

 ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

RECEIVED
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SOUTH CAROLINA
COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

TIMOTHY WAYNE ALFORD, .

APPELLANT

Appellate Case No. 2011-202530

ANDERS BRIEF OF APPELLANT

DAYNE C. PHILLIPS
Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting Appellant's verbal statements to law enforcement when, under the totality of the circumstances, those statements were not freely, knowingly, and voluntarily made based on law enforcement's failure to warn Appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966)?

STATEMENT OF THE CASE

On January 19, 2012, the York County Grand Jury indicted Appellant Timothy Alford for driving a vehicle while under the influence of alcohol and/or drugs with a blood alcohol level of less than .10, to the extent that his faculties to drive were materially and appreciably impaired, second offense. R. 166 – 167.

On May 7, 2012, Appellant proceeded to trial before the Honorable Lee S. Alford and a jury. R. 1. Amy Sikora and Mark McKinnon represented Appellant, and Assistant Solicitor John Shiflet represented the State. The jury found Appellant guilty as charged. R. 158, ll. 5-20. The trial court sentenced Appellant to one-year imprisonment suspended upon five years' probation. R. 164, ll. 4-14; R. 168.

This appeal follows.

ARGUMENT

The trial court erred in admitting Appellant's verbal statements to law enforcement when, under the totality of the circumstances, those statements were not freely, knowingly, and voluntarily made based on law enforcement's failure to warn Appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966).

Relevant Facts

Pre-trial, defense counsel requested a hearing pursuant to *Jackson v. Denno*, 378 U.S. 368 (1964), to determine the admissibility of Appellant's verbal statements to police. R. 40, ll. 9-21. During the *Jackson v. Denno* hearing, Officer Matthew Palmer of the York County Sheriff's Office described Appellant's "condition" at the time of the traffic stop as follows: "[Appellant] was *grossly intoxicated*. He had an odor associated with alcoholic beverages emanating from his person, *red bloodshot eyes and slowed slurred speech*." R. 49, ll. 9-13 (emphasis added). Officer Palmer maintained that Appellant made several statements prior to conducting the field sobriety tests (e.g., Appellant allegedly stated, "you got me"). R. 51, ll. 1-3.

At trial, the State began its opening statement as follows: "You got me. You got me. Ladies and gentleman, those are the words of the defendant, Timothy Wayne Alford, on the night that he was arrested for driving under the influence." R. 62, ll. 19-22 (internal quotation marks omitted). Officer Palmer's trial testimony mirrored the testimony elicited during the *Jackson v. Denno* hearing. R. 81, l. 2 – 83, l. 5. During the State's closing argument, the solicitor emphasized Appellant's statements as evidence of guilt. R. 128, l. 1 – 133, l. 8.

Discussion

"[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.” *Jackson v. Denno*, 378 U.S. 368, 378 (1964). This fundamental principle applies “even though there is ample evidence aside from the confession to support the conviction.” *Id.* In *Miranda v. Arizona*, 384 U.S. 436, 444 (1966), the United States Supreme Court stated, “Prior to any questioning, the person must be warned that he has the right to remain silent, that any statement he does make may be used as evidence against him, and that he has the right to the presence of an attorney, either retained or appointed.” Specifically, “[l]aw enforcement must state the *Miranda* warnings ‘after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way [(i.e., custodial interrogation)].’” *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003) (quoting *Miranda*, 384 U.S. at 444-45); *see also Stansbury v. California*, 511 U.S. 318, 322 (1994); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977).

In this case, Officer Palmer testified that when Appellant made those verbal statements, Appellant was not under arrest for DUI, but detained for purposes of investigation, despite Officer Palmer’s contention that Appellant was “*grossly intoxicated*” with “*red bloodshot eyes and slowed slurred speech*.” R. 49, ll. 9-13 (emphasis added). At that point, Appellant was “otherwise deprived of his freedom of action in any significant way” because Officer Palmer would not have allowed Appellant to conclude the resulting “investigation” of the traffic stop and be free to leave. *See Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003) (quoting *Miranda*, 384 U.S. at 444-45). Officer Palmer had a duty to warn Appellant of his rights pursuant to *Miranda v. Arizona*, 384 U.S. 436. Therefore, the trial court erred in admitting Appellant’s verbal statements to law enforcement, as those statements, under the totality of the circumstances, were not freely, knowingly, and voluntarily made. *See U.S. Const. amend. V; see also Denno*, 378 U.S. at 376.

CONCLUSION

Based on the foregoing reasons, Appellant Timothy Alford respectfully requests that this Court reverse his conviction and remand this case to the York County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Dayne Phillips", written over a horizontal line.

Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of March, 2013.

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Lee S. Alford, Circuit Court Judge

THE STATE,

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V.

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Appellate Case No. 2011-202530

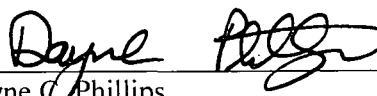
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Wayne Alford states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Lee S. Alford, which was held on May 7-8, 2012, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He 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, he asks the Court to relieve him as counsel for Timothy Wayne Alford.

Respectfully submitted,


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of March, 2013.

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

Pursuant to the new Anders procedure set forth by the Court, Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment;
- (2) Sentencing Sheet;
- (3) Entire transcript of proceeding.*

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

March 28th, 2013



Dayne C. Phillips
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
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(803) 734-1343

Attorney for Appellant

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IN THE COURT OF APPEALS

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THE STATE,

RESPONDENT,

V.

TIMOTHY WAYNE ALFORD,

APPELLANT

Appellate Case No. 2012-211997

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Columbia, SC 29201; and on Timothy Wayne Alford, at 59 Old Calhoun Falls Road, Abbeville, SC 29630, this 28th day of March, 2013.


Dayne C. Phillips
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 28th day of March, 2013.


Notary Public for South Carolina

My Commission Expires: October 30, 2022.