STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SHERARD A. WEATHERS,

APPELLANT

APPELLATE CASE NO. 2014-001271

ANDERS BRIEF OF APPELLANT

BENJAMIN JOHN TRIPP
Appellate Defender

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred in denying Appellant's motion to exclude his statement to police in the prosecution against him for a possession of cocaine charge where police arrested and Mirandized him based on outstanding warrants from separate charges and where police subsequently found cocaine on his person but did not then advise him that any statements could also be used against him for purposes of the possession charge.

STATEMENT OF THE CASE

On March 14, 2013, the York County Grand Jury indicted Appellant Sherard Weathers for possession of crack cocaine. R. 147-148. On June 3, 2014, Appellant proceeded to trial before The Honorable John C. Hayes and a jury. Ashley Anderson represented Appellant and Leslie Robinson represented the State. R. 1. At the conclusion of trial, the jury found Appellant guilty, and Judge Hayes sentenced him to three years' incarceration. R. 135, lines 22-25; R. 142, lines 1-2.

ARGUMENT

THE TRIAL JUDGE ERRED IN DENYING APPELLANT'S MOTION TO EXCLUDE HIS STATEMENT TO POLICE BECAUSE HE WAS NOT SPECIFICALLY ADVISED THAT ANY STATEMENTS COULD BE USED AGAINST HIM FOR PURPOSES OF THE POSSESSION CHARGE AT ISSUE.

FACTS

The State alleged that December 12, 2012, law enforcement officers found in Appellant's pocket a baggie containing a small amount of crack cocaine. App. 55, lines 15-22. Prior to trial, Appellant requested a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), seeking to exclude from trial a statement Appellant made to officers after his arrest. R. 10, line 15—R. 31, line 19. During the hearing, the State presented testimony that a police officer pulled over Appellant's vehicle in order to serve outstanding warrants for offenses relating to distribution of drugs. The officer arrested Appellant, read him standard Miranda warnings, and searched his person. In Appellant's shorts pocket, he found a baggie containing crack cocaine. R. 12, line 5—R. 13, line 9. The officer left the scene in his vehicle with Appellant in the back seat and drove to the police office. During the fifteen minute ride, the two conversed, and Appellant allegedly admitted that "he would mix the crack with his marijuana." R. 16, line 14—R. 17, line 9.

After the State's testimony, Appellant argued that because he was arrested for both the possession offense at issue and prior charges based on outstanding warrants, the officer did not provide a sufficiently clear warning as to how his rights applied to each charge. R. 31, line 23—R. 33, line 6. The trial judge Appellant's motion to exclude the statement, stating that the officer's standard Miranda charge was sufficient. R. 33, line 17—R. 34, line 20.

DISCUSSION

The trial judge erred in denying Appellant's motion to exclude his statement to police because he was not specifically advised that any statements could be used against him for purposes of the possession charge at issue. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that "[p]rior to any questioning, [a defendant] must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed," *id.* at 444. "[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689 (1980); *State v. Howard*, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988). "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).

In this case, the standard Miranda warning that any statement the defendant makes may be used as evidence against him was not sufficient to explain that Appellant's statements would be used in the prosecution for the present charge. Police initially accosted and arrested Appellant based on warrants for offenses relating to distribution of drugs. However, once handcuffed, Mirandized, and searched, officers found cocaine warranting separate charges. Thus, Appellant was not specifically informed that his statements could be used against him for a new charge arising from the possession of cocaine. Accordingly, while Appellant was presumably apprised of his rights for purposes of the distribution

DISCUSSION

The trial judge erred in denying Appellant's motion to exclude his statement to police because he was not specifically advised that any statements could be used against him for purposes of the possession charge at issue. In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that "[p]rior to any questioning, [a defendant] must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed," *id.* at 444. "[T]he *Miranda* safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent." *Rhode Island v. Innis*, 446 U.S. 291, 300-01, 100 S.Ct. 1682, 1689 (1980); *State v. Howard*, 296 S.C. 481, 488, 374 S.E.2d 284, 288 (1988). "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).

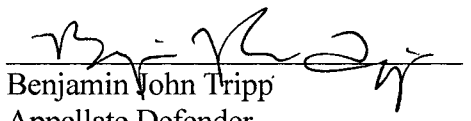
In this case, the standard Miranda warning that any statement the defendant makes may be used as evidence against him was not sufficient to explain that Appellant's statements would be used in the prosecution for the present charge. Police initially accosted and arrested Appellant based on warrants for offenses relating to distribution of drugs. However, once handcuffed, Mirandized, and searched, officers found cocaine warranting separate charges. Thus, Appellant was not specifically informed that his statements could be used against him for a new charge arising from the possession of cocaine. Accordingly, while Appellant was presumably apprised of his rights for purposes of the distribution

offenses, he was not apprised consistent with *Miranda* for the possession charge, and the trial judge erred in concluding to the contrary.

CONCLUSION

For the foregoing reasons, Appellant requests that this Court reverse his conviction and remand for a new trial.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2015.

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THE STATE,

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for Sherard A. Weathers states:

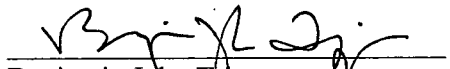
1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge John C. Hayes, III, which was held on June 3, 2014, 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 Sherard A. Weathers.

Respectfully submitted,



Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

This 20th day of January, 2015.

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APPELLATE CASE NO. 2014-001271

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) Entire Trial Transcript

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

January 20th, 2015

Benjamin John Tripp
Appellate Defender

South Carolina Commission on Indigent Defense
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PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

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."

January 20, 2015

Benjamin John Tripp
Appellate Defender

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Columbia, South Carolina 29211-1589

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Sherard A. Weathers, #346120 at Kirkland Correctional Institution, 4344 Broad River Road, Columbia, SC 29210, this 20th day of January, 2015.

Benjamin John Tripp
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 20th day of January, 2015.

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