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Dec 17 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

MALIK JABREE SINGLETON,

APPELLANT

APPELLATE CASE NO. 2019-000124

Appeal from Sumter County

Honorable George M. McFaddin, Circuit Court Judge

Opinion No. 2021-UP-437

PETITION FOR REHEARING

On December 8, 2021 this Court affirmed the trial judge's decision to allow the introduction of Petitioner's statements to law enforcement. State v. Singleton, Op. No. 2021-UP-437 (S.C. Ct. App. Filed December 8, 2021). Pursuant to Rule 221(a), SCACR, Petitioner respectfully requests this Court rehear the matter considering the significant points overlooked and/or misapprehended by this Court discussed below.

In affirming Petitioner's convictions, this Court found that the record supported the trial judge's finding that Petitioner's statements to law enforcement were voluntarily made. This

Court relied on State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007), where the defendant's statements to law enforcement were found to be voluntary because "no one made any direct or implied promise of leniency." Therefore, this Court in Miller concluded that the defendant's statements had been made in the "'hope' of leniency rather than as a consequence of a 'promise' [of leniency]." Id. at 387, 652 S.E.2d at 453.

The facts of Miller were significantly different from Petitioner's situation, however. In Miller, the defendant claimed that his statements to law enforcement were induced by a promise of an "eight to twelve year sentence." Id. However, this Court noted that three police officers and the prosecutor all denied having ever extended such a promise to the defendant and the defendant did not testify at the Denno[1] hearing as to the existence of such a promise. Id. Here, Petitioner's statements, and the promises of leniency made to him by law enforcement, were video and audio recorded so that the officers could not deny having made such promises.

During the interrogation of Petitioner, the officers used a two-pronged approach to overbear his will. First, they falsely claimed that Petitioner could be charged with murder and that he would be facing a sentence of life imprisonment even though the alleged victim, Travis, did not die, and the officers knew that he was in stable condition. Secondly, they attempted to coerce Petitioner into claiming it was an accident and thereby admit to being the shooter by impliedly promising him that if he said it was an accident, he would be charged with a less serious crime. See State's Ex. 2.

At times during the interrogation, Ragin implied that Petitioner would not be charged at all if he told them it was "just an accident." State's Ex. 2 at 7:11; State's Ex. 2 at 8:06. At other times Ragin clearly stated that Petitioner was going to be arrested but that he may be charged

[1] Jackson v. Denno, 378 U.S. 368 (1964).

with murder, voluntary manslaughter or even involuntary manslaughter. State's Ex. 2 at 7:31. However, all three of these charges would require the death of Travis which was used in furtherance of their misleading Petitioner as to the status of Travis' condition.

Bonner and Ragin started by leading Petitioner to believe that he could be charged with murder and that he would be looking at life imprisonment even though they knew that Travis was not dead, and in no danger of dying. R. 30, ll. 1 – 20. The officers went so far as to tell Petitioner that Travis' family would not want him to attend Travis' funeral and that they would all be crying at the funeral wanting to know what Petitioner had done. State's Ex. 2 at 7:28 – 7:31. The importance of this cannot be overstated because Travis and Petitioner *are related and share the same family*. R. 219, l. 21 – R. 220, l. 1. Petitioner and Travis are cousins. By falsely insinuating that Travis was dead and then claiming that Petitioner would not be able to attend *his own cousin's funeral*, the officers were overbearing Petitioner's will to elicit a false confession.

Ragin also repeatedly lied to Petitioner by falsely claiming that Travis stated the shooting was an accident. R. 33, l. 22 – R. 34, l. 4. Bonner pressured Petitioner to say it was an accident by telling Petitioner that if he said it was an accident, he would be looking at a different "situation" than the life imprisonment that murder carried. State's Ex. 2 at 6:47 – 6:48.

The repeated attempts to get Petitioner to claim he shot Travis on accident was critical because the investigators repeatedly implied that if only Petitioner would claim it was an accident he would be charged with voluntary or involuntary manslaughter *or not even be charged at all.* This implied promise of leniency was continuously and repeatedly made to Petitioner throughout the duration of his interrogation. See State's Ex. 2.

This Court's reliance on State v. Goodwin, 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009) was also misplaced. In Goodwin, the officers misrepresented the strength of the evidence

they had at the time of their interrogation of the defendant, but that was significantly less coercive than what happened here where Petitioner was repeatedly led to believe that Travis was dead. Further, in Goodwin, the officers' emotional appeals consisted of telling the defendant that his cooperation would prevent them from having to unnecessarily search the homes of his family members, that his parents were very upset, and that his children might think of him as a "cold blooded murderer." Id. at 595-597, 683 S.E.2d at 504-505. That paled in comparison to what the officers did in this case where the alleged victim was Petitioner's own family member, and the officers insinuated that Petitioner would not be allowed to attend the funeral.

