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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Anderson County

Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLAUDIUS ADRIAN WILLIAMS,

APPELLANT

APPELLATE CASE NO. 2014-000227

ANDERS BRIEF OF APPELLANT

TIFFANY L. BUTLER
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Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial judge erred by failing to exclude Appellant's verbal statement admitting to owning the gun that police found inside the apartment where Appellant was arrested where Appellant made the admission after he was placed under arrest but before he was advised of his rights under Miranda v. Arizona, 384 U.S. 426 (1966)?

STATEMENT OF THE CASE

On September 13, 2013, an Anderson County Grand Jury indicted Appellant for armed robbery and possession of a weapon during a violent crime. (R 282 – R. 285 Indictment). On October 29, 2013, the Tenth Circuit Solicitor's Office served Appellant with a Notice of Intent to Seek a Sentence of Life without Parole. (R. 281 Notice of Intent). The matter proceeded to a jury trial before the Honorable Frank Addy. R. 7, lines 13 – 17.

On January 28, 2014, after a two-day jury trial, Appellant was found guilty of both offenses. R. 273. Judge Addy sentenced Appellant to life imprisonment without the possibility of parole pursuant to S.C. Code Ann. § 17-25-45. R. 276. Hugh Welborn represented Appellant and Rame Campbell represented the State. R. 10, line 17 – R. 11, line 9.

Appellant filed a notice of appeal on February 3, 2014. This brief follows.

ARGUMENT

The trial judge erred by failing to exclude Appellant's verbal statement admitting to owning the gun that police found inside the apartment where Appellant was arrested where Appellant made the admission after he was placed under arrest but before he was advised of his rights under Miranda v. Arizona, 384 U.S. 426 (1966).

Relevant Facts at Trial

Meseret Kifla testified that on the night of Wednesday, April 24, 2013, she was working at her store, "Lil General," on South Murray Avenue in Anderson County. R. 99 – 100. About 9:00 pm, a man wearing tinted glasses walked into the store with a plastic bag on his hand. R. 106, lines 1 – 8. After entering the store, he dropped the bag and walked straight to the cash register where Kifla was standing. R. 106, lines 9 – 14.

As he approached the counter, he demanded that she open the cash register. He pointed a gun at Kifla and asked her for the "bag money." R. 106, lines 21 – 25. She told him that she did not have any bag money. R. 107, lines 3 – 4. The man took the cash out of the register, put it in his pocket, and walked out of the store. R. 107, lines 5 – 7.

Kifla pushed her panic button and the police responded to the scene. R. 107. She gave police a copy of the robbery recorded by the store's video surveillance system. R. 109, lines 16 – 25. One of her employees recognized the robber as a customer who was in the store Monday before the robbery. R. 114, lines 10 – 14. Kifla reviewed the store video from that Monday and claimed to recognize the man as the one who was in the store on the night of the robbery. R. 115, lines 16 – 25. At that point in the investigation, the police did not have a name for the suspect. R. 162, lines 18 – 20.

Law enforcement printed a still shot from the Monday store video and created a flyer. R. 122, lines 14 – 15. Kifla “showed that flyer to everyone.” R. 122, line 15. One customer claimed to recognize the man in the picture as “Claudius Williams.” R. 158, lines 7 – 10. After speaking with this customer, Investigator Matthew Ritter ordered a six-person photo line-up and showed it to Kifla. R. 124. Kifla picked Appellant out of the line-up and identified him as the man who robbed her store. R. 124.

On cross-examination, Kifla admitted to talking to the police several times about the case and being told that Appellant had a twin brother. R. 140 – 141. She agreed with defense counsel that she had never seen the twin brother and, therefore, did not know what he looked like. R. 141, lines 9 – 13.

Investigator Ritter, the lead investigator in the case, was the State’s last witness. R. 154. Ritter testified that after getting Appellant’s name from the customer and having Kifla identify him in the photo line-up, he obtained arrest warrants for Appellant. R. 170, lines 2 – 24. Ritter, along with other officers, went to Appellant’s home. R. 171, lines 1 – 2. As they approached the front door, they discovered it was open and Appellant was sitting on a couch inside. R. 171, lines 7 – 14. Appellant walked outside upon request and officers placed him under arrest. R. 171, lines 15 – 23.

While making “a sweep” of the house, officers noticed a gun sticking out from underneath the couch where Appellant had been sitting. R. 172, lines 17 – 21. Ritter asked Appellant whether the gun was his, but Appellant denied owning the gun. R. 172, lines 22 – 23. According to Ritter, while Appellant was sitting in the police car waiting to be taken to the police station, “he said that it was his gun.” R. 176, lines 2 – 5.

Motion to Exclude Appellant's Verbal Statement

Prior to trial and pursuant to Jackson v. Denno, 378 U.S. 368 (1964), defense counsel moved to exclude Appellant's statement to Investigator Ritter admitting to owning the gun. R. 46, lines 9 – 10. Counsel argued that Appellant made no "spontaneous or excited utterance." R. 56, lines 3 – 12. He argued that Appellant should have been advised of his Miranda rights before he was allowed to start making statements. R. 56, lines 3 – 12.

The solicitor argued that the statement Appellant made regarding the gun was not a direct response to Ritter. Rather, Appellant voluntarily made the statement. R. 57, lines 4 – 10.

