judge erred in allowing appellant's statements into evidence at trial because his confession was involuntary given as it was obtained based on the inducement of a promise in effect that indicated leniency in exchange for his cooperation.

After a control buy occurred at the house where appellant was present by a confidential informant, police officers obtained and ultimately executed a search warrant on February 24, 2016. Drugs and two guns were found in the house pursuant to a search inside.

Prior to trial, a Jackson v. Denno [6] hearing was held per the issue regarding whether to suppress appellant's statements during the search. R. 44, l.8-16. Apparently, appellant repeatedly stated "I f -------- up" when police entered to execute the search warrant.

During the hearing, Officer Stephen Ramsey and James M. Ligon testified. They both stated that during the search appellant was handcuffed and read his Miranda [7] warnings. R 44, l. 17 – p. 52, l. 4; R 61, l. 13 – p. 63, l. 10. Officer Ligon testified that he in effect asked appellant indirectly to "cooperate with the officers" and if there was anything in the residence that [they] needed to know about" and if he wanted to state his [appellant's] side. R 62, l.15-20; R. 63, l.22-p. 64, l.11. Note that appellant kept repeating to Officer Ligon that "I've f------ up" and led the officers to where the drugs were located. R 50, l.17-22. Officer Ligon answered what he meant by cooperation as follows:

> Q: you said to tell his [appellant's] side of things…so when you gave him an opportunity was that in any way said or insinuated that it will go easier on you or it would be better for you if you cooperate
>
> A: No, Sir.

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[6] 378 U.S. 368 (1964).
[7] 384 U.S. 436 (1966).

> Q: Do you think he took it as whether or not he cooperated would make it easier on him?
>
> A: I do not know, sir. R. 64, l.25-p. 65, l.15.

Counsel argued that the police insinuated that cooperation would help him out, which was indirect coercion and inducement so clearly, the statements were involuntarily given. R 69, l.1-10. The trial judge ruled that appellant knowingly and voluntarily waived his rights and that his statements were not made as a result of promises. R. 70, l.7-22.

The voluntariness of the statement depends on the totality of the circumstances, which would include whether threats, improper influence, or promises (direct or indirect) were used to obtain a statement. State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990); Colorado v. Connelly, 479 U.S. 157 (1986). A defendant's statement is induced by a promise of leniency is involuntary if it is so connected to the inducement as to be a consequence of the promise. State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987). If the suspect is advised of his rights per Miranda v. Arizona, 384 U.S. 436 (1966) then the state must prove by a preponderance of the evidence that his rights were waived voluntarily. State v. Arrowwood, 375 S.C. 359, 652 S.E.2d 438 (2007).

Here, appellant was surely under the impression that cooperating with the police after he was detained would help him out somehow and after admitting he f---- up (stated repeatedly), he went on and proceeded to show the officers where the drugs were located. It was error to admit appellant's statements into evidence because they were not voluntarily given, all of which violated his Fifth and Sixth Amendment rights.

CONCLUSION

Based on the foregoing arguments, counsel for appellant requests that this Court reverse appellant's convictions and sentences, and remand the case to the lower court for a new proceeding.

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of January, 2021.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Quincy Lakeith Hemphill states that:

1. She is Deputy Chief 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 A. McKinnon, which was held from October 7-10, 2019, 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 Quincy Lakeith Hemphill.

Respectfully Submitted,

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender
ATTORNEY FOR APPELLANT

This 4th day of January, 2021.

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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 Transcript dated October 7-10, 2019

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

January 4, 2021

s/Wanda H. Carter
Wanda H. Carter
Deputy Chief Appellate Defender

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ATTORNEY FOR APPELLANT

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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."

January 4, 2021.

s/Wanda H. Carter
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