No. 153A03 District 3-A

SUPREME COURT OF NORTH CAROLINA

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STATE OF NORTH CAROLINA	)	
	)	From the Court of Appeals
vs.	)	No. COA02-571
	)	From Pitt County
	)	No. 01 CRS 54675-6
MARCUS LAMONT CARMON	)	
	)	

****

BRIEF OF AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, INC.

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

QUESTION PRESENTED..... iii

STATEMENT OF THE CASE..... 2

STATEMENT OF FACTS..... 2

ARGUMENT..... 3

I. Officer Holland's Threat to Mr. Carmon's Girlfriend In Itself Rendered His Confession Involuntary..... 3

II. The Totality of the Circumstances Also Demonstrates that Mr. Carmon's Confession was Involuntary..... 6

III. The Unconstitutional Tactics Used by the Police to Obtain Mr. Carmon's Confession Require the Confession to be Suppressed..... 9

CONCLUSION..... 11

CERTIFICATE OF SERVICE..... 12

TABLE OF AUTHORITIES

Cases

Commonwealth of Pennsylvania v. Spotts, 341 Pa. Super. 31, 491 A.2d 132 (1985) 5, 8
Ferguson v. Boyd, 566 F.2d 873 (4th Cir. 1977)..... 5
In re Shawn D., 20 Cal. App. 4th 200, 24 Cal. Rptr. 2d 395 (1993) 5, 8
Lynumn v. Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963) ..... passim
People v. Trout, 54 Cal. 2d 576, 354 P. 2d 231 (1960)..... 5, 8
Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961) 5, 8
State v. Fox, 274 N.C. 277, 163 S.E.2d 492 (1968)..... 8
State v. Fuqua, 269 N.C. 223, 152 S.E.2d 68 (1967)..... 4, 10
State v. Hardy, 339 N.C. 207, 451 S.E.2d 600 (1994)..... 6
State v. Livingston, 202 N.C. 809, 164 S.E. 337 (1932)..... 4
State v. Morris, 92 N.C. 600, 422 S.E.2d 578(1992)..... 10
State v. Pruitt, 286 N.C. 442 (1975)..... 4
State v. Roberts, 12 N.C. 259 (1827)..... 3
State v. Woodruff, 259 N.C. 333, 130 S.E. 2d 641 (1963). 4, 8, 9, 10
Tipton v. Commonwealth of Virginia, 224 Va. 256, 295 S.E.2d 880 (1982) 5

Statutes

N.C. Gen. Stat. §15A-1443..... 10

Other Authorities

N.C. CONST., art. I, §23..... 1
U.S. CONST., amend. XIV..... 1

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AMICUS CURIAE BRIEF

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QUESTION PRESENTED

I. WHETHER THE COURT OF APPEALS ERRONEOUSLY HELD THAT MR. CARMON'S STATEMENT WAS VOLUNTARY AND ADMISSIBLE WHEN THE POLICE OFFICER INTERROGATING HIM THREATENED TO CHARGE HIS GIRLFRIEND WITH A FELONY IF HE DID NOT COOPERATE WITH THEM.

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BRIEF OF AMICUS CURIAE THE AMERICAN CIVIL LIBERTIES UNION OF NORTH CAROLINA LEGAL FOUNDATION, INC.

****

While Officer Holland had Marcus Carmon in custody, he told Mr. Carmon that his girlfriend, who was pregnant with Mr. Carmon's child, and suffered from cerebral palsy, could be arrested but that he could prevent her arrest by cooperating. Once the threat was made, Mr. Carmon gave a statement implicating himself and exonerating his girlfriend.

Contrary to the Court of Appeals' holding, the threat to Mr. Carmon's girlfriend violated Mr. Carmon's constitutional right to due process under the Fourteenth Amendment to the United States Constitution and Article I, §23 of the North Carolina Constitution and rendered his statement involuntary. In determining that the statement was voluntary, the Court of Appeals' majority ignored well-established United States and North Carolina Supreme Court precedent. Therefore, this Court

should reverse the opinion of the Court of Appeals and adopt the Court of Appeals' dissenting opinion.

