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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Appeal from Greenville County

D. Garrison Hill, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

RESPONDENT,

V.

JARED WILLIAMS,

APPELLANT.

APPELLATE CASE NO. 2013-001042

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ANDERS BRIEF OF APPELLANT PURSUANT TO  
WHITE V. STATE

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ATTORNEY FOR APPELLANT

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial court erred in finding the State presented sufficient evidence that Petitioner spoke knowingly and voluntarily during custodial interrogation ten to fifteen hours after he was Mirandized and jailed for an unrelated offense; where he had just spent the night in jail; and where the interrogating officers came from a different law enforcement office.

## STATEMENT OF THE CASE

On April 13, 2010, the Greenville County grand jury indicted Petitioner Jared Lee Williams on one count of armed robbery and one count of possession of a weapon during the commission of a violent crime. App. 304-305. On September 7, 2010, Petitioner proceeded to trial on the armed robbery charge<sup>1</sup> before the Honorable D. Garrison Hill and a jury. App. 1. L. Mark Moyer represented the State and H. Chase Harbin represented Petitioner. App. 1.

On September 8, 2010, the jury found Petitioner guilty. App. 264, ll. 12-16. The trial judge sentenced Petitioner to thirty years imprisonment. App. 271, ll. 21-23. Petitioner did not appeal.

On August 18, 2011, petitioner filed an application for post-conviction relief alleging ineffective assistance of counsel. App. 273-280. The State filed a return on December 30, 2011. App. 281-284; App. 300. On April 16, 2013, Petitioner proceeded to a hearing before the Honorable G. Edward Welmaker. Rodney Richey represented Petitioner and Karen Ratigan represented the State. App. 286. On May 3, 2013, the PCR court issued an order of dismissal finding Petitioner did not knowingly and voluntarily waive his right to an appeal but ruling Petitioner must petition this Court to obtain relief pursuant to *White v. State*, 236 S.C. 110, 108 S.E.2d 35 (1974). App. 300-303.

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<sup>1</sup> The State did not proceed on the weapon charge. App. 5, ll. 4-9.

## ARGUMENT

**THE STATE FAILED TO ADDUCE A PREPONDERANCE OF THE EVIDENCE THAT PETITIONER KNOWINGLY AND VOLUNTARILY MADE HIS INITIAL STATEMENTS TO INVESTIGATOR JARVIS ON THE MORNING AFTER HE WAS MIRANDIZED.**

## STATEMENT OF FACTS

The State alleged that on September 7, 2009, at around 9 p.m., Petitioner robbed a Greenville County convenience store at gunpoint. App. 82, ln. 6—App. 84, ln. 13. Prior to the trial, the lower court held a Jackson v. Denno<sup>2</sup> hearing to determine the admissibility of certain statements Petitioner made to police. App. 18, ln. 23—App. 72, ln. 13. Police officer Gary Rhinehart testified that after a robbery of a Pantry convenience store on the night of September 7, 2009, police arrested Petitioner at a local bar based on the similarity of his vehicle, a white Hummer, to the one described in reports from the robbery. App. 20, ln. 20—App. 21, ln. 3. Officer Rhinehart read Petitioner *Miranda*<sup>3</sup> warnings and had him fill out a statement form. App. 24, ll. 9-18. Petitioner gave a statement that did not implicate himself in the robbery. App. 27, ln. 6—App. 28, ln. 12. Officer Rhinehart then took Petitioner to jail for an unrelated, minor traffic violation. App. 29, ll. 7-20.

Investigator Mike Fortner with the Greenville County Sheriff's Office then testified that the following morning, he signed Petitioner out of jail for questioning regarding an unrelated case in his office that also involved a white Hummer. App. 31, ll. 2-25. Investigator Fortner asked Petitioner if he was willing to talk, and Petitioner said yes. App. 33, ll. 3-11. He walked Petitioner across a parking lot to the Sheriff's office

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<sup>2</sup> 378 U.S. 368 (1964).

<sup>3</sup> *Miranda v. Arizona*, 84 U.S. 436, 479 (1964).

building, App. 32, on. 21—App. 33, ln. 2, so that another investigator assigned to the case could question him, App. 34, ll. 2-11. During the ensuing questioning, Fortner testified that Petitioner “mentioned that he was, in fact, involved with the robbery involved with the Greenville City case.” App. 35, ll. 19-21. Fortner then testified that he did not ensure that Petitioner was made aware of his *Miranda* rights prior to the statement:

A: I interrupted and notified [the other investigator], since he was not in the office at the time when I first brought [Petitioner] over there, that I had not read him his rights or anything, that we were interviewing him as a witness since he pretty much the night before showed no connection with the robbery, or anything like that. . . .

Q: Now, at this point, were you aware that he had been given his *Miranda* warnings the night before by the city officers?

A: I was not, no, sir.

