

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

 ORIGINAL

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Appeal from York County

Honorable John C. Hayes, Circuit Court Judge  
\_\_\_\_\_

THE STATE,

RESPONDENT,

V.

TIMOTHY EMMENUEL GREENE,

APPELLANT

**RECEIVED**

JUN 27 2017

SC Court of Appeals

APPELLATE CASE NO 2016-001123  
\_\_\_\_\_

FINAL BRIEF OF APPELLANT  
\_\_\_\_\_

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**STATEMENT OF ISSUE ON APPEAL**

Whether the trial judge erred in admitting Appellant's confession to law enforcement where the state could not prove by a preponderance of evidence that Appellant's statement came at a time when he was free to leave, when the incriminating question of whether the drugs belonged to him came after he was arrested but prior to being administered any Miranda warnings?

### **STATEMENT OF THE CASE**

A York County Grand Jury indicted Appellant at the October 22, 2015 term of General Sessions for possession of a controlled substance, second offense and possession of marijuana, second offense. R. 117 - 118. His case was called to trial on May 17, 2016 before the Honorable John C. Hayes, III, and a jury. Assistant Solicitors Marina Hamilton and Teasa Weaver appeared on behalf of the prosecution, and Jessica and Phil Smith represented Appellant. R. 1.

At the conclusion of the trial, the jury found Appellant guilty as indicted. R. 104, ll. 1 – 9. On each charge, Judge Hayes sentenced Appellant to one year imprisonment suspended upon the service of thirty days, to run concurrently. R. 109, ll. 10 - 16. He also sentenced Appellant to two years' probation as well as substance abuse counseling. R. 109, ll. 10 – 16.

This appeal follows.

## ARGUMENT

**The trial judge erred in admitting Appellant's confession to law enforcement where the state could not prove by a preponderance of evidence that Appellant's statement came at a time when he was free to leave, when the incriminating question of whether the drugs belonged to him came after he was arrested but prior to being administered any Miranda warnings.**

On July 15, 2015, Officer Mark Suchenski entered the home of Cameron Greene, Appellant's brother, in order to serve him with outstanding arrest warrants. R. 11, l. 24 – R. 12, l. 2. Accompanied by Officer David Vaughn, who received consent to search the home, Suchenski located two substances believed to be marijuana and alprazolam in one of the home's bedrooms. R. 35, ll. 4 – 23. Vaughn had already discerned the owner of each bedroom, and he testified that Appellant claimed ownership of the room in which the drugs were located. R. 16, l. 3 – R. 17, l. 10; R. 34, ll. 13 – 20; R. 47, ll. 3 – 23.

After finding drugs in the bedroom which had been claimed by Appellant, officers arrested Appellant and asked whether the drugs belonged to him. R. 17, ll. 1 – 10; R. 48, ll. 3 – 8. Immediately after Appellant allegedly answered in the affirmative, he was read his Miranda<sup>1</sup> rights, and asked the same question again. R. 17, ll. 1 – 10; R. 18, ll. 3 - 19. According to law enforcement, his answer remained the same. R. 17, ll. 1 – 10.

Law enforcement did not have any cameras or audio recording devices during this interview. R. 53, ll. 5 – 21. As a result, no recorded or written statements exist from anyone in the home from the night in question. R. 53, ll. 19 – 21.

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<sup>1</sup> Miranda v. Arizona, 384 U.S. 426 (1966).

### **Jackson v. Denno Hearing**

Prior to the start of trial, defense counsel requested a Jackson v. Denno<sup>2</sup> hearing to determine the admissibility of Appellant's verbal statement obtained by law enforcement while Appellant was in custody. R. 6, l. 25 – R. 7, l. 3.

Officer Vaughan interviewed Appellant on July 15, 2015. R. 11, l. 19 – R. 12, l. 8. Two other law enforcement officers were present, and the interview took place in the living room of Cameron Greene's home. R. 12, ll. 9 – 21. Although Appellant had already been arrested and was handcuffed at the time of the alleged admission, Vaughan testified that he was free to leave. R. 13, ll. 3 – 4; R. 17, ll. 20 – 25. According to Vaughan, Appellant indicated that he understood his rights and still wished to speak with law enforcement following a reading of his rights under Miranda. R. 13, l. 15 – R. 14, l. 16. Vaughan then testified that the substance of Appellant's statement was an admission regarding ownership of the drugs found in one of the home's bedrooms. R. 14, l. 25 – R. 15, l. 2. Appellant did not introduce any evidence or testimony during the hearing.