STATEMENT OF THE CASE

Amicus adopts the statement of the case as set forth in the defendant appellant's brief.

STATEMENT OF FACTS

On April 6, 2002, Anice Daughtry went to the Food Lion with her boyfriend, Marcus Carmon, the defendant, to buy beer and wine for him. Tp. 92. Mr. Carmon waited outside while Ms. Daughtry went into the store; when she finished shopping, the two got into the car and drove off. Tp. 64. As they were leaving the parking lot, the police pulled over her car, searched Mr. Carmon, and found cocaine in his possession. Tp. 64-67. They took Mr. Carmon to the police station where he remained in police custody until released some time later. Tp. 73. Mr. Carmon was not free to leave while he was being questioned. Tp. 80.

The police officers had no reason to believe Anice Daughtry had any knowledge of any illegal activity. Tp. 78. In fact, Officer Holland testified that when the police stopped the car, Ms. Daughtry "acted like she had no idea what we were talking about" and told them they could go ahead and search the vehicle. Tp. 66. Despite the lack of any evidence inculpating Ms. Daughtry, Officer Holland told Mr. Carmon that his girlfriend

could be charged with the crime of "maintaining a vehicle" and that Ms. Daughtry's car would be seized. Tp. 78. Officer Holland testified that he told Mr. Carmon that "it was through his cooperation, in general, that his - he could admonish [sic][1] his girlfriend of any wrongdoing." Tp. 78.

Mr. Carmon believed Officer Holland's threat that, unless he confessed, that Mr. Carmon's girlfriend, who was the mother of his children, Tp. 92, and suffered from cerebral palsy, Tp. 80, would be charged with a felony criminal offense. In Mr. Carmon's twelve line written statement, the last four lines read: "I got my girlfriend to go in the store and get some beer. She didn't know anything about it. She thought that they stopped us because of her taillight." Rp. 13.

Amicus adopts the remainder of the facts as set forth in the defendant-appellant's brief.

ARGUMENT

I. Officer Holland's Threat to Mr. Carmon's Girlfriend In Itself Rendered His Confession Involuntary.

Since 1827, this Court has held that "a confession obtained by the slightest emotions of hope or fear" is involuntary and therefore inadmissible. State v. Roberts, 12 N.C. 259, 260 (1827). "Any statement wrung from the mind by the flattery of hope, or by the torture of fear, comes in such questionable

[1] It appears that Officer Holland meant to say "absolve" or "exonerate."

shape as to merit no consideration." State v. Woodruff, 259 N.C. 333, 337, 130 S.E. 2d 641, 644 (1963)(confession involuntary when defendant granted favors in exchange for confession).

Following this rationale, this Court has consistently excluded confessions where the defendant was promised leniency if he confessed or threatened with harsher punishment if he did not. See State v. Pruitt, 286 N.C. 442 (1975) (officers' statements that it would be harder on defendant if he did not cooperate and that they knew he was lying could be inferred to have provoked fright; new trial ordered); State v. Fuqua, 269 N.C. 223, 228, 152 S.E.2d 68, 72 (1967) (statement involuntary where officer promised defendant he would testify defendant had been cooperative); State v. Livingston, 202 N.C. 809, 164 S.E. 337 (1932) (confession involuntary when sheriff told defendants, "it would be lighter on them" if they confessed and "it looks like you had about as well tell it.")

A threat or promise regarding a defendant's family member, if it induces the defendant to make a confession, also renders a confession involuntary. In Lynumn v. Illinois, 372 U.S. 528, 83 S.Ct. 917, 9 L.Ed.2d 922 (1963), police officers came to the defendant's home and talked to her about cooperating with them. The officers told the defendant that if they took her down to the station and charged her, that she would probably lose

custody of her children, but that if she cooperated, they would recommend leniency for her. Id. at 532-33, 83 S.Ct. at 919-20. The court held, "we think it clear that a confession made under such circumstances must be deemed not voluntary, but coerced." Id. at 534, 83 S.Ct. at 920.

