

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County

G. Edward Welmaker, Circuit Court Judge

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SEP 22 2014

S.C. Supreme Court

JARED WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001042

BRIEF OF PETITIONER

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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 charge¹ 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.

¹ 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 STATEMENTS 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 at gunpoint a Greenville County Pantry convenience store. App. 82, line 6—App. 84, line 13. Prior to the trial, the lower court held a *Jackson v. Denno*² hearing to determine the admissibility of certain statements Petitioner made to police. App. 18, line 23—App. 72, line 13. Police officer Gary Rhinehart from the Greenville City Police Department testified that he and other officers were investigating the robbery around an hour after it occurred. Another officer, Corporal Austin, spotted at a local bar Petitioner driving a white Hummer, which was the type of vehicle described in a report of the robbery. Corporal Austin detained Petitioner. Yet another officer on scene, Officer Ross, handcuffed Petitioner and placed him in the back of his patrol vehicle. App. 19, line 20—App. 21, line 25.

Officer Rhinehart testified he arrived at the scene, and Officer Ross took him to Petitioner. Officer Ross opened the car door and read Petitioner *Miranda*³ warnings. App. 22, lines 1-24. Officer Rhinehart told Petitioner the police were investigating a robbery involving a vehicle like his. He requested that Petitioner fill out a form with a statement describing his whereabouts that night, and Petitioner complied, giving a statement that a friend named Wade had borrowed the vehicle that night and just returned it to him. The statement form itself incorporated Miranda warnings. App. 24, line 9—App. 28, line 12. Officer Rhinehart then took

² 378 U.S. 368 (1964).

³ *Miranda v. Arizona*, 84 U.S. 436, 479 (1964).

Petitioner to jail for the night for driving under suspension. App. 29, lines 7-20; App. 32, lines 11-14.

The State then called Investigator Mike Fortner with the Greenville County Sheriff's Office to testify. He explained that the following morning, Investigator Collis Flavell from the city police notified his office of Petitioner's arrest with the white Hummer and his story. Investigator Flavell was aware that the Sheriff's Department was investigating a robbery of a local Sunoco gas station allegedly involving a white Hummer. App. 31, lines 1-23; App. 41, lines 20-23.

Investigator Fortner walked across the parking lot from the Sheriff's Department building to the city police office. He pulled Petitioner from detention and asked him if he would talk at his office. Petitioner agreed, and Investigator Fortner took him to the basement of the Sheriff's Department building. App. 31, line 24—App. 33, line 20. Investigator Fortner took him to his office, which was square with sides measuring twenty to twenty-five feet, that he shared with four other officers. App. 33, line 21—App. 34, line 1. There Investigator Fortner initially asked Petitioner about his background and made other small talk. Eventually, another officer with the Sheriff's Department, Investigator Jarvis, arrived to interview Petitioner. He was the investigator who was actually assigned to the Department's robbery case, so Investigator Fortner turned Petitioner over to him. App. 34, lines 2-24.

Investigator Fortner testified that during the ensuing questioning, Petitioner "mentioned that he was, in fact, involved with the robbery involved with the Greenville City case." App. 35, lines 19-21. Investigator Fortner then testified that he made Jarvis aware that he had not Mirandized Petitioner:

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, line 21—App. 36, line 9.

The State finally called Investigator Jarvis to testify. He explained that his initial interest was identifying Wade, who would likely be a suspect in his case. After eliciting further identifying information from Petitioner, the officers showed Petitioner a photo of an individual known to them named Wade Gambrell. Petitioner confirmed that he was the man who borrowed the Hummer. However, soon thereafter the officers figured out that Gambrell had been incarcerated for the previous two weeks. App. 38, line 23—App. 41, line 6. “We told [Petitioner] that he had been in jail for a couple of weeks. . . . And I asked the Defendant why he was lying about who had the vehicle. He kind of hung his head down, and said that he had been the one who had robbed the Pantry.” App. 41, lines 9-16. Investigator Jarvis said Investigator Fortner then interrupted because he had not read Petitioner his *Miranda* rights. App. 42, lines 2-6. Investigator Jarvis then read Petitioner his rights, had him sign a waiver, 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 just up to the actual robbery, at which time he asked for an attorney. App. 45, ln. 8—App. 48, ln. 23.

Petitioner moved to exclude the confession on grounds that he was exposed to custodial interrogation without 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 statements were 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 statements 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*, 384 U.S. 436, 479 (1964)). The advice is necessary “to dispel the compulsion inherent in custodial surroundings.” *Miranda*, 384 U.S. at 458. More specifically, “[a]n individual swept from familiar surroundings into police custody, surrounded by antagonistic forces, and subjected to the techniques of persuasion . . . cannot be otherwise than under compulsion to speak.” *Id.* at 461. The *Miranda* warnings ensure that an individual in custody is not only aware of the right to remain silent, but also that he knows the consequences of forgoing the right, *id.* at 469 (warnings “make the individual more acutely aware that he is faced with a phase of the adversary system—that he is not in the presence of persons acting solely in his interest.”), and that he feels free to invoke the right, *id.* at 468 (“warning will show the individual that his interrogators are prepared to recognize his privilege should he choose to exercise it.”).

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).

[T]he fact of lengthy interrogation or incommunicado incarceration before a statement is made is strong evidence that the accused did not validly waive his rights. In these circumstances the fact that the individual eventually made a statement is consistent with the conclusion that the compelling influence of the interrogation finally forced him to do so.