This case is much more similar to State v. Osborne, 301 S.C. 363, 392 S.E.2d 178 (1990). In Osborne, the Supreme Court of South Carolina held that the defendant's confession was involuntary because it was induced by law enforcement repeatedly telling her that if she did not speak to them they could charge her with "withholding evidence." Id. at 367, 392 S.E.2d at 180. In other words, in Osborne, rather than a promise of leniency, there was a threat to treat the defendant more harshly if she did not confess. In this case, Petitioner was told that by confessing and stating the shooting was an accident, he would be treated *less* harshly by being arrested for manslaughter as opposed to murder.

The interrogation of Petitioner lasted from 4:50 a.m. to 9:01 a.m. See State's Ex. 2. Throughout that process he was emotionally distraught and asking the investigators for their help. See State's Ex. 2. Petitioner was also handcuffed for the entire interrogation. See State's Ex. 2. Throughout most of the interrogation there were three uniformed, armed law enforcement officers in the room with Petitioner. At times the third officer was blocking the doorway and at times all three of these officers were standing over Petitioner.

All three of the officers repeatedly accused Petitioner of lying and told him that they did not believe anything he was saying. Finally, after an exhaustive interrogation of law enforcement misleading Petitioner about the severity of the charges he was facing and offering him an implied promise of leniency if he claimed the shooting was an accident, Petitioner claimed that he shot Travis on accident. State's Ex. 2 at 8:23. However, only a few minutes later Petitioner went back to denying he was the shooter and when Petitioner wrote his written statement he denied being the shooter. State's Ex. 2 at 8:28; State's Ex. 3.

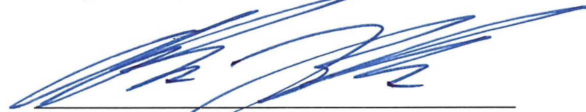
Under United States Supreme Court and South Carolina precedent, a suspect's statement obtained while in the custody of law enforcement should be deemed involuntary and therefore inadmissible when it is the product of implied promises or improper influence. Hutto v. Ross, 429 U.S. 28, 30 (1976); State v. Register, 323 S.C. 471, 478, 476 S.E.2d 153, 158 (1996) (citing State v. Rochester, 301 S.C. 196, 391 S.E.2d 244 (1990)). Here, law enforcement made repeated implied promises of leniency to coerce Petitioner to claim he shot Travis by accident. See State's Ex. 2.

The investigators further exerted improper influence on Petitioner by falsely claiming he could be charged with murder and that he would be facing life imprisonment. They countered that by assuring Petitioner that if he claimed it was an accident that he may be charged with something less serious than murder, e.g., voluntary or involuntary manslaughter, or that he may not even be charged at all. Ragin even went so far as to imply to Petitioner that if he claimed it was an accident it would be no different from a car accident when he said, "if it was an accident, it was an accident; accidents happen every day – that's why they got [sic] insurance." State's Ex. 2 at 8:06.

By falsely claiming that Petitioner could be charged with murder--where the officers knew Travis was not dead or in danger of dying--while simultaneously implying Petitioner would receive leniency if he claimed it was an accident, Petitioner's will was overborne by improper influence, rendering his statement involuntary.

Based upon the specific points overlooked and/or misapprehended by this Court in its opinion discussed above, Petitioner requests this Court to rehear the matter.

Respectfully Submitted,



ADAM SINCLAIR RUFFIN
Appellate Defender

This 17th day of December, 2021.

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MALIK JABREE SINGLETON,

APPELLANT

APPELLATE CASE NO. 2019-000124

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Petition for Rehearing in the above-entitled case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), and upon Malik Jabree Singleton, #378882, at Lee Correctional Institution, 990 Wisacky Hwy., Bishopville, SC 29010, this 17th day of December, 2021.

Adam Sinclair Ruffin
Appellate Defender

ATTORNEY FOR APPELLANT

SCCID

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Wanda H. Carter, Deputy Chief Appellate Defender

December 17, 2021

William M. Blitch, Jr., Esquire
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

Re: The State v. Malik Jabree Singleton

Dear Mr. Blitch:

Attached is a copy of the Petition for Rehearing in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Adam Sinclair Ruffin
Appellate Defender

ASR/sl

Attachment

SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

December 17, 2021

Mr. Malik Jabree Singleton, #378882
Lee Correctional Institution
990 Wisacky Hwy.
Bishopville, SC 29010

Re: Your Case

Dear Mr. Singleton:

Enclosed is a copy of the Petition for Rehearing that I filed today on your behalf in the South Carolina Court of Appeals. Feel free to contact me if you have any questions.

Please contact me if you have any questions.

Sincerely,

Adam Sinclair Ruffin
Appellate Defender

ASR/SL

Enclosure