

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jan 13 2023

S.C. SUPREME COURT

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Certiorari to Lexington County

Honorable R. Lawton McIntosh, Circuit Court Judge
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LANCE LEON MILES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000821
—————

JOHNSON PETITION FOR WRIT OF CERTIORARI
—————

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ISSUE PRESENTED

Did the post-conviction relief (PCR) court err by finding trial counsel was not ineffective when counsel failed to object to the admission of Petitioner's statements to law enforcement pursuant to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), where the statements were the result of a two phase interrogation of Petitioner who was in custody and was not advised of his Miranda rights until after he made incriminating statements, and when Petitioner was prejudiced by counsel's deficient performance because if counsel had properly objected, the trial judge would have excluded the statements and the outcome of Petitioner's trial would have been different, or if the trial judge erroneously admitted the statements, Petitioner would have prevailed on appeal?

STATEMENT OF THE CASE

On the morning of September 13, 2013, Agent Doug Edmonson of the Lexington County Sheriff's Department was conducting "parcel interdiction" at a FedEx "ramp" at the Columbia Metropolitan Airport in West Columbia. App. 102, l. 14 – 103, l. 25. Edmonson was observing packages that arrived by plane as they came by on a conveyor belt. App. 106, l. 15 – 107, l. 9. Edmonson observed a package that morning he claimed had "indicators of maybe containing some type of illegal narcotic." App. 29, ll. 12-19.

According to Edmonson the package was suspicious because: (1) it was "excessively" taped, (2) it was being sent overnight from California, (3) the sender paid in cash, and (4) the sender waived the signature requirement for the recipient. App. 65, ll. 4-23; App. 108, l. 7 – 109, l. 10. Edmonson took a photograph of the package's label and released it for delivery. He then ran the name of the recipient through a law enforcement database. The name did not match the delivery address. App. 71, l. 15 – 72, l. 11.

Based on this information, Edmonson decided to conduct surveillance of the delivery address. Edmonson enlisted the help of Officer Marc Miramontes of the Town of Lexington Police Department and Lexington County Deputy Travis Bass. App. 109, ll. 6-18; App. 111, l. 8 – 112, l. 3. Miramontes, sitting in an undercover vehicle, observed the package being delivered and witnessed a black female, who was talking on a cell phone, step out of the apartment where the package was delivered. App. 112, ll. 4-23. The unknown female looked at the package briefly then went back inside the apartment. Shortly thereafter, Miramontes saw Petitioner walk up to the apartment and pick up the package. App. 112, ll. 23-25. Petitioner then began to walk back in the direction from which he came. App. 112, ll. 23-25. Edmonson and Bass, who were stationed nearby, drove into the parking lot and converged on Petitioner. App. 113, ll. 1-16.

Once Petitioner allegedly recognized the men as law enforcement, he dropped the package. App. 115, ll. 1-6. The officers ordered Petitioner to the ground. Bass had his gun drawn. When Petitioner did not immediately comply, Bass forced him to the ground and Edmonson handcuffed him. App. 142, ll. 12-23; App. 115, ll. 14-15. Edmonson immediately began interrogating Petitioner. He repeatedly asked Petitioner what was in the box. Petitioner said he did not know. Edmonson told Petitioner he thought there were illegal drugs in the box. Petitioner eventually acknowledged that the box may contain drugs. App. 31, ll. 1-23; App. 116, ll. 4-8; App. 141, ll. 19-23.

Edmonson admitted he only advised Petitioner of his Miranda rights “after he [Petitioner] told me that it [the box] might have drugs in it.” App. 31, ll. 15-23. After finally advising Petitioner of his rights, Edmonson again asked Petitioner what was in the package. App. 31, l. 21 – 32, l. 1. Petitioner repeated that he believed the package probably contained drugs. App. 32, ll. 14-18. Significantly, Petitioner did not know what kind of drugs were in the package. App. 32, ll. 14-18. There was no evidence that Edmonson explained to Petitioner that his statements given before he was advised of his Miranda rights were very likely inadmissible before a court of law.

According to Edmonson, Petitioner then gave permission for police to open the package. However, “just to go the extra mile,” Edmonson requested a K-9 unit respond to the scene to check the package. App. 116, ll. 9-19. A trained narcotics dog conducted a “free air” sniff around the package and “alerted to the box.” App. 244, l. 2 – 245, l. 21.

Rather than open the package then, Edmonson called Deputy Dennis Tracy who completed a search warrant and presented it to a magistrate. App. 117, l. 22 – 118, l. 9. Once a search warrant had been “authorized,” Edmonson finally opened the package. App. 118, ll. 7-21. Inside the package was “a party bag,” a shirt, a stuffed animal, and a wax candle. App. 119, l. 22 – 120, l. 16;

App. 152, l. 8 – 153, l. 10. Police cut open the wax candle and discovered three hundred tablets of oxycodone, with a total weight amounting to nine grams. App. 270, l. 11 – 273, l. 12.

