STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lancaster County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

INDIA SOWELL,

APPELLANT

APPELLATE CASE NO. 2012-213675

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in denying appellant's motion to exclude the evidence because her alleged statement to police was the result of interrogatory questioning about the shoplifting without *Miranda*[1] warnings?

[1] Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

India Sowell was indicted by the Lancaster County Grand Jury for shoplifting third offense or more. On August 15-16, 2012, a trial was held in Sowell's absence before the Honorable D. Craig Brown and a jury. Sowell was represented by Mark Grier, and the state was represented by William Nowiki. The jury returned a verdict of guilty. Judge Brown completed the sentencing and sealed it. R. 100, ll. 19 – 22.

On September 12, 2012, Sowell appeared before the Honorable Paul Burch for sentencing. Sowell was represented by Mark Grier, and the state was represented by William Nowiki. Judge Burch opened the sealed sentence and sentenced Sowell to the six years and ATU. Sept. 12, 2012, R. 105 - 107. Sowell's attorney filed a notice of appeal. This appeal follows.

STATEMENT OF FACTS

On April 11, 2012, Chantelle Stewart, the manager of the Family dollar Store in Lancaster, called the Sheriff's Office when she saw a black woman put items in her large black purse. R. 55, ll. 21 – R.59, ll. 17; R. 60, ll. 15 – 25. The woman then went to the cash register line and proceeded to check out. The officer arrived as the woman was checking out. The woman bought some food items with her food stamps. R. 58, ll. 5 – R. 59, ll. 3.

When the officer entered the store, Ms. Stewart pointed out the lady to the officer. The lady was just swiping her EBT card when the officer approached her. R. 58, ll. 17 – R. 59, ll. 8. Ms. Stewart's testimony before the jury was that when the officer arrived, she saw what he did. He asked Sowell if she had anything on her, and Sowell said she did. Then Sowell started pulling the "stuff" out of her purse. R. 59, ll. 4 – 19.

In a pretrial Jackson v. Denno, 378 U.S. 368 (1964), hearing, Officer Charles McKinnon of the Lancaster County Sheriff's Office, testified that he responded to the Family Dollar Store on April 11, 2012 regarding the shoplifting call. The manager pointed out Sowell as the person shoplifting the items. He approached Ms. Sowell and asked her if she had anything on her. She then said: "Yeah." She started taking the items from her purse. R. 11, ll. 22 – R. 13, ll. 16.

Officer McKinnon did not read her her *Miranda* rights. Once he confirmed with the manager that the items were from the store, he arrested Sowell and handcuffed her in the store. R. 13, ll. 17 – R. 14, ll. 23. He admitted that he never Mirandized her at all. He was wearing a badge, was wearing a uniform, and identified himself as Deputy McKinnon to her. R. 15, ll. 1 – 21; R. 17, ll. 3 – 8.

On cross examination, Deputy McKinnon said the manager, Ms. Stewart, told him before he talked to Sowell, that Sowell had taken the items. Sowell was not under arrest but he could not say if she felt she was free to leave or not. He admitted that people did not walk away when he approached them to ask questions. R. 16, ll. 1 – R. 17, ll. 21.

Defense counsel made a motion to exclude the evidence because it was the result of the statement made by Sowell when she was not interrogated but not read her *Miranda* rights. Counsel argued that the circumstances of the statement would lead one to believe they were not free to leave. She was confronted by law enforcement and basically interrogated. R. 19, ll. 25 – R. 20, ll. 18.

The trial judge ruled that Sowell was not in custody based on the testimony he heard, and her statement of "Yeah" was voluntary. He denied the suppression motion. R. 21, ll. 11. Deputy McKinnon testified before the jury, and repeated the same testimony as from the Denno hearing. Deputy McKinnon testified that he **confronted** [emphasis added] Sowell and asked her if she had anything on her. When the deputy said that Sowell said "yeah" admitting that she had stolen items in her purse, defense counsel made no objection. R. 63, ll. 11 – R. 64, ll. 22. The items she allegedly took were a bar of Dove soap, Listerine, and two quarts of oil. The value of the items was $16. R. 66, ll. 6 – R. 67, ll. 14.

Defense counsel moved for a directed verdict at the close of the state's case. His grounds included his motion to suppress that was previously made. R. 70, ll. 8 – R. 71, ll. 12. The judge denied the motion. R. 72, ll. 1 – 9.

Sowell was found guilty. R. 94, ll. 13 – 22.

ARGUMENT

The trial court erred in denying appellant's motion to exclude the evidence because her alleged statement to police was the result of interrogatory questioning about the shoplifting without Miranda warnings.

In Miranda v. Arizona, 384 U.S. 436 (1966), the Supreme Court held that any person who is subjected to a custodial interrogation must be apprised of their right to counsel and their privilege against self incrimination during the questioning. The Miranda "in custody" requirement is defined as a formal arrest or some deprivation or restraint on one's freedom of movement. Minnesota v. Murphy, 465 U.S. 420 (1984), citing Oregon v. Mathiason, 429 U.S. 492 (1977). The Miranda "interrogation" requirement (or the functional equivalent thereof) is defined as any words or actions on the part of the police which the police know are reasonably likely to elicit an incriminating response from the suspect. Arizona v. Mauro, 481 U.S. 520 (1987), citing Rhode Island v. Innis, 446 U.S. 291 (1980).

In State v. Evans, 354 S.C. 579, 582 S.E.2d 407 (2003), our Supreme Court noted that a custodial determination involves an objective analysis based on whether a reasonable person would have concluded he was in police custody.

In State v. Williams, 405 S.C. 263, 747 S.E.2d 194 (Ct. App. 2013), the Court of Appeals wrote that to determine if a suspect is in custody, the trial court must examine the totality of the circumstances, which include the place, purpose, length of interrogation, as well as whether the suspect was free to leave the place of questioning. A person is "in custody" when a person's freedom has been restricted.

India Sowell was not free to leave because Deputy McKinnon had been told by the manager that Sowell had taken items that were in her purse. His purpose was to arrest her.

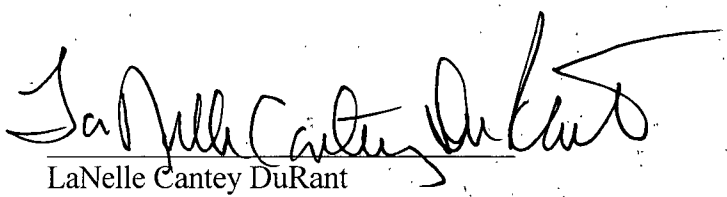
He said he "confronted" her which indicated an adversarial questioning. He asked her a question which he knew could elicit an incriminating response. He did not tell her that she had a right not to answer or to ask for an attorney. He should have read her her *Miranda* rights before he questioned her. The court should have suppressed her statement and all of the other evidence.

In Wong Sun v. United States, 371 U.S. 471 (1963), the United States Supreme Court ruled that "the fruit of the poisonous tree doctrine provides that evidence must be excluded if it would not have come to light but for the illegal actions of the police, and the evidence has been obtained by exploitation of that illegality."

CONCLUSION

Based on the above, Sowell's conviction and sentence should be reversed, and her case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of February, 2014.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant 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."

February 20th, 2014

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THE STATE,

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Deborah R. J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 20th day of February, 2014.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of February, 2014.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.