The trial judge agreed with the solicitor and ruled that Miranda "was not required to be given" because the officer intended to question Appellant at the police department and no questioning took place in the car concerning the gun. R. 68, lines 11 – 14. The judge denied defense counsel's motion to exclude Appellant's admission. R. 68, lines 3 – 17.

Discussion

The trial judge erred by failing to exclude Appellant's statement admitting to owning the gun that police found inside the apartment where Appellant was arrested. Appellant made the admission after he was placed under arrest but before officers advised him of his rights under Miranda v. Arizona, 384 U.S. 426 (1966).

Before a statement or admission can be introduced into evidence, 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, 384 U.S. 426 (1966). State v. Miller, 375 S.C. 370, 379, 652 S.E.2d 444, 449 (Ct. App. 2007).

In Miranda, the United States Supreme Court held that the prosecution may not use statements made by a defendant during a custodial interrogation unless it demonstrates that law enforcement used “procedural safeguards effective to secure privilege against self-incrimination.” Miranda, 384 U.S. at 444; State v. Saltz, 346 S.C. 114, 135-36, 551 S.E.2d 240, 252 (2001); State v. Lynch, 375 S.C. 628, 633, 654 S.E.2d 292, 295 (Ct. App. 2007). A custodial interrogation is “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Miranda, 384 U.S. at 444. See also Rhode Island v. Innis, 446 U.S. 291, 301(1980) (An interrogation “refers to any words or action on the part of the police, other than those normally attendant on arrest and custody, that the police should know are reasonably likely to elicit an incriminating response from the suspect.”).

Prior to any questioning by law enforcement, a “person 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.” Id. Only if a suspect has been advised of and voluntarily waived these rights, will any statements made to law enforcement be admissible. Saltz, 346 S.C. at 135-36, 551 S.E.2d at 252.

In this case, Appellant should have been advised of his rights under Miranda. He had already been arrested and handcuffed when police found the gun underneath the couch. Investigator Ritter admitted on the witness stand that he asked Appellant if it was his gun. Even if Appellant originally denied owning the gun but later admitted to owning

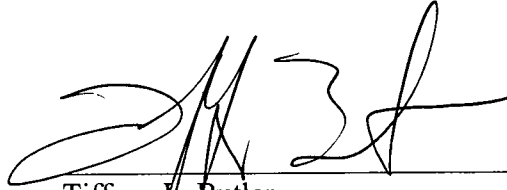
it in the car, he was in police custody and had already been questioned. Ritter testified that he was not going to interrogate Appellant until he took him to the police station, but Appellant was not immediately transported to the police station.

At the time officers discovered the gun and decided to question Appellant about it, they should have advised Appellant of his right to remain silent, that whatever statements he made could be used against him, and that he has the right to have an attorney present before answering any questions by police. Because Appellant was in police custody and the police sought to elicit incriminating information from him about the gun, the trial judge erred in ruling that the procedural safeguards of Miranda did not apply **and** admitting Appellant's verbal admission into evidence.

CONCLUSION

For the foregoing reasons, Appellant Claudius Williams respectfully requests this Court to reverse his conviction and sentence and remand to the lower court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Butler', written over a horizontal line.

Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2015.

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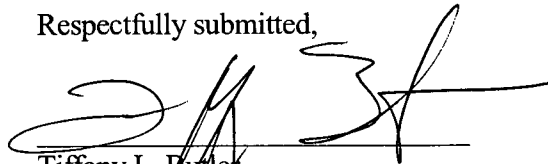
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Claudius Adrian Williams states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge Frank R. Addy, which was held on January 28, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for Claudius Adrian Williams.

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

This 7th day of January, 2015.

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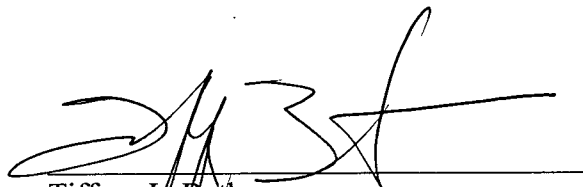
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Court's Exhibit #2 - Notice of Intent to Seek Life Without Parole;
- (3) Entire Trial Transcript (January 27 – 28, 2014)

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

January 7th, 2015



Tiffany L. Butler
Appellate Defender

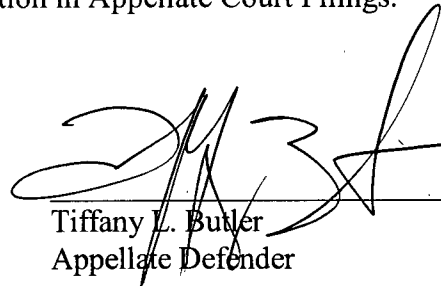
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PO Box 11589
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Attorney for Appellant

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 7, 2015


Tiffany L. Butler
Appellate Defender

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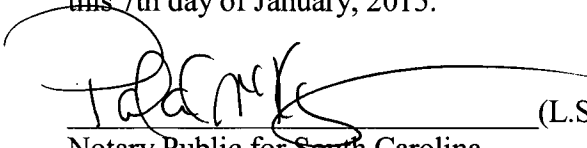
CERTIFICATE OF SERVICE

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 Claudius Adrian Williams, #299040 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 7th day of January, 2015.


Tiffany L. Butler
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 7th day of January, 2015.

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