STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2013-001042

Jared Lee Williams, ... Petitioner,

v.

State of South Carolina, ... Respondent.

BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. 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

The Greenville County Grand Jury indicted Petitioner at the April 2010 term of General Sessions for armed robbery (2009-GS-23-10022, count 1) and possession of a weapon during the commission of a violent crime (2009-GS-23-10022, count 2). (App.pp.304-06). H. Chase Harbin, Esquire represented Petitioner.

After the State called the case to trial on the armed robbery indictment, Petitioner was found guilty.[1] On September 8, 2010, the Honorable D. Garrison Hill sentenced the Petitioner to thirty years imprisonment. (App.p.271).

STATEMENT OF FACTS

A Pantry convenience store was robbed at gunpoint on September 7, 2009. The arrest warrant indicated the suspect demanded money from the clerk and fled the store. The arrest warrant indicated witnesses saw a white Hummer parked nearby (and gave the license number to police) and that Petitioner was later located in this vehicle and arrested on an unrelated driving offense. (App.p.306).[2]

Prior to the commencement of trial, a Jackson v. Denno[3] hearing was held to determine the voluntariness of Petitioner's statements. Investigator Gary Rhinehart (Greenville City Police Department) testified he was involved with the Pantry investigation and met Petitioner after another officer had stopped his white H3 Hummer because of the matching description. (App.pp.19-21). Investigator Rhinehart testified he met Petitioner at approximately 10:00 p.m. the night of the Pantry robbery and witnessed

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[1] The indictment for possession of a weapon during commission of a violent crime was subsequently nol prossed.

[2] These facts were subsequently adduced through trial testimony.

[3] 378 U.S. 368, 84 S. Ct. 1774 (1964).

another officer read Petitioner his Miranda[4] rights while he was in the back of a police car. (App.p.22). Investigator Rhinehart testified Petitioner was not handcuffed and was "very relaxed" when he said he understood his rights and would be glad to speak with him. (App.pp.23-24). Investigator Rhinehart testified Petitioner never invoked his Miranda rights. (App.pp.29-30). Investigator Rhinehart testified Petitioner gave a written statement, wherein he stated his fried Wade borrowed the vehicle that night for 30-45 minutes. (App.pp.24-28). Investigator Rhinehart testified Petitioner was ultimately arrested for a traffic violation and taken to the detention center after he took officers to Wade's residence and no one was there. (App.pp.28-29).

Investigator Mike Fortner (Greenville County Sheriff's Office) testified he had a case involving a white Hummer and was told by a City investigator on September 8, 2009 that a man in a white Hummer had been pulled over the night before (and had said he loaned this vehicle to someone). (App.p.31). Investigator Fortner testified Petitioner was in jail for driving under suspension. (App.p.32). Investigator Fortner testified he signed out Petitioner and walked him across a parking lot to his office to ask him about to whom he had loaned the Hummer. (App.pp.32-33). Investigator Fortner testified Petitioner would have agreed to speak with him before he would have signed him out of the jail. (App.p.33). Investigator Fortner testified he retrieved Petitioner for Investigator Jarvis and was speaking to him before Jarvis arrived. (App.p.34). Petitioner brought up that he loaned the Hummer to someone. (App.p.34). Jarvis arrived, Petitioner was moved to his desk, and Investigator Fortner testified he heard Jarvis say Petitioner was involved with a

[4] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602 (1966).

robbery – at that point, Investigator Fortner testified he stopped them and said Petitioner had not been read his Miranda rights because he had been interviewed as a witness. (App.pp.34-35). Investigator Fortner testified he then overheard Jarvis read Petitioner his Miranda rights. (App.p.36).

Investigator Mike Jarvis (Greenville County Sheriff's Office) testified he was assigned an armed robbery case involving a white Hummer several days earlier – around August 31, 2009. (App.pp.37-38). Investigator Jarvis testified a City investigator told him on September 7th that Petitioner had been arrested regarding another armed robbery and had said he loaned out the Hummer. (App.p.38). Investigator Jarvis testified his goal was to determine to whom Petitioner loaned the Hummer. (App.p.39). Jarvis stated Petitioner said he loaned the Hummer to Wade. (App.p.39). Investigator Jarvis testified another investigator pulled Wade's name from the address Petitioner gave the previous night and that Petitioner identified Wade from a photograph. (App.pp.39-40). Investigator Jarvis testified he told Petitioner he was lying because Wade was in jail during that time. (App.p.41). Investigator Jarvis testified Petitioner then hung his head and admitted he robbed the Pantry. (App.p.41). At this point, Investigator Jarvis confirmed Fortner interrupted and said he had not read Petitioner his Miranda rights, so he stopped and did so. (App.pp.42-43). Investigator Jarvis testified he typed a statement as Petitioner spoke and that he stopped halfway through the statement because Petitioner stated he wanted an attorney. (App.pp.44-46). Investigator published the partial statement, in which Petitioner stated how he was talked into the armed robbery, drove the white Hummer, and described the clothes, mask, and gloves he was wearing.