Similarly, in Rogers v. Richmond, 365 U.S. 534, 81 S.Ct. 735, 5 L.Ed.2d 760 (1961) the Supreme Court found the defendant's confession was not voluntary where the defendant confessed after the arresting officer told the defendant he was about to take the defendant's wife into custody. See also People v. Trout, 54 Cal. 2d 576, 354 P. 2d 231 (1960) (wife).

The Fourth Circuit has held that a threat to a girlfriend can be just as coercive as a threat to a spouse. Ferguson v. Boyd, 566 F.2d 873 (4th Cir. 1977) (confession involuntary where induced by promise that defendant's girlfriend would be released); Tipton v. Commonwealth of Virginia, 224 Va. 256, 295 S.E.2d 880 (1982) (officer promised to "keep defendant's girlfriend out of it" if he confessed); Commonwealth of Pennsylvania v. Spotts, 341 Pa. Super. 31, 491 A.2d 132 (1985) (threat to charge defendant's girlfriend); In re Shawn D., 20 Cal. App. 4th 200, 24 Cal. Rptr. 2d 395 (1993) (girlfriend). Holland's threat to Mr. Carmon's girlfriend undoubtedly raised in Mr. Carmon a fear that his girlfriend would be charged with a felony offense. The fact that he exonerated her in his

statement demonstrated that the threat was a concern to him. Based on those circumstances alone, the statement should be excluded.

II. The Totality of the Circumstances Also Demonstrates that Mr. Carmon's Confession was Involuntary.

The test in North Carolina for whether a confession is voluntary is the same as the federal test - if the totality of the circumstances shows that the confession is "the free and unconstrained choice by its maker" then the confession can be used against him. State v. Hardy, 339 N.C. 207, 222, 451 S.E.2d 600, 608 (1994). It is a violation of due process to use a confession, however, where the defendant's "will has been overborne and his capacity for self-determination critically impaired. . ." Id. See also Lynumn, 372 U.S. at 534-35, 83 S.Ct. at 921 (totality of circumstances showed confession involuntary where policy threatened defendant that she would lose custody of her children.) The Court of Appeals failed to even mention, let alone apply, this test.

Officer Holland's threats alone violated the "slightest hope or fear standard" articulated by this Court in earlier cases. An examination of the totality of the circumstances makes the case for suppressing the confession even more compelling. Tp. 78.

Ms. Daughtry is the mother of Mr. Carmon's children, she was pregnant and suffered from cerebral palsy, and Officer Holland was threatening to charge her with a felony offense for which she could have been handcuffed and taken into custody, like Mr. Carmon was, and possibly sentenced to jail time. Had Mr. Carmon not cooperated, the police would have confiscated Ms. Daughtry's vehicle, and therefore her ability to support herself and Mr. Carmon's children. Mr. Carmon's decision not to cooperate was likely to affect Ms. Daughtry's health, freedom and livelihood.

Officer Holland's threat to charge Mr. Carmon's girlfriend was not just a stray remark, but "the topic of discussion throughout the whole process." Mr. Carmon may have confessed because he wanted to cooperate, but he wanted to cooperate, as Officer Holland said, to take the heat off of his pregnant girlfriend. Tp. 78.

The Court of Appeals cited no cases, and amicus has found none, supporting the rationale that the confession was voluntary simply because the officer made a suggested threat to the defendant instead of a firm threat. "Where a person in authority offers some suggestion of hope or fear, to one suspected of crime and thereby induces a statement in the nature of a confession, the decisions are at one in adjudging such statement

to be involuntary in law, and hence incompetent as evidence." Woodruff, 259 N.C. at 337, 130 S.E.2d at 644 (emphasis added).

