ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2012-213675

The State,

Respondent,

vs.

INDIA SOWELL,

Appellant.

FINAL BRIEF OF RESPONDENT

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ATTORNEYS FOR RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The circuit court properly admitted testimony regarding appellant's statement to police and items she removed from her purse and person, because Appellant was not in custody when she made the statement and produced the items, and Miranda[1] warnings were not required.

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[1]Miranda v. Arizona, 384 U.S. 436 (1966).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On July 19, 2012, the Lancaster County Grand Jury indicted Appellant India Sowell on one count of shoplifting 3rd or subsequent offense. The matter was called for a jury trial on August 15, 2013, before the Honorable D. Craig Brown, Circuit Court Judge. Appellant did not appear for trial, and the trial proceeded *in absentia*. (Trial Transcript [TT], pp. 4-9; Record on Appeal [R.], pp. 4-9).

Prior to trial, Appellant moved to suppress all evidence arising from the investigating officer's initial contact with Appellant, contending the evidence was obtained during a police interrogation of Appellant without first giving her the Miranda warnings. During the suppression hearing, Deputy Charles McKinnon with the Lancaster County Sheriff's Office testified he responded to a shoplifting call at the Dollar General Store on April 11, 3012. When he arrived, the store manager pointed out Appellant, who was at the check-out counter, as the person she saw putting items in her purse. (TT, pp. 12-13; R., pp. 12-13).

Deputy McKinnon approached Appellant, and asked if she had anything on her. Appellant immediately said "yeah," and started pulling items out of her purse and bra. Appellant was not under arrest at that time, and Deputy McKinnon did not give her the Miranda warnings. (TT, pp. 13-14, 17-19; R., pp. 13-14, 17-19).

After the store manager confirmed the items Appellant removed from her purse and bra belonged to the store, Deputy McKinnon placed Appellant under arrest, and transported her to the detention center. He did not ask her any further questions, and Appellant made no further statements. (TT, pp. 14-15; R., pp. 14-15).

The circuit court denied the motion to suppress, finding Appellant was not in custody at the time Deputy McKinnon asked if she had anything on her. The court further found Appellant's response to Deputy McKinnon's question was voluntary, with no threats, force, