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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Cherokee County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MATTHEW S. MEDLEY,

APPELLANT

APPELLATE CASE NO. 2014-001499

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting incriminating statements from appellant, in violation of the rules in Missouri v. Siebert[1] and State v. Navy[2] regarding alcohol consumption because the police asked appellant how much he had been drinking after they took him into custody and before reading him his Miranda[3] rights?

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[1] 542 U.S. 600 (2004).
[2] 386 S.C. 294, 688 S.E.2d 838 (2010).
[3] Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

On August 8, 2013, a Cherokee County grand jury indicted appellant for failure to stop for a blue light and DUI second. R. 163. On June 10, 2014, appellant was tried before the Honorable G. Edward Welmaker and a jury. R. 1. Matt Kendall represented the State. R. 1. Michael Berry represented appellant. R. 1. The jury convicted appellant. R. 153, ll. 1 – 12. On the DUI charge, Judge Welmaker sentenced appellant to five years' imprisonment suspended upon the service of 27 months and five years' probation. The court sentenced appellant to a consecutive term of three years' imprisonment suspended upon the service of three months and probation for the failure to stop for a blue light charge. R. 159, l. 24 – 160, l. 2. The court also revoked appellant's probation on another charge, sentenced him to one year's imprisonment, and terminated that probation. R. 159, ll. 9 – 12. The sentences described above were made consecutive to the probation revocation sentence. R. 159, ll. 22 – 23. This appeal follows.

ARGUMENT

The trial court erred in admitting incriminating statements from appellant, in violation of the rules in Missouri v. Siebert[4] and State v. Navy[5] regarding alcohol consumption because the police asked appellant how much he had been drinking after they took him into custody and before reading him his Miranda[6] rights.

Relevant Facts

After midnight on April 21, 2013, the police were working at a DUI checkpoint in a remote part of Cherokee County. R. 30, l. 24 – 31, l. 16. The police saw a man on a motorcycle run a stop sign and speed away from the checkpoint. R. 31, l. 8 – 32, l. 7. Two police officers gave chase in separate cars. R. 32, ll. 8 – 11. R. 49, ll. 16 – 21.

The cameras in both cars recorded the high-speed chase. R. 49, ll. 22 – 23. R. 32, ll. 15 – 19. (State's Ex. 1) (State's Ex. 2). The top speed reached during the chase was 109 mph. R. 37, ll. 5 – 8. Considering the high rate of speed, during the chase the video shows appellant in full command of the motorcycle. (State's Ex. 1) (State's Ex. 2). The chase ended at appellant's parents' house. R. 53, l. 24 – 54, l. 13. One of the police officers "ran up on the porch and got him and put him on the ground." R. 54, ll. 2 – 6. State's Ex. 1).

On the video, the first thing that can be heard when the chase ends is an officer yelling, "Get on the ground!" (State's Exhibit 2). The officer shouts at appellant's family to "Back up! Back up!" (State's Exhibit 2). He keeps yelling, "Get down! Get down!" (State's Exhibit 2). The officer tells appellant to "Shut up!" (State's Exhibit 2).

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[4] 542 U.S. 600 (2004).
[5] 386 S.C. 294, 688 S.E.2d 838 (2010).
[6] Miranda v. Arizona, 384 U.S. 436 (1966).

The officer says, "Fuckin' out here gone kill somebody!" (State's Exhibit 2). Appellant's parents ask a question about what happened and the officer replies, "Fuckin' hundred miles an hour through two states, you idiot." (State's Exhibit 2).

The officer asks appellant, "You got a damn license?" (State's Exhibit 2). He then asks, "How much you had to drink?" (State's Exhibit 2). Appellant replies, "Too much." (State's Exhibit 2). The officer repeats it back to him: "Too much?" (State's Exhibit 2). Either an officer or dispatch can be heard saying, "Suspect in custody." (State's Exhibit 2). After a brief moment of radio chatter, the officer reads appellant his Miranda rights. (State's Exhibit 2).

Later, when appellant is in the back of the police car, the officer asks him how much he had to drink that day and appellant replies he doesn't know. (State's Exhibit 2). The officer tells him, "Estimate." (State's Exhibit 2). Appellant says, "I couldn't tell you." (State's Exhibit 2). The officer asks him if he had more than ten. (State's Exhibit 2). Appellant replies, "No, sir." (State's Exhibit 2). The officer asks, "More than five?" (State's Exhibit 2). Appellant replies, "About four." (State's Exhibit 2). The officer says, "I believe you had more than that." (State's Exhibit 2).

Pre-trial, the court held a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964). R. 6, ll. 19 – 20. The attorneys told the trial judge that no dispute existed about what was said and pointed out the parts of the video that were relevant to the motion. R. 7, l. 4 – 11, l. 3. Judge Welmaker reviewed the video during a break. R. 13, ll. 16 – 20.

The court then heard argument. R. 13, l. 21 – 24, l. 9. Citing Siebert and Navy, appellant argued the incriminating statements were inadmissible because the officer asked appellant how much he had consumed before reading him his Miranda rights. R.

15, l. 16 – 21, l. 22. Defense counsel explained each point as to why the statements were inadmissible under Siebert and Navy. R. 17, l. 8 – 19, l. 8. The solicitor conceded that appellant was in custody, but argued that the officers did not interrogate appellant:

> I would also argue with respect to the first one, that, again, that he may have been in custody in the sense he was physically restrained, and he was, he was physically restrained at that time, I think the officers had a reasonable – had the right to try to make a reasonable determination as to what was happening.

R. 20, ll. 12 – 17. The solicitor later argued that the officer, "had the right to find out what was going on. . . ." R. 22, ll. 3 – 4. The trial court ruled the statements were admissible. R. 23, l. 9 – 24, l. 9. Appellant contemporaneously objected when the State sought to admit the statements during the trial. R. 54, ll. 21 – 24. R. 59, ll. 15 – 17.