Vaughn claimed that members of law enforcement were neither pointing a weapon at Appellant nor threatening him, although Tiffany Poole, who was in the house at the time, indicated during her trial testimony that law enforcement threatened to arrest everyone in the home if nobody claimed ownership of the drugs. R. 12, ll. 22 – 25; R. 77, ll. 3 - 17. Vaughn further testified that Appellant appeared to be "clear headed and sober" as well as uninjured. R. 13, ll. 5 – 8. Vaughn also believed that Appellant comprehended what was being discussed. R. 13, ll. 9 – 11. No promises were made in order to get Appellant to talk. R. 13, ll. 12 – 14.

At the end of the pre-trial hearing, counsel argued:

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<sup>2</sup> Jackson v. Denno, 378 U.S. 368, 385, 84 S. Ct. 1774, 1785, 12 L. Ed. 2d 908 (1964).

I believe that [law enforcement] questioned Mr. Greene before Miranda [and therefore received] answers that they want[ed] and then ask[ed] that exact same question after Miranda. At that point the officer says that [Appellant] was free to leave. I think there is a question there whether he would have been free to leave since they had based the evidence on why they arrested him and why they questioned him alone on the fact that that was his bedroom and the drugs were located in that area. I have questions about whether he was truly free to leave at that point. I think it would be inappropriate for them to question him, Mirandize him, and ask him the exact same question. I would ask that we suppress the statement made both before and after Miranda.

R. 19, ll. 10 – 23.

The trial judge found that Appellant was not in custody at the time of the initial questioning and concluded that because the statement was freely, voluntarily, and knowingly made following a waiver of Appellant's rights under Miranda, it was admissible. R. 19, l. 24 – R. 21, l. 2.

### **Discussion**

If the police take a suspect into custody and then ask him questions without informing him of his rights, his responses cannot be introduced into evidence to establish his guilt. See, e.g., Estelle v. Smith, 451 U.S. 454, 466–467, 101 S.Ct. 1866, 1875, 68 L.Ed.2d 359 (1981); Rhode Island v. Innis, 446 U.S. 291, 297–298, 100 S.Ct. 1682, 1687–1688, 64 L.Ed.2d 297 (1980) (dictum); Orozco v. Texas, 394 U.S. 324, 326–327, 89 S.Ct. 1095, 1096–1097, 22 L.Ed.2d 311 (1969); Mathis v. United States, 391 U.S. 1, 3–5, 88 S.Ct. 1503, 1504–1505, 20 L.Ed.2d 381 (1968). A person subjected to custodial interrogation is entitled to the benefit of the procedural safeguards enunciated in Miranda, regardless of the nature or severity of the offense of which he is suspected or for which he was arrested. Berkemer v. McCarty, 468 U.S. 420, 434, 104 S. Ct. 3138, 3147, 82 L. Ed. 2d 317 (1984).

“[T]he privilege against self-incrimination—the essential mainstay of our adversary system—is founded on a complex of values. Murphy v. Waterfront Comm. of New York Harbor,

378 U.S. 52, 55—57, n. 5, 84 S.Ct. 1594, 1596—1597, 12 L.Ed.2d 678 (1964); Tehan v. United States ex rel. Shott, 382 U.S. 406, 414—415, n. 12, 86 S.Ct. 459, 464, 15 L.Ed.2d 453 (1966).

The question is often whether the privilege is fully applicable during a period of custodial interrogation. The privilege has consistently been accorded a liberal construction. Albertson v. Subversive Activities Control Board, 382 U.S. 70, 81, 86 S.Ct. 194, 200, 15 L.Ed.2d 165 (1965); Hoffman v. United States, 341 U.S. 479, 486, 71 S.Ct. 814, 818, 95 L.Ed.2d 1118 (1951); Arnstein v. McCarthy, 254 U.S. 71, 72—73, 41 S.Ct. 26, 65 L.Ed. 138 (1920); Counselman v. Hitchcock, 142 U.S. 547, 562, 12 S.Ct. 195, 197, 35 L.Ed. 1110 (1892). Miranda v. Arizona, 384 U.S. 436, 460–61, 86 S. Ct. 1602, 1620, 16 L. Ed. 2d 694 (1966).

