

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Oct 15 2020

Appeal from Williamsburg County
Clifton Newman, Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ANTHONY ANDERSON,

APPELLANT

APPELLATE CASE NO. 2019-001406

SUPPLEMENTAL RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
STATE,)

TRANSCRIPT OF RECORD
11-GS-45-00140

v.)
ANTHONY ANDERSON,)
DEFENDANT.)

May 12 - May 14, 2014
Kingstree, South Carolina

BEFORE :

THE HONORABLE CLIFTON NEWMAN, JUDGE;
AND JURY

APPEARANCES:

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

STEVEN S. MCKENZIE, ESQ.
Attorney for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

1 opinion anything had changed. He testified that it
2 did not change.

3 Your Honor, just for the record, the order
4 regarding competency to stand trial in terms of the
5 evaluation, it was done with the consent of the
6 State. The information provided to the Department
7 of Mental Health for that evaluation to be done was
8 provided by defense counsel; and so given that
9 Doctor Frierson has opined that even if he had these
10 hospitalizations it wouldn't affect his opinion
11 about his competency, we believe that the Court
12 ought to determine that the defendant at this time
13 is competent to stand trial.

14 THE COURT: All right, Mr. McKenzie.

15 MR. MCKENZIE: Your Honor, based upon the
16 doctor's testimony here today and we have nothing to
17 contradict that, that he is not competent to stand
18 trial, we would join in that motion. We think he is
19 competent to stand trial.

20 THE COURT: All right. Based on the
21 record and testimony and report of the doctor as
22 well as the arguments of the parties, I find that he
23 is competent to stand trial in that he understands
24 the nature of the proceedings and is able to assist
25 counsel in his defense.

1 MR. MCKENZIE: Thank you, Your Honor.

2 THE COURT: All right.

3 MS. BARR: Judge, Mr. McKenzie filed a, or
4 served a notice of his intent to ask the Court to
5 suppress the confession that defendant gave to a
6 Myrtle Beach police officer; and Your Honor, of
7 course, we anticipated having a Jackson versus Denno
8 hearing this morning. Judge, the officer who the
9 defendant gave the confession to retired just a
10 month ago from the Horry County Police Department,
11 and I was not notified about that until last week.
12 We'd actually sent out the subpoena a month ago. We
13 came back and found out that he no longer worked
14 there. We were able to get him served with a
15 subpoena; however, he sent an email to our office on
16 Saturday indicating that he had a medical procedure
17 that he had to undergo this morning at 11 and it
18 normally takes him about 24 hours to 48 hours
19 depending on the effects to have the anesthesia, the
20 effects of the anesthesia out of his system. And so
21 Judge, at this time we're not prepared to deal with
22 the Jackson versus Denno hearing. And certainly,
23 Judge, we understand that if we intend to offer that
24 we have to have that hearing. If we intend to offer
25 the statement into evidence, we have to have that

1 hearing before. I have not had an opportunity to
2 touch base with the detective, but I wanted to let
3 the Court know that. And I believe we have other
4 matters related to other cases that we can address
5 at this time.

6 THE COURT: All right, Mr. McKenzie.

7 MR. MCKENZIE: Your Honor, if we, you
8 know, I made the motion based upon -- and I provided
9 your law clerk with a written copy of that motion.
10 And our motion is based upon the fact that the,
11 Doctor Frierson found that at the time of the
12 commission of these crimes my client lacked the
13 capacity to conform. We provide you case law.
14 Although it is, you will see on the record or see in
15 the memorandum that people who have the diminished
16 and mental capacity can give voluntarily and knowing
17 statements in regards to and waive their Miranda
18 rights. What I was hoping to do today with Doctor
19 Frierson here was to go through this with a Jackson
20 Denno hearing 'cause my client did give some
21 statements at the time that were, that I think that
22 he was, did not have the ability to knowingly and
23 voluntarily. That's one of the questions, the
24 reason I asked why he was the last time that Doctor
25 Frierson had seen my client or the records indicated

1 was seen at mental health and what medications he
2 was on was because I believe that that goes to the
3 totality of the circumstances, what the case law
4 says, about whether or not a person with diminished
5 mental capacity can actually give a knowing and
6 voluntarily waiver of the Miranda warnings. And
7 it's, you'll see from my memo that Ms. Burroughs,
8 who is my client's mother, actually gave a statement
9 prior to my client giving a statement where she
10 informed the Horry County Sheriff's Department that
11 my client had been in a severe automobile accident,
12 he had severe brain trauma, that he was on
13 medication. They actually asked her to go find the
14 medication before he gave the statement so all of
15 those things kind of tied in.