Discussion

As in almost all DUI trials, the central factual question in this case was how much alcohol appellant had consumed. The police asked this question when it was conceded that appellant was in custody, but before they gave appellant any Miranda warnings. Not just appellant's response to the pre-Miranda question should have been excluded—the responses to post-Miranda questions about his alcohol consumption should have been excluded pursuant to Siebert and Navy.

In Missouri v. Siebert, 542 U.S. 600 (2004), the United States Supreme Court condemned a deliberate practice used in police departments throughout the country meant to circumvent Miranda. Siebert at 610-12 and n.2. The Court cited the Police Law Institute's manual which instructed officers to use a "two-stage interrogation" and not give Miranda warnings until after arrestees have confessed. Id. at 610. The Court listed

multiple sources advising officers on how to obtain confessions and then curing the failure to give Miranda warnings. Id. at 610 n.2.

The Court called this practice "question-first" and rejected the notion that the subsequent giving of Miranda warnings could transmute these confessions into admissible evidence. Id. at 610-13. "By any objective measure . . . it is likely that if the interrogators employ the technique of withholding warnings until after interrogation succeeds in eliciting a confession, the warnings will be ineffective in preparing the suspect for successive interrogation, close in time and similar in content." Id. at 613. "After all, the reason that question-first is catching on is as obvious as its manifest purpose, which is to get a confession the suspect would not make if he understood his rights at the outset." Id. "Upon hearing warnings only in the aftermath of interrogation and just after making a confession, a suspect would hardly think he had a genuine right to remain silent, let alone persist in so believing once the police began to lead him over the same ground again." Id.

The police in Siebert were surprisingly honest and admitted they were deliberately using the two-phase question-first strategy. Id. at 605-05. "Because the intent of the officer will rarely be as candidly admitted as it was here (even as it is likely to determine the conduct of the interrogation), the focus is on facts apart from intent that show the question-first tactic at work." Id. at 617 n.6.

Because appellant was in custody, Miranda warnings were required. Miranda, 384 U.S. at 478-79. The State conceded during the Denno hearing that appellant was in custody. R. 20, ll. 12 – 17. In his opening statement, the solicitor stated that the officers

"chased [appellant] down at that point and placed him under arrest. He was asked how much he had to drink. He said too much." R. 26, ll. 3 – 9.

The trial court ruled that the question of how much appellant had been drinking did not constitute an interrogation because it was "for health issues, for safety issues." R. 23, l. 13 – 24, l. 3. No such exception to Miranda exists. Regardless, the question about appellant's drinking could only elicit an incriminating response. Miranda warnings were required. Because the questions post-Miranda were on exactly the same topic and occurred approximately twenty minutes after the illegal questioning, the rules from Seibert and Navy require the suppression of appellant's answers. The subsequent warnings cannot cure the earlier failure to warn, otherwise the rule in Seibert would be meaningless. The court erred in admitting these statements.

Admission of these statements prejudiced appellant.[7] Appellant refused the breathalyzer, so no evidence of his blood alcohol content was admitted. R. 65, ll., 2 – 4. Appellant was driving with a suspended license, so he had a reason to flee the checkpoint other than being intoxicated. R. 79, ll. 6 – 22. The video showed appellant in control of his motorcycle, which requires far more dexterity and balance than a car. (State's Ex. 1). Appellant was not belligerent towards the officers and acted respectfully. (State's Ex. 2). R. 84, ll. 2 – 21. The officer's assertions that appellant had glassy eyes and slurred speech were impeached by their omission in his report. R. 81, l. 23 – 82, l. 17.

Finally, the solicitor's closing argument demonstrates the importance of appellant's erroneously admitted statements. R. 119, l. 20 – 120, l. 12. The solicitor told the jury, "But most importantly, and most obviously, what shows he's intoxicated is what

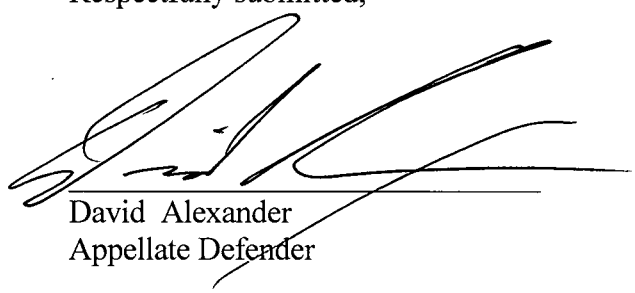
[7] Appellant admitted he was guilty of failing to stop for a blue light. R. 28, ll. 3 – 7.

he says. We know he had too much to drink, because when officers asked him how much he had to drink, he said 'too much.'" R. 119, ll. 20 – 23. The trial court erred in admitting these statements. Their admission prejudiced appellant. Therefore, this Court should reverse.

CONCLUSION

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

Respectfully submitted,



David Alexander
Appellate Defender

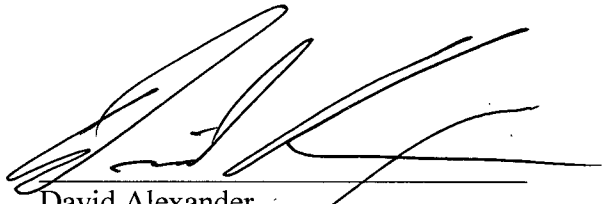
ATTORNEY FOR APPELLANT

This 2nd day of September, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief 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."

September 2nd, 2015



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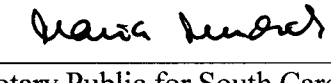
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Susannah R. Cole, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of September, 2015.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of September, 2015.



_____(L.S.)
Notary Public for South Carolina
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