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AUG 12 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

Opinion No. 2015-UP-378

PETITION FOR REHEARING

Appellant asks this Court to re-examine its opinion in this case and grant rehearing. Respectfully, this Court's opinion overlooks points that necessitate reversal of appellant's conviction.

The two parenthetical citations in the Court's opinion appear to indicate the reasons for affirmance were that the issue was not preserved for appeal and that the standard of review controlled. State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741 (2005); State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006). The voluntariness of appellant's confession was raised to and ruled on by the trial judge. The trial judge conducted a full evidentiary hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). Throughout the hearing, the court heard evidence related

to whether appellant was in custody and the giving and timing of warnings pursuant to Miranda v. Arizona, 384 U.S. 436 (1966). Appellant was not given Miranda warnings until after he made an incriminating statement and was in custody at the police station. R. 39, l. 23 – 40, l. 8.

Following the conclusion of testimony at the Denno hearing, and without hearing argument, the court recessed for lunch. R. 85, ll. 9 – 15. When the court returned from the lunch break, Judge Welmaker **immediately ruled** on the admissibility of the statements. R. 85, l. 18 – 86, l. 4. The trial judge held that after weighing the testimony, he found that appellant's statement was freely and voluntarily given. R. 85, l. 18 – 86, l. 4. The trial judge did not ask for argument from either the State or the defense before or after ruling. R. 85, l. 18 – 86, l. 4. Appellant renewed his objection to the statement during the trial and the renewed objection was denied. R. 360, ll. 16 – 21. R. 366, ll. 17 – 23. R. 373, ll. 14 – 20.

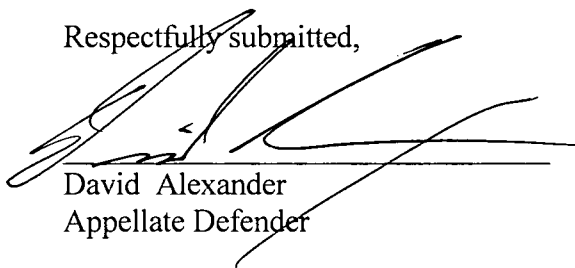
The voluntariness of appellant's confession necessarily implicated Miranda, Missouri v. Siebert, 542 U.S. 600 (2004), and State v. Navy, 386 S.C. 294, 688 S.E.2d 838 (2010). These are well-known, bedrock cases involving the voluntariness of confessions that were no doubt known to the experienced trial judge and implicated by the evidence. Nearly every Denno hearing deals with Miranda. Siebert and Navy are companion cases to Miranda. The trial judge did not feel argument was necessary to rule. Furthermore, the incentive created by the preservation decision in this case is for trial judges to rule without taking argument and therefore insulate themselves from reversal on appeal. A trial judge is presumed to know the law and this presumption should apply with greater force when the trial judge rules without taking argument on a legal issue.

As for the merits of the case, the standard of review does not control. Appellant's case bears such an incredible resemblance to Navy that the trial court made an error of law in admitting appellant's statement. In fact, the police conduct in appellant's case was even more egregious than Navy because appellant was intoxicated and mentally retarded. The police in Navy "began an

unwarned custodial interrogation designed to elicit incriminating information.” Id. at 303, 688 S.E.2d at 842. It was clear that appellant was in custody pursuant to State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). Two officers questioned Navy; three questioned appellant. Both men were picked up from their house by the police. Both men were confronted with contradictory evidence. Both sets of officers knew the results of an autopsy. Neither man received Miranda warnings until after they had confessed. Appellant’s mental retardation and intoxication left him even less capable of protecting himself from these police tactics than the defendant in Navy.

Even seven years after Seibert and five years after this Court’s opinion in Navy, the police in Greenville County were using a playbook the Courts had condemned. Respectfully, this Court overlooked the striking resemblance of this case to Navy. The trial judge ruled on the voluntariness of appellant’s statement. This Court should grant rehearing and reverse appellant’s conviction.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "David Alexander", is written over a horizontal line. The signature is stylized and extends above and below the line.

David Alexander
Appellate Defender

This 12th day of August, 2015.

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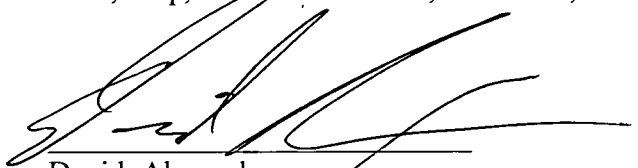
JAMES ALLEN JOHNSON,

APPELLANT

APPELLATE CASE NO. 2013-001314

CERTIFICATE OF SERVICE


The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Susannah Cole, Esquire, at 4446 Erskine Street, Columbia, SC 29206 and on Ms. Mary Williams Leddon, Esq., at PO Box 11549, Columbia, SC 29211-1549 this 12th day of August, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 12th day
of August, 2015.

 (L.S.)
Notary Public for South Carolina

My Commission Expires: July 23, 2023