(App.pp.47-48).

The trial judge found Petitioner was "properly advised of his Miranda rights on the initial interview." (App.pp.65-66). The trial judge found Petitioner was subjected to a custodial interrogation when he was approached by Investigator Fortner the next day and "there was no need, at that point, to refresh the Miranda warnings." (App.p.66). The trial judge found the statements Petitioner gave at that point were "freely and voluntarily given after being advised of his Constitutional rights and the Miranda litany of rights." (App.pp.66-67). The trial judge found Petitioner's statements were admissible. (App.p.69).

ARGUMENT

The trial judge did not err in finding Petitioner's statements were admissible.

Petitioner argues 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." (Brief of Petitioner, p.8). This argument is without merit. The trial judge did not err in finding Petitioner's statements were admissible.

A.

The trial judge was correct in finding Petitioner was properly given his Miranda warnings when he was arrested on the evening of September 7, 2009. Investigator Rhinehart testified Petitioner was in custody and in the back of a patrol vehicle when another officer advised him of his Miranda rights. (App.pp.21-23). Investigator Rhinehart testified Petitioner was "very relaxed" when he agreed to speak with him and

subsequently gave a written statement that his friend Wade had borrowed the white Hummer that night. (App.pp.23-28). The trial judge found Investigator Rhinehart's testimony was "highly credible." (App.p.66). See Menne v. Keowee Key Prop. Owners' Ass'n, Inc., 368 S.C. 557, 567, 629 S.E.2d 690, 696 (Ct. App. 2006) ("Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to trial court findings where matters of credibility are involved."). Petitioner was properly advised of his Miranda rights because he was in subjected to a custodial interrogation. See State v. Easler, 327 S.C. 121, 127, 489 S.E.2d 617, 621 (1997) (holding Miranda rights are required only in situations involving custodial interrogation, in which a suspect is taken into custody or deprived of his freedom in any significant way); see also State v. Kennedy, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998) (defining interrogation as "express questioning, or its functional equivalent," consisting of words or actions by police that "are reasonably likely to elicit an incriminating response"). The trial judge properly found Petitioner understood his rights, was not coerced, and had adequate time to determine he wanted to waive those rights and give a statement to Investigator Rhinehart. See, e.g., State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) ("The test for determining the admissibility of a statement is whether it was knowingly, intelligently, and voluntarily given under the totality of the circumstances.").

B.

The trial judge was also correct in finding Petitioner's statements to Investigators Fortner and Jarvis were voluntary and admissible. Approximately twelve hours after the

initial advisement of Miranda rights, Petitioner agreed to accompany Investigator Fortner to his office. Petitioner was signed out of the detention center and escorted across the parking lot to the building where Fortner's office was located. (App.pp.32-33). Petitioner was seated at Fortner's desk in the investigators' office and they "talked about where he used to live at, where he moved here from, why he moved here, that sort of thing." (App.p.34). Petitioner then just "brought up the Hummer, that he had loaned it out to people." (App.p.34). Investigator Jarvis arrived and Petitioner was moved to his desk in the same shared office. (App.p.34). Jarvis asked Petitioner why he lied about having given the Hummer to Wade and Petitioner "kind of hung his head down, and said that he had been the one who had robbed The Pantry." (App.p.41). Fortner interrupted at this point and stated Petitioner had not been Mirandized because they "were interviewing him as a witness since he pretty much the night before showed no connection with the robbery, or anything like that." (App.pp.35-36; pp.42-43). After Jarvis again advised Petitioner of his rights, Petitioner gave a written partial statement in which he admitted to having been recruited to participate in the armed robbery of the Pantry. (App.pp.42-46).