After discovering the pills, Edmonson asked Petitioner “to be more detailed about what was going on.” App. 122, ll. 23-24. He instructed Petitioner to provide a written statement “detailing his side of these events.” App. 122, l. 22 – 123, l. 14. Before giving the written statement, Petitioner was again (belatedly) advised of his Miranda rights. After Petitioner completed his statement, Edmonson wrote out two questions at the end of the form. The first concerned whether Petitioner knew drugs were in the box to which Petitioner responded, “Yes.” App. 128, ll. 8-13; App. 131, ll. 6-8. In his statement, Petitioner said he was supposed to get paid one hundred dollars to pick up the box and give it to its owner. While he admitted he believed there were drugs inside the box, he did not know what kind of drugs they were. App. 128, l. 21 – 129, l. 13.

Petitioner moved pretrial to suppress the oral and written statements he made to police at the time of his arrest. During the Jackson v. Denno, 378 U.S. 368 (1964) hearing, Edmonson, Miramontes, and Bass all testified. App. 28, l. 7 – 61, l. 20. Edmonson conceded that he first interrogated Petitioner without advising Petitioner of his Miranda rights even though Petitioner was in custody. App. 39, l. 25 – 42, l. 19. Edmonson testified that he only “Mirandized” Petitioner after Petitioner stated, in response to Edmonson’s questioning, that he believed the package “probably” contained drugs. App. 42, ll. 13-17. After he advised Petitioner of his rights, Edmonson continued the same line of questioning. Petitioner again maintained that drugs were likely in the box but he did not know what kind. After discovering the pills, Petitioner provided a written statement consistent with his earlier oral statements. Before giving this statement, Edmonson advised Petitioner of his Miranda rights a second time. App. 33, l. 12 – 34, l. 8.

At the conclusion of the hearing, trial counsel moved to suppress all of Petitioner's statements on the basis that they were not freely and voluntarily given. App. 61, ll. 6-17. However, counsel did not argue the statements were inadmissible pursuant to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). The state conceded that the oral statements Petitioner made while in custody before being advised of his Miranda rights were inadmissible. App. 62, ll. 4-19. However, the state argued that the written statement, which was substantially similar to Petitioner's pre-Miranda statements, was freely and voluntarily given and should be admitted. App. 62, ll. 4-19.

The trial court ruled that the written statement was "entered into freely and voluntarily without coercion" and that Petitioner had been adequately advised of his rights. App. 63, ll. 16-23.

A Lexington County Grand Jury indicted Petitioner on March 10, 2014 for trafficking in illegal drugs. App. 665-666. His case was called to trial on February 11, 2015 before the Honorable Thomas A. Russo, and a jury. App. 1. Assistant Solicitors Micah Caskey and Casey Rankin represented the state. App. 1. Robert Theo Williams represented Petitioner. App. 1.

On February 12, 2015, the jury found Petitioner guilty as indicted. App. 356, ll. 9-18. He was sentenced to the mandatory minimum term of twenty-five years' imprisonment and a one hundred thousand dollar fine. App. 363, ll. 1-8.

The Court of Appeals affirmed Petitioner's conviction and sentence. State v. Miles, 421 S.C. 154, 805 S.E.2d 204 (Ct. App. 2017); App. 468-477. Petitioner argued on appeal that the trial judge erred by admitting Petitioner's statements to law enforcement made after Petitioner was advised of his Miranda rights because the statements were tainted by Petitioner's prior, unwarned interrogation conducted while Petitioner was in custody. App. 370. The Court of Appeals held the issue of whether the admission of Petitioner's third, written statement violated Missouri v. Seibert,

542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010) was unpreserved as Petitioner did not raise these cases or the “question first” principle to the trial court. Miles, 421 S.C. at 166, 805 S.E.2d at 211. This Court denied Petitioner’s petition for writ of certiorari by order filed October 18, 2018. App. 545.

On January 11, 2019, Petitioner filed an application for post-conviction relief (PCR). App. 546-562. The state filed a return to this application dated May 29, 2019. App. 563-570. With the assistance of counsel, Petitioner filed an amended application on December 10, 2021 raising the claim argued in this petition. App. 571-572. An evidentiary hearing was convened on December 15, 2021 before the Honorable R. Lawton McIntosh. App. 573. Senior Assistant Attorney General Megan Jameson represented the state. App. 573. Ashley McMahan represented Petitioner. App. 573.