16 We have Doctor Frierson here today, and I
17 don't want to waste anymore of his time; but we're
18 here ready, prepared to go forward. I've got this
19 Jackson Denno motion that's out there, and I don't
20 know how we can go forward with a trial if we can't
21 address the issue whether or not my client
22 voluntarily and knowingly waived his Miranda rights
23 and gave a statement that could or could not be
24 allowed into evidence based upon the totality of the
25 circumstances that you would rule so I don't know

1 where we are, where that puts us.

2 THE COURT: All right, Ms. Barr.

3 MS. BARR: Well, Judge, certainly it's the
4 State's right to offer or not offer the confession
5 into evidence; and so whether or not we do or we
6 don't, I would imagine it wouldn't have an effect on
7 us being able to start the trial. And Judge, one
8 other thing that I want to bring to the Court's
9 attention, there were references made to medical
10 records and so forth and we did file a motion for
11 reciprocal discovery when we responded to the
12 defendant's discovery. So to the extent that there
13 are records or evidence that the Defense will tend
14 to rely on, we'd ask that we be provided copies of
15 those as well. We served our reciprocal discovery
16 response on December 18th of 2012.

17 MR. MCKENZIE: And Your Honor, I have no
18 problem complying with that. I got the same report
19 that the, that Doctor Frierson relied upon, the same
20 thing that the State. We listed all these medical
21 records and everything that he had reviewed. And
22 the State, this is the State's expert witness and I
23 didn't realize that Ms. Barr did not have those
24 records from Doctor Frierson, but I'll be happy to
25 turn over anything I have. Basically he says he was

1 going through treatment to a period of time, then
2 stopped it. That's why I wanted -- actually, Doctor
3 Frierson had more records than I do and so ---

4 THE COURT: Well, are those the records
5 you're referring to are the ones from New Jersey,
6 Missouri, or wherever?

7 MR. MCKENZIE: I don't have any records.
8 Those records have been destroyed. His mother will
9 testify about his inpatient treatment.

10 MS. BARR: Judge, I don't have any of the
11 defendant's medical records, and I'm assuming that
12 Doctor Frierson would have gotten through
13 authorization that either the defendant or his
14 counsel would have provided. I don't have any
15 medical records for defendant.

16 THE COURT: All right. Well, you can make
17 a copy or get a copy of whatever it is that exists
18 that you want a copy of if they're his medical
19 records that'll be utilized in the trial.

20 MR. MCKENZIE: I'll be happy to provide
21 those. What I have, Your Honor, like I said, I do
22 not have all the records. Doctor Frierson had some
23 or all the records. The other thing, Your Honor,
24 is, again, I'm not sure how we proceed without a
25 Jackson Denno hearing unless Ms. Barr can withdraw

1 the statement of the officer that testified or that
2 took the statement from my client.

3 THE COURT: I think she's saying that she
4 wouldn't offer it prior to the Jackson Denno
5 hearing. The question is whether, what impact, if
6 any, that has on your ability to present a complete
7 defense.

8 MR. MCKENZIE: Exactly.

9 THE COURT: Or strategy wise.

10 MR. MCKENZIE: I don't know how to proceed
11 without a Jackson Denno hearing first.

12 THE COURT: You're saying you want to know
13 whether or not a confession is going to come in
14 before you make your opening statement.

15 MR. MCKENZIE: Exactly, Your Honor.

16 THE COURT: How about that, Ms. Barr?

17 MS. BARR: Well, Judge, and certainly I
18 would want to as well, but at this point the officer
19 who took the statement is supposed to start surgery
20 at 11:00 and I would have no way of knowing that at
21 this point. And I think that when we have issues
22 regarding whether or not certain evidence comes in,
23 Your Honor and other judges have just instructed the
24 lawyers to tread lightly in opening statement and so
25 that's what I would certainly would do.

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Supplemental Record on Appeal complies to the best of my ability with 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,

s/Susan B. Hackett

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This 15th day of October, 2020.