Miranda, 384 U.S. at 476. In *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010), the South Carolina Supreme Court held a defendant's statement was inadmissible when police questioned him until eliciting incriminating information, then administered *Miranda* warnings, then questioned him and re-elicited the incriminating information.

“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). “[A] heavy burden rests on the government to demonstrate that the defendant knowingly and intelligently waived his privilege against self-incrimination” *Miranda*, 384 U.S. at 475.

In this case, many factors indicate Petitioner made the inculpatory statements under compulsion and without full knowledge of his right to remain silent or the consequences of forgoing the right and speaking to Investigators Fortner and Jarvis. This evidence far outweighs the evidence that the State adduced to show Petitioner spoke knowingly and voluntarily. First and foremost, ostensibly ten to fifteen hours elapsed between the time Officer Ross Mirandized Petitioner at 10:00 at night and the time Investigators Fortner and Jarvis interrogated him the next morning. An entire night passed during this time, and no evidence showed he spoke with an attorney. This timeline weighs against the proposition that Petitioner retained full knowledge of his right to remain silent and that the State would use anything he said against him in court. The

only evidence to the contrary was testimony that Investigator Fortner “asked him if he would talk at his office.”

Developments in Petitioner’s setting from the time he was Mirandized to the time of the interrogation also weigh in favor of the conclusion that Petitioner did not fully understand his right or the consequences of forgoing it. Furthermore, they suggest Petitioner did not feel free to invoke the right. Petitioner was Mirandized in the back of a police car at a gas station. He was then taken to city jail for the night. He was effectively in incommunicado incarceration for ten to fifteen hours. He was then swept to the Sheriff’s Office building and taken to the basement. Being ushered from unfamiliar place to unfamiliar place, Petitioner was likely occupied with apprising and adjusting to his settings and did not fully recollect or consider the list of rights briefly read to him during the uncertain events unfolding the night before. Once in the basement, he was interrogated in a relatively small room occupied by three antagonistic officers in addition to Investigators Jarvis and Fortner. This particularly coercive atmosphere leads to the conclusion that Petitioner did not firmly believe his interrogators were prepared to recognize his privilege should he have chosen to exercise it. Again, the only evidence to the contrary adduced by the State was that Investigator Fortner asked if Petitioner would talk in his office.

The changes in the actors Petitioner dealt with also suggest Petitioner did not feel free to invoke his right to remain silent. He was Mirandized in the company of three officers from the Greenville City Police Department. One officer detained him, another officer handcuffed him and read him his rights, and the third officer questioned him. The next day, Petitioner was questioned by Investigators Fortner and Jarvis with the Greenville’s Sheriff’s Office, who did not personally explain to Petitioner that he did not have to answer their questions. The evidence supports

further Petitioner's lack of a firm belief that his interrogators were not prepared to recognize his privilege should he have chosen to exercise it.

Moreover, the circumstances of the interrogation itself uniformly support the conclusion that Petitioner did not speak knowingly and voluntarily. Petitioner was Mirandized by city police after he was arrested for driving under suspension. He was then immediately questioned about the robbery of the Pantry. During the interrogation, investigators from the county sheriff's office asked only for information about the robbery of the Sunoco. The State adduced no evidence in return to show that Petitioner fully understood that the rights read to him for purposes of separate offenses and by a separate law enforcement office applied equally during the interrogation.

The investigators also interacted with Petitioner in manners tending to elicit responses from him. Investigator Fortner initially made unassuming small talk with Petitioner. When Investigator Jarvis began speaking to Petitioner, he was purportedly interested in Petitioner as a witness for purposes of identifying a separate suspect. Thus, he likely spoke in a friendly manner encouraging cooperativeness, and Petitioner was not acutely aware that he facing a phase of the adversary system and was not in the presence of persons acting solely in his interest. This evidence suggests Petitioner did not understand the consequences of forgoing his right to remain silent. Additionally, the investigators suddenly and aggressively confronted Petitioner by calling him a liar and asking him to explain himself, a tactic designed to make Petitioner feel as if he had no choice but to offer a response.


Finally, When Petitioner did confess, "[h]e kind of hung his head down," indicating he did not feel comfortable in making the statement. After the investigators asked him to recount aloud his involvement in the Pantry robbery, he stopped short in doing so expressed the desire not to speak by asking for an attorney. Thus, a slew of factors weigh in favor of the conclusion did

speak to Investigators Fortner and Jarvis after knowingly and voluntarily waiving his right to remain silent. The evidence in the record reveals scant facts suggesting that he did, and the State failed adduce a preponderance of the evidence to make Petitioner's confession admissible.

CONCLUSION

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

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER.

This 22nd day of September, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Greenville County
G. Edward Welmaker, Circuit Court Judge

JARED WILLIAMS,

PETITIONER,

V.

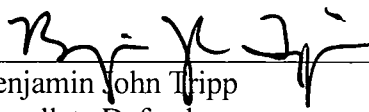
STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001042

CERTIFICATE OF SERVICE

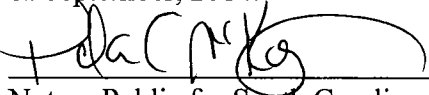
I certify that a true copy of the brief of petitioner, in this case has been served on Karen Ratigan, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of September, 2014.



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 22nd day
of September, 2014.



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