By order filed June 6, 2022, the PCR judge denied Petitioner relief. App. 648-664. The judge found trial counsel “did indeed challenge the admission of [Petitioner’s] statements and was able to successful keep out [Petitioner’s] initial, pre-Miranda statement based on a concession from the State.” App. 660. As to the remaining statements, the PCR judge emphasized that the trial judge found they were “given knowingly, freely, and voluntarily” following the advisement of Miranda warnings. App. 660. Consequently, the PCR judge found this allegation was without merit. App. 660.

Because Petitioner’s Sixth and Fourteenth Amendment rights to the effective assistance of counsel were violated by trial counsel’s failure to challenge the admission of Petitioner’s statements to law enforcement pursuant to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), where the statements were the result of a two phase

interrogation of Petitioner who was in custody and was not advised of his Miranda rights until after he made incriminating statements, this petition for writ of certiorari follows.

ARGUMENT

The post-conviction relief (PCR) court erred by finding trial counsel was not ineffective when counsel failed to object to the admission of Petitioner's statements to law enforcement pursuant to *Missouri v. Seibert*, 542 U.S. 600 (2004) and *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010), where the statements were the result of a two phase interrogation of Petitioner who was in custody and was not advised of his *Miranda* rights until after he made incriminating statements, and when Petitioner was prejudiced by counsel's deficient performance because if counsel had properly objected, the trial judge would have excluded the statements and the outcome of Petitioner's trial would have been different, or if the trial judge erroneously admitted the statements, Petitioner would have prevailed on appeal.

Trial counsel was ineffective for failing to challenge the admission of Petitioner's second and third statements to law enforcement pursuant to *Missouri v. Seibert*, 542 U.S. 600 (2004) and *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010), since the statements were the result of a two phase interrogation of Petitioner who was in custody and was not advised of his *Miranda* rights until after he made incriminating statements. Petitioner was prejudiced by counsel's deficient performance because if counsel had moved to suppress the statements on these grounds, there is a reasonable probability the trial judge would have excluded the statements and the outcome of Petitioner's trial would have been different as his statements were the only evidence Petitioner knew the package contained illegal drugs, or if the trial judge erroneously admitted the statements, Petitioner would have prevailed on appeal.

In order to show ineffective assistance of counsel as a ground for relief, Petitioner must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland v. Washington*, 466 U.S.

668, 686 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Strickland, 466 U.S. at 687-688.

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. Petitioner must prove “that counsel’s performance was deficient” and fell below reasonable professional norms, and there is a reasonable probability that, but for counsel’s unprofessional errors, the result would have been different. Cherry v. State, 300 S.C. 115, 117-118, 386 S.E.2d 624, 625 (1989) (citing Strickland, 466 U.S. at 688). “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 668).

This “Court has previously held that an issue that was raised on direct appeal but found to be unpreserved may be raised in the context of a PCR claim alleging ineffective assistance of counsel.” McHam v. State, 404 S.C. 465, 475, 746 S.E.2d 41, 47 (2013) (citing McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003) and Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999)). In this case, trial counsel was ineffective for failing to object to the admissibility of Petitioner’s statements pursuant to Missouri v. Seibert, 542 U.S. 600 (2004) and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010), thereby failing to preserve the argument for appellate review. See S.C. Dept. of Transport. v. First Carolina Corp. of S.C., 372 S.C. 295, 641 S.E.2d 903, 907 (2007) (holding that in order to preserve an issue at trial for appellate review, the issue must be raised to and ruled upon by the trial court, raised by the appellant, raised in a timely manner, and raised to the trial court with sufficient specificity).

“Since the issue was not considered on direct appeal because it was unpreserved, an examination of the merits of the issue is appropriate in analyzing the prejudice prong.” McHam,

404 S.C. at 475, 746 S.E.2d at 47; See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) (“When the defendant claims that counsel’s failure to articulate a Fourth Amendment claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”).

In Missouri v. Seibert, 542 U.S. 600 (2004), the United States Supreme Court held that Miranda warnings given mid-interrogation, after the defendant gave an unwarned confession, were ineffective, and thus the confession repeated after warnings were given was inadmissible at trial. The Court also held that, pursuant to Miranda, admissibility at trial of any custodial confession is conditioned on warning a suspect of his rights and failure to give prescribed warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained.

The Court called this practice “question-first” and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-613. The Court exclaimed:

By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content. After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset; the sensible underlying assumption is that with one confession in hand before the warnings, the interrogator can count on getting its duplicate, with trifling additional trouble. Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again.

Id. at 613.

The police in Seibert were surprisingly honest and admitted they were deliberately using the two phase “question first” strategy. Id. at 605-606. While law enforcement made no such

admission in this case, Seibert recognized that such admissions are unnecessary: “Because the intent of the officer will rarely be as candidly admitted as it was here . . . the focus is on facts apart from intent that show the question-first tactic at work.” Id. at 617 n.6; See State v. Navy, 386 S.C. 294, 304, 688 S.E.2d 838, 842 (2010) (stating “the Seibert Court acknowledged that it was unlikely that law enforcement would admit it was using the ‘question first’ technique, and thus evidence that officers were following this protocol was not necessary in order for a Miranda violation to be found.”).

