

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

THE STATE,

RESPONDENT,

V.

ANTWAN J. JETT

APPELLANT

APPELLATE CASE NO 2015-001042

RECEIVED

MAY 04 2018

SC Court of Appeals

Appeal from Florence County

Honorable D. Craig Brown, Circuit Court Judge

Opinion No. 5554

PETITION FOR REHEARING

The Court of Appeals affirmed the above named appellant's convictions and sentences on April 25, 2018. In support of this petition for rehearing, which is being submitted on today's date pursuant to Rules 221 and 224 of the South Carolina Appellate Court Rules, Appellant submits the following:

Appellant Jett raised one issue on appeal: The trial court erred in admitting the recorded statement by Appellant Jett to Investigator Felicia Jones in the back of the patrol car which was a violation of Miranda v. Arizona, 384 U.S. 436 (1966) because Appellant Jett unambiguously asked for his lawyer initially when he said: "Where is my lawyer at?" and Investigator Jones continued to

question him and he again said later that Investigator Jones would have to ask his attorney any further questions, and the investigator continued to ask a question.

The Court of Appeals found, with two judges concurring, that Jett's statement to Detective Jones, prior to her reading Jett his *Miranda* rights, was ambiguous and equivocal enough so that a reasonable officer could have decided it was not an invocation of counsel.

Judge Konduros wrote a dissent where she would hold that Jett's statement was an unequivocal and unambiguous invocation of his right to counsel. She found that Jett's case was distinguished from Davis where Davis' statement to police was : "Maybe I should talk to a lawyer."

The Court of Appeals respectfully misapprehended the issue.

The Court of Appeals relied on the case of Davis v. United States, 512 U.S. 452 (1994), which held that a suspect must unambiguously request counsel. The United States Supreme Court held in Davis that: "Invocation of the *Miranda* right to counsel requires, at a minimum, some statement that can reasonably be construed to be an expression of a desire for the assistance of an attorney."

In Davis, the suspect who was a member of the United States Navy, was being questioned about the murder of a sailor. Initially, Davis waived his right to counsel. However, about an hour and half into the interview, Davis said to the investigator: "Maybe I should talk to a lawyer." When the investigator asked if he were asking for a lawyer, Davis said he was not. Following a break, the investigator reminded Davis of his rights again. Later, Davis asked to have a lawyer present. The Supreme Court found that Davis' remark: "Maybe I should talk to a lawyer" was not a request for counsel; therefore, the investigator was not required to stop questioning him. The Supreme Court also held that when a suspect makes an ambiguous or equivocal statement as to counsel, it would be

good police practice for the interviewer to clarify whether the suspect actually wants an attorney but is not required.

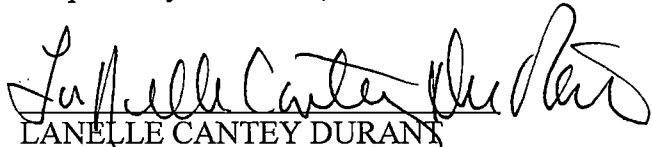
Jett's case is distinguished from both Davis and Wannamaker. Jett's statement was not ambiguous in that he did not say he may need to talk to an attorney. He clearly asked for his attorney when he said: "Where is my lawyer at?" Any reasonable law enforcement officer would have seen that as a request for an attorney. At the least, the request was sufficient enough for the officer to ask for clarification. That did not happen. Instead, Investigator Jones continued to talk to him and ask questions which Jett did not initiate. Later, it was very clear when Jett told Investigator Jones that she would have to talk to his attorney if she wanted any more information. That second request did show that the first request was an unambiguous request for an attorney.

Jett's speech may have been inarticulate and may have been the incorrect use of grammar, he was clearly asking for an attorney.

If the suspect requests counsel at any time during the interview, he is not subject to further questioning until a lawyer has been made available or the suspect himself reinitiates conversation. Edwards v. Arizona, 451 U.S. 477 (1981).

WHEREFORE, we respectfully request this Court to reconsider its ruling, and remand Jett's case for a new trial.

Respectfully Submitted,

  
LANELLE CANTEY DURANT  
Appellate Defender

This 4th day of May, 2018.

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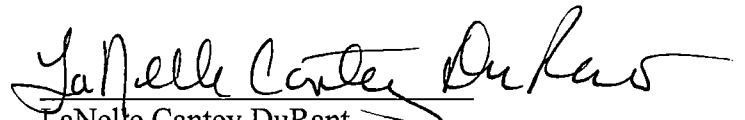
APPELLANT

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CERTIFICATE OF SERVICE

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The undersigned attorney hereby certifies that a copy of the Petition for Rehearing in the above-entitled case has been served upon Mark Farthing, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and Antwan J. Jett, #358650, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 4<sup>th</sup> day of May, 2018.

  
LaNelle Cantey DuRant  
Appellate Defender  
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO BEFORE  
ME this 4th day of May, 2018.

 (L.S)  
Notary Public for South Carolina  
My Commission Expires: July 5, 2027.