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Oct 11 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from York County

Honorable H. Steven DeBerry IV, Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

HENRY WAYNE PARKER,

APPELLANT

APPELLATE CASE NO. 2023-000032

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ANDERS BRIEF OF APPELLANT

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SARAH E. SHIPE  
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ATTORNEY FOR APPELLANT

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ..... ii

STATEMENT OF ISSUE ON APPEAL..... 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW ..... 3

ARGUMENT

The trial court abused its discretion admitting appellant’s involuntary confession where appellant clearly stated he did not wish to speak to police and where the officer improperly continued the conversation after appellant asserted his right to remain silent. ..... 4

CONCLUSION..... 8

PETITION TO BE RELIEVED AS COUNSEL ..... 9

**TABLE OF AUTHORITIES**

**Cases**

*Jackson v. Denno*, 378 U.S. 368 (1964) ..... 4, 6

*Lego v. Twomey*, 404 U.S. 477, 92 S.Ct. 619, 30 L.Ed.2d 618 (1972)..... 6

*Miranda v. Arizona*, 384 U.S. 436 (1966) ..... 4

*State v. Arrowood*, 375 S.C. 359, 652 S.E.2d 438 (2007) ..... 6

*State v. Asbury*, 328 S.C. 187, 493 S.E.2d 349 (1997) ..... 3

*State v. Miller*, 375 S.C. 380, 652 S.E.2d 448 (2007)..... 6

*State v. Myers*, 359 S.C. 40, 596 S.E.2d 488 (2004)..... 3

*State v. Neeley*, 271 S.C. 33, 244 S.E.2d 522 (1978)..... 6

*State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007)..... 6, 7

*State v. Reed*, 332 S.C. 35, 503 S.E.2d 747 (1998)..... 3

*State v. Rochester*, 301 S.C. 196, 391 S.E.2d 244 (1990)..... 3

*State v. Smith*, 268 S.C. 349, 234 S.E.2d 19 (1977) ..... 6

*State v. Washington*, 296 S.C. 54, 370 S.E.2d 611 (1988) ..... 6

**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court abused its discretion admitting appellant's involuntary confession where appellant clearly stated he did not wish to speak to police and where the officer improperly continued the conversation after appellant asserted his right to remain silent?

## STATEMENT OF THE CASE

On June 9, 2022, a York County grand jury indicted appellant for trafficking methamphetamine. R. 202. January 3, 2023, appellant's case was called to trial before the Honorable Steven DeBerry, IV, and jury. R. 1. Melissa Inizerillo represented appellant and assistant solicitors, Misti Shelton and Landon Finnie, represented the state. R. 1. Appellant was tried in his absence January 4, 2023. R. 3-6.

The jury found appellant guilty of trafficking methamphetamine. R. 189, ll. 16-20. The following day Judge DeBerry sentenced appellant to five years' imprisonment. R. 200, ll. 13-18.

This appeal follows.

## STANDARD OF REVIEW

“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).

## ARGUMENT

The trial court abused its discretion admitting appellant's involuntary confession where appellant clearly stated he did not wish to speak to police and where the officer improperly continued the conversation after appellant asserted his right to remain silent.

### **Relevant facts**

In January 2022, Officer Morgan McClaugherty, stopped appellant because the license plate came back as registered to a different vehicle. R. 106, ll. 8-20. Appellant was driving and he had a female passenger in the vehicle with him. R. 107, ll. 11-12. At trial, Officer McClaugherty testified appellant was acting extremely nervous, and she asked him to step out of the vehicle. R. 107, ll. 5-15. She testified that when she asked him about his license plate he first told her it was not his vehicle but later changed his story. McClaugherty said appellant told her that he did not have a driver's license. R. 107, ll. 5-16. Appellant remained very nervous and McClaugherty stated that it was hard to get him to communicate. R. 107, ll. 23-25. She asked appellant for consent to search his car and he agreed. R. 108, ll. 3-4. A search of the car was conducted, and an amount of methamphetamine was found. R. 108, ll. 12-15.

Prior to the start of trial defense counsel requested a *Jackson v. Denno*<sup>1</sup>, hearing to suppress appellant's statements recorded on Officer James Hawkins' body worn camera at the traffic stop.

Officer James Hawkins responded to the traffic stop to assist Officer McClaugherty with the search of appellant's car. R. 70, l. 17-71, l. 1. After the drugs were found Officer Hawkins detained appellant and read him the *Miranda*<sup>2</sup> warning. R. 71, ll. 9-20. After the warning was

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<sup>1</sup> 378 U.S. 368 (1964).

<sup>2</sup> 384 U.S. 436 (1966).

given Hawkins asked appellant if he would speak with him and appellant clearly stated he did not wish to speak with him. R. 72, ll. 8-19; 78, ll. 16-20. Hawkins asked appellant again if he wanted to speak to him and appellant asked if he were arrested and then began speaking to Hawkins. R. 72, l. 27-73, l. 1; 78, l. 22-79, l. 12. He alleged appellant first denied any knowledge of the drugs found in the car, even when shown them. R. 73, ll. 2-10. During the conversation Hawkins went on to tell appellant the quantity of drugs found would likely result in a “trafficking charge.” R. 73, ll. 11-16. Hawkins admitted that he expressed to appellant that he could potentially “set him up with [the] DEU [drug enforcement unit]” if appellant wanted to help himself out. R. 73, l. 17-74, l. 22; 81, ll. 1-21. He explained to appellant that he might be able to “work[] off” the charge if he cooperated with the DEU. R. 81, ll. 6-21. After this conversation appellant told Hawkins the drugs belonged to him and the female passenger in the car was not responsible. R. 75, ll. 4-19; 83, ll. 4-18.