App. 35, ln. 21—App. 36, l. 9. Investigator Michael Steven Jarvis, the investigator questioning Petitioner, also testified about the interrogation, saying that at one point Petitioner “said that he had been the one who had robbed the Pantry.” App. 41, ll. 15-16. After that statement, Investigator Jarvis said Investigator Fortner interrupted because he had not read Petitioner his *Miranda* rights. App. 42, ll. 2-6. Investigator Jarvis then read Petitioner his rights and continued the interrogation, during which Petitioner again admitted to robbing the Pantry. App. 45, ll. 10-14. Investigator Jarvis then typed a statement as Petitioner stated aloud the circumstances leading up to the robbery before ultimately asking for an attorney. App. 45, ln. 8—App. 48, ln. 23.

Petitioner moved to exclude the second statement on grounds that he was exposed to custodial interrogation with being read his *Miranda* warnings as required by the Fifth

Amendment. App. 51, ln. 2—App. 52, ln. 9. The trial court ruled that the statement was admissible. App. 66, ln. 22—App. 67, ln. 18.

### DISCUSSION

The State failed to adduce a preponderance of the evidence that Petitioner knowingly and voluntarily made his initial statements to Investigator Jarvis on the morning after he was Mirandized. “In *Miranda v. Arizona*, the [United States Supreme Court] determined that the Fifth and Fourteenth Amendments’ prohibition against compelled self-incrimination required that custodial interrogation be preceded by advice to the putative defendant that he has the right to remain silent and also the right to the presence of an attorney.” *Edwards v. Arizona*, 451 U.S. 477, 481-82 (1981) (citing *Miranda v. Arizona*, 84 U.S. 436, 479 (1964)). “In order to introduce into evidence a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with *Miranda v. Arizona*.” *State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010) (citation omitted); *Colorado v. Connelly*, 479 U.S. 157, 168 (1986). The admissibility of a confession is a question of fact to be determined in the light of all of the attendant circumstances. *State v. Smith*, 259 S.C. 496, 192 S.E.2d 870 (1972).

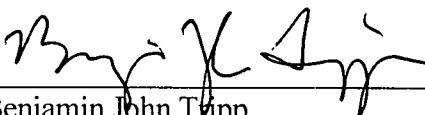
In the *Jackson v. Denno* hearing below, the State only presented testimony concerning Petitioner’s initial statements to Investigator Jarvis from the three law enforcement officers. Officer Rhinehart testified he Mirandized Petitioner on the night of the robbery before taking him into custody on a charge entirely unrelated to the robbery. Investigators Fortner and Jarvis, who work for a different law-enforcement office, testified that they pulled Petitioner from detention the following morning to question him

about a third, unrelated incident. They acknowledged Petitioner was not re-Mirandized. Thus, Petitioner faced custodial interrogation ten to fifteen hours after he was Mirandized and jailed for a different offense; after he spent the night in jail; and where the interrogating officers came from a different law-enforcement office. Considering the totally new interrogation under fresh circumstances so far separated from the initial warnings in time and action, refreshing Petitioner's rights or at least a reminder that his rights were still in effect was necessary to establish that Petitioner was knowingly waiving those rights in speaking to Investigator Jarvis. Because the State failed to adduce any evidence beyond the warnings on the previous night that Petitioner knowingly and intelligently spoke to Investigator Jarvis, the trial court could not have found a preponderance of the evidence supported that finding.

### CONCLUSION

For the foregoing reasons, Petitioner's conviction should be reversed and this case remanded for a new trial.

Respectfully submitted,

  
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Benjamin John Tipp  
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of January 2014.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Appeal from Greenville County  
D. Garrison Hill, Circuit Court Judge

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STATE OF SOUTH CAROLINA,

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APPELLANT

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PETITION TO BE RELIEVED AS COUNSEL

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Counsel for Jared Williams states:

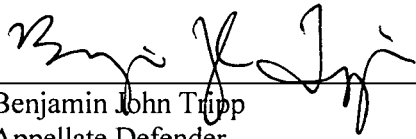
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge D. Garrison Hill, which was held on September 7, 2010, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He 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, he asks the Court to relieve him as counsel for Jared Williams.

Respectfully submitted,

  
Benjamin John Tripp  
Appellate Defender

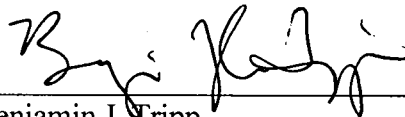
ATTORNEY FOR APPELLANT

This 2nd day of January 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant pursuant to White v. State complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 2, 2014



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Benjamin J. Tripp  
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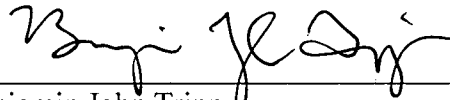
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant pursuant to White v. State in the above referenced case has been served upon Karen Ratigan, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant pursuant to White v. State has been served on Jared Williams, #342691 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 2nd day of January, 2014.

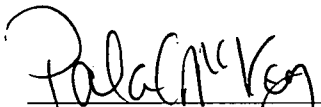


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Benjamin John Tripp  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 2nd day of January, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 24, 2022.