A mere gap in time between the initial advisement of Miranda rights by a Greenville City officer and Petitioner's subsequent statements to Greenville County investigators Fortner and Jarvis did not render those statements inadmissible. Initially it should be noted "[t]he mere passage of time . . . does not compromise a Miranda warning." United States v. Frankson, 83 F.3d 79, 83 (4th Cir. 1996). Several federal courts of appeal have found Miranda warnings were not compromised in cases where several hours elapsed between the initial warning and subsequent statement. See, e.g.,

United States v. Pruden, 398 F.3d 241 (3d Cir. 2005) (twenty hours); Guam v. Dela Pena, 72 F.3d 767 (9th Cir. 1995) (fifteen hours); Stumes v. Solem, 752 F.2d 317 (8th Cir. 1985) (five hours); United States ex rel. Henne v. Fike, 563 F.2d 809 (7th Cir. 1977) (nine hours).

Further, courts "have generally rejected a per se rule as to when a suspect must be readvised of his rights after the passage of time or a change in questioners." United States v. Andaverde, 64 F.3d 1305, 1312 (9th Cir. 1995); see also Weeks v. Angelone, 176 F.3d 249, 268 (4th Cir. 1999) ("The fact that incomplete Miranda warnings, or no warnings at all, are given prior to the second interrogation is not decisive."). The trial judge evaluated the facts and timeline in the instant case and concluded that – between the first Miranda advisement and Petitioner's subsequent statements to Investigators Fortner and Jarvis – there was nothing to change Petitioner's "psychological makeup, or his ability to understand, comprehend, and have to capacity to understand and comprehend the warning and his legal rights, and the consequences of waiving those rights." (App.p.69). Petitioner initiated the discussion about the white Hummer with Investigator Fortner and then made a sua sponte confession when confronted with the falsity of his story by Investigator Jarvis. Petitioner presented no evidence at the Jackson v. Denno hearing to indicate he did not understand his Miranda rights or that his will was in some way overborne when he was questioned the following day. See Dickerson v. United States, 530 U.S. 428, 434, 120 S. Ct. 2326, 2331 (2000) (holding the test for determining whether a defendant's confession was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the

circumstances surrounding the confession). While Petitioner makes statements in his brief[5] that he was "likely occupied with apprising and adjusting to his settings and did not fully recollect or reconsider the list of rights briefly read to him during the uncertain events unfolding the night before" and that he "did not firmly believe his interrogators were prepared to recognize his privilege should he have chosen to exercise it" and that the change from City to County officers suggest he "did not feel free to invoke his right to remain silent," these statements are purely speculative because Petitioner did not testify at the Jackson v. Denno hearing. See id.; cf. United States v. Andaverde, 64 F.3d at 1312. The only evidence in the record is the testimony presented by the State that threats and coercion were not used (and promises were not made) in the investigator's conversations with Petitioner. (App.pp.23-24; p.44).

Accordingly, there is no evidence in the record to support Petitioner's argument that his statements were inadmissible. The trial judge considered the passage of time and circumstances surrounding Petitioner's statements and properly found Petitioner's statements to Investigators Fortner and Jarvis were voluntary and admissible.

[5] Brief of Petitioner, p.10.

CONCLUSION

For the reasons stated above, this Court should affirm Petitioner's conviction and sentence for armed robbery.

Respectfully submitted,

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By: _____
ATTORNEYS FOR RESPONDENT

January 28, 2015

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable D. Garrison Hill, Circuit Court Judge

Appellate Case No. 2013-001042

Jared Lee Williams, ... Petitioner,

v.

State of South Carolina, ... Respondent.

CERTIFICATE OF SERVICE

I, Karen C. Ratigan, certify that I have today served the within Brief of Respondent upon Petitioner by hand-delivery:

Benjamin J. Tripp, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
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I further certify that all parties required by Rule to be served have been served. This 28th day of January, 2015.

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January 28, 2015

The Honorable Daniel E. Shearouse
Clerk, South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

Re: **Jared Lee Williams v. State of South Carolina**
Appellate Case No. 2013-001042
Lower Court Case No. 2011-CP-23-5583

Dear Mr. Shearouse:

Attached are the original and thirteen (13) copies of the **Brief of Respondent** in the above referenced case for filing in your office.

Sincerely,

Karen C. Ratigan
Senior Assistant Deputy Attorney General
SC Bar #68331

KCR/jacc

cc: Benjamin J. Tripp, Esquire
Trisha Allen, Victim Services