Defense counsel argued appellant’s admission should be suppressed because appellant clearly stated he did not wish to speak with law enforcement and Officer Hawkins improperly initiated a second conversation with appellant which led to his confession. R. 86, ll. 16-25. Second, counsel argued the conversation regarding working as an informant should be suppressed. R. 87, ll. 3-14.

The court ruled appellant’s confession was admissible where appellant was “properly Mirandized, and [] freely [] voluntarily, knowingly, and intelligently decided to speak to the police.” The court found Officer Hawkins did not reinstate the conversation but that he was just confirming and asking for clarification and appellant decided he wanted to speak to him. R. 90, l. 22-91, l. 5. The court did suppress the later statements where Hawkins and appellant were discussing cooperating with the DEU. R. 91, ll. 6-14.

During trial state's exhibit 2, a portion of Hawkins body worn camera recording was played for the jury.<sup>3</sup> R. 131-132.

## **Discussion**

The trial court abused its discretion by admitting appellant's confession to Officer Hawkins where appellant clearly stated he did not wish to speak to police and where Hawkins improperly initiated a second conversation with appellant.

"A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession." *State v. Pittman*, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing *Jackson v. Denno*, 378 U.S. 368, 377 (1964)), cert. denied, 552 U.S. 1314 (2008). In *State v. Miller*, this court instructed:

The process for determining whether a statement is voluntary, and thus admissible, is bifurcated; it involves determinations by both the judge and the jury. First, the trial judge must conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. *Jackson v. Denno*, 378 U.S. 368, 376 (1964). If the statement is found to have been given voluntarily, it is then submitted to the jury, where its voluntariness must be established beyond a reasonable doubt. *State v. Washington*, 296 S.C. 54, 56, 370 S.E.2d 611, 612 (1988).

*Miller*, 375 S.C. at 380, 652 S.E.2d at 448; *Arrowood*, 375 S.C. at 366, 652 S.E.2d at 442. See also *Lego v. Twomey*, 404 U.S. 477, 489, 92 S.Ct. 619, 30 L.Ed.2d 618 ("[T]he prosecution must prove ... by a preponderance of the evidence that the confession was voluntary."); *State v. Smith*, 268 S.C. 349, 354, 234 S.E.2d 19, 21 (1977) ("It has been uniformly held, a confession may be introduced upon proof of its voluntariness by a preponderance of the evidence."); *State v. Neeley*, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978) ("[T]he burden is on the State to prove by a preponderance of the evidence that [these] rights were voluntarily waived.").

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<sup>3</sup> State's exhibit 2, recording from Hawkins' body worn camera is on file with this Court.

In *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007), this Court instructed:

In determining whether a confession was given “voluntarily,” this Court must consider the totality of the circumstances surrounding the defendant's giving the confession. *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973). As the United States Supreme Court has instructed, *the totality of the circumstances includes “the youth of the accused, his lack of education or his low intelligence, the lack of any advice to the accused of his constitutional rights, the length of detention, the repeated and prolonged nature of the questioning, and the use of physical punishment such as the deprivation of food or sleep.”* *Id.* (internal citations omitted). Furthermore, no one factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances. *Id.*

*Pittman*, 373 S.C. at 566, 647 S.E.2d at 164. (emphasis added).

Appellant was deprived of due process where his conviction was based in part by his involuntary confession made to Officer Hawkins. Hawkins’ improper further conversation with appellant after he stated he did not wish to speak to him was not “just a confirmation” as the trial court found. Appellant was handcuffed and given *Miranda* warnings. Appellant asserted his right to remain silent. Hawkins ignored appellant’s assertion and improperly continued a conversation with appellant which resulted in appellant giving an involuntary confession.

**CONCLUSION**

Based on the foregoing the appellant requests this Court reverse his convictions and remand for a new trial.

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of October, 2023.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Henry Wayne Parker states:

1. She is 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 H. Steven Deberry IV, which was held on Jan. 3-5, 2023, 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 Henry Wayne Parker.

Respectfully Submitted,

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender

ATTORNEY FOR APPELLANT

This 11th day of October, 2023.

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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) Trial Transcript dated January 3, 2023 pages 1-36;
- (3) Trial Transcript dated January 4, 2023 pages 1-162;
- (4) Trial Transcript dated January 5, 2023 pages 1-4;
- (5) State's Exhibit No. 2 (Inv. Hawkins Body Cam Video)

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

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR APPELLANT

This 11th day of October, 2023.

**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.”

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CERTIFICATE OF SERVICE

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Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above-referenced case has been served upon Mark Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and on Henry Wayne Parker, #338747, at Turbeville Correctional Institution, 1578 Clarence Coker Hwy, Turbeville, SC 29162, this 11th day of October, 2023.

s/ Sarah E. Shipe  
Sarah E. Shipe  
Appellate Defender

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