This Court’s opinion in State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010) also concerns a Seibert two phase interrogation. Navy was convicted of suffocating his two year old son. Id. at 296, 688 S.E.2d at 838. EMS responded to Navy’s house and found him performing CPR on the child. Id. at 297, 688 S.E.2d at 838. Navy gave an unsatisfactory statement to the police at the hospital that night. Id. The police subsequently met with the pathologist who told them the child died from suffocation. Id. With this knowledge in hand, the police took Navy from his house to the police station. Id. He was not formally under arrest. He gave a statement that was not incriminating. Id. at 298, 688 S.E.2d at 839. Questioning continued and police confronted Navy with information from the autopsy. Id. at 298, 688 S.E.2d at 839-840. Our Supreme Court found that “[a]t this juncture, the nature of the interrogation and [Navy’s] status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation.” Id. Without giving Miranda warnings, the police ultimately obtained a confession from Navy which they memorialized after having him sign a Miranda waiver. The Court ruled these statements violated Seibert and were inadmissible. Id. at 301-304, 688 S.E.2d at 841-843.

The interrogation of Petitioner presents a similar factual scenario as in Seibert and Navy. Edmonson interrogated Petitioner for an extended period of time prior to advising him of his rights.

Petitioner was indisputably in custody as he had been forced to the ground and handcuffed. Edmonson even conceded at trial that Petitioner was not free to leave at the time he began questioning Petitioner. App. 41, l. 20 – 42, l. 9. At the onset of the interrogation, Petitioner initially denied knowing the contents of the package. App. 141, ll. 19-23; App. 143, l. 23 – 144, l. 2. Unsatisfied with this answer, Agent Edmonson continued to probe Petitioner, telling him that he believed there were drugs in the package. App. 40, l. 25 – 42, l. 17. Petitioner eventually conceded that there were very likely drugs in the package. App. 42, ll. 10-17. Only then did Edmonson advise Petitioner of his Miranda rights. App. 42, ll. 10-17. Immediately after advising Petitioner of his rights, Edmonson continued to ask him the same questions and received the same answers. Significantly, there was no break whatsoever between the unwarned statements and the warned statements. Consequently, Petitioner’s oral statements and subsequent written statement were inadmissible pursuant to Seibert and Navy.

Accordingly, trial counsel was deficient for failing to object to the admission of Petitioner’s statements pursuant to Seibert and Navy as the statements should have been suppressed based on these cases. Petitioner has shown that he was prejudiced by counsel’s deficient performance because if counsel had raised these grounds at trial, there is a reasonable probability the trial judge would have suppressed the statements and the outcome of Petitioner’s trial would have been different as there was no other evidence that Petitioner knew the package contained illegal drugs. In the alternative, if counsel had properly raised these grounds at trial thereby preserving the issue for appellate review, even if the trial judge erroneously found the statements were admissible, there is a reasonable probability the appellate court would have held the statements should have been suppressed pursuant to Seibert and Navy and reversed Petitioner’s conviction on appeal.

Respectfully, this Court should grant certiorari, hold trial counsel was ineffective for failing to object to the admissibility of Petitioner's statements pursuant to Seibert and Navy, and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Petitioner respectfully requests this Court grant the petition for writ of certiorari and order further briefing. Petitioner ultimately requests this Court reverse his conviction and sentence and remand for a new trial.

Respectfully submitted,

s/ Lara M. Caudy
Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2023.

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Lexington County

Honorable R. Lawton McIntosh, Circuit Court Judge

LANCE LEON MILES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Lance Leon Miles states:

1. She is an appellate defender for the South Carolina Office of Appellate Defense, and was appointed to represent Petitioner.
2. She has reviewed the record of Petitioner’s post-conviction relief hearing, which was held on December 15, 2021 before the Honorable R. Lawton McIntosh, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Johnson v. State, 294 S.C. 310, 364 S.E.2d 201 (1988), briefed an arguable legal issue which arose during the post-conviction relief process.

Therefore, counsel requests that the Court relieve her as counsel for Lance Leon Miles.

Respectfully Submitted,

s/ Lara M. Caudy_____

Lara M. Caudy
Appellate Defender

ATTORNEY FOR PETITIONER

This 13th day of January, 2023.

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CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of her ability this Johnson Petition for Writ of Certiorari 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.”

s/ Lara M. Caudy

Lara M. Caudy
Appellate Defender

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ATTORNEY FOR PETITIONER

This 13th day of January, 2023.