In State v. Fox, 274 N.C. 277, 292, 163 S.E.2d 492, 503 (1968), the officer told the defendant that he might be charged with the lesser charge of being an accessory if he confessed. The court held this "suggestion of hope" rendered the confession involuntary. Id. at 293. See also Rogers, 365 U.S. at 537; 81 S.Ct. at 737 (confession involuntary even though officer denied that he had framed his remarks about bringing the defendant's wife in for questioning as a threat); Spotts, 341 Pa. Super. at 33, 491 A.2d at 133 (1985) (confession involuntary where officer told defendant that defendant's girlfriend, who delivered hacksaw blades to him in prison, "might be prosecuted."); In re Shawn D., 20 Cal. App. 4th at 204, 24 Cal. Rptr. 2d at 397 (1993) (confession involuntary where officer said he "did not want to see defendant's girlfriend get in trouble" and that "defendant was putting his girlfriend in a precarious situation."); Trout, 54 Cal. 2d at 583-84, 354 P. 2d at 235 (1960) (confession involuntary where officer's statements "could have been understood as suggesting that defendant's wife would be released from custody upon his confession.")

Neither is there any support for the Court of Appeals' rationale that the confession was voluntary because Mr. Carmon initiated the idea of cooperating to save his girlfriend.

First, as Judge Timmons-Goodson noted in her dissent, the trial court's finding that Mr. Carmon initiated the conversation about his girlfriend, Rp. 14, directly contradicted Officer Holland's testimony that he was the one who mentioned the possibility of Mr. Carmon's girlfriend being charged. Tp. 77. If Mr. Carmon then offered to confess in exchange for his girlfriend's absolution, he could only have done so in response to the threat – Mr. Carmon, like the officers, had no reason to think Ms. Daughtry could be charged with a crime based on what had occurred. Tp. 66.

Additionally, it does not matter who initiated the discussion if promises or threats were made in exchange for the confession. In Woodruff, the defendant offered to provide information about some murder cases in exchange for help with a forgery case and to have his cousin moved to a different prison. 259 N.C. at 333; 130 S.E.2d at 641. Even though the defendant initiated the bargaining, this Court held that the confession must be excluded because, due to the promises, it could not "be considered free and voluntary . . ." Id. at 338, 130 S.E.2d at 645.

III. The Unconstitutional Tactics Used by the Police to Obtain Mr. Carmon's Confession Require the Confession to be Suppressed.

It is well established that whether conduct on the part of investigating officers amounts to a threat or promise which

renders a subsequent confession involuntary and incompetent is a question of law, and the decision of the trial judge is reviewable upon appeal. Fuqua, 269 N.C. at 227, 152 S.E.2d at 71; Woodruff, 259 N.C. at 337; 130 S.E.2d at 644 ("what facts amount to . . . threats or promises as make confessions not voluntary and admissible in evidence is a question of law, and the decision of the judge in the court below can be reviewed by this Court.").

Moreover, the admission of an involuntary confession is presumed to prejudice the defendant unless the state proves beyond a reasonable doubt that the error was harmless – a difficult task. State v. Morris, 92 N.C. 600, 611, 422 S.E.2d 578, 584-85 (1992); N.C. Gen. Stat. §15A-1443. "Even though there may have been sufficient evidence, apart from the coerced confession, to support a judgment of conviction, the admission in evidence, over objection, of the coerced confession vitiates the judgment because it violates the Due Process Clause of the Fourteenth Amendment." Lynumn, 372 U.S. at 537, 83 S.Ct. at 922.

Involuntary confessions are inadmissible, not because they are unlikely to be true but because "the methods used to extract them offend an underlying principle in the enforcement of our criminal law." Id. at 540-41, 83 S.Ct. at 739. The state must prove guilt "by evidence independently and freely secured and

not by coercion prove its charge against and accused out of his own mouth." Id.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals and adopt the Court of Appeals' dissenting opinion.

Dated: May 19, 2003.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document on counsel by mailing one copy of the same, by first-class mail, postage prepaid, addressed as follows:

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