“[I]f a person in custody is to be subjected to interrogation, he must first be informed in clear and unequivocal terms that he has the right to remain silent.” Miranda at 467–68, 86 S. Ct. at 1624, 16 L. Ed. 2d 694 (1966). “The Fifth Amendment privilege is so fundamental to our system of constitutional rule and the expedient of giving an adequate warning as to the availability of the privilege so simple, [the Supreme Court of the United States] will not pause to inquire in individual cases whether the defendant was aware of his rights without a warning being given.” Id., at 468, 86 S. Ct. at 1625, 16 L. Ed. 2d 694 (1966).

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that “a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.” To introduce a statement produced during custodial interrogation, the prosecution 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. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d

444, 448 (Ct. App. 2007). In South Carolina, a court will examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: Did the totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401.

An examination of the totality of the circumstances revealed that Appellant was in custody at the time of questioning and was therefore not free to leave. As a result, his statement was not taken in compliance with Miranda. “**Prior to any questioning**, the 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, either retained or appointed. Miranda v. Arizona, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L. Ed. 2d 694 (1966) (emphasis added).

The trial judge in Appellant's case erroneously concluded that Appellant was not in custody based upon the testimony of Officer Vaughn. R. 19, ll. 24 – 25. As the Supreme Court has emphasized, the test for whether an interrogation was custodial is an objective one: “[T]he subjective views harbored by either the interrogating officers or the person being questioned are irrelevant. The test, in other words, involves no consideration of the actual mindset of the particular suspect subjected to police questioning.” J.D.B. v. North Carolina, — U.S. —, 131 S.Ct. 2394, 2402, 180 L.Ed.2d 310 (2011) (internal quotation marks and citations omitted); see also United States v. Parker, 262 F.3d 415, 419 (4th Cir.2001) (“Custody determinations do not

depend on the subjective views of either the interrogating law enforcement officers or of the person being questioned, but depend instead [on] the objective circumstances of the interrogation.”). United States v. Hashime, 734 F.3d 278, 285 (4th Cir. 2013).

There was evidence that law enforcement was aware of the ownership of each bedroom. “Before [they] searched the residence, [they] ask[ed] what room belonged to who.” R. 16, ll. 22 – 24. As such, the officers could attribute ownership of the drugs to Appellant, who allegedly suggested that the bedroom belonged to him. Therefore, after the drugs were located, officers arrested Appellant. R. 17, ll. 1 – 4. Following the arrest, officers asked Appellant whether the drugs belonged to him, read him his Miranda rights, and asked him if the drugs were his again, in that order. R. 17, ll. 1 – 6. Appellant was in custody at the time of interrogation, in violation of Miranda.

Officer Vaughn offered conflicting testimony during the Jackson v. Denno hearing. Initially, he stated that Appellant was free to leave prior to the reading of the Miranda rights. R. 17, ll. 17 – 22. “[H]e could have walked out of the house” and Vaughn would not have arrested him at that point.” However, Vaughn wavered when pressed on this issue; he testified that Appellant would only have been free to leave before officers located the drugs. R. 18, ll. 3 – 5. In other words, Appellant was not free to leave after the drugs were located in his bedroom. As a result, the initial questioning of Appellant by law enforcement, prior to Miranda warnings, was done at a time when Appellant was in the custody of law enforcement; he deserved but was not provided his Miranda and 5<sup>th</sup> Amendment protections. A reasonable person in these circumstances would have considered his freedom of movement restrained to the degree associated with a formal arrest.

When being questioned by law enforcement regarding ownership of the drugs for which Appellant was arrested and subsequently tried, Appellant was in custody for the purposes of

Miranda. Consequently, law enforcement's failure to read him his Miranda rights in a timely fashion made his testimony inadmissible and requires that his conviction be reversed. Appellant's statement should have been suppressed under Miranda, because he was in custody when he spoke with law enforcement officers.

**CONCLUSION**

Appellant's convictions should be reversed and this case remanded to the York County Court of General Sessions for a new trial.

A handwritten signature in black ink, appearing to read 'Taylor D Gilliam', written over a horizontal line.

Taylor D Gilliam  
Appellate Defender

ATTORNEY FOR APPELLANT

This 27<sup>th</sup> day of June, 2017.

**CERTIFICATE OF COUNSEL**

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

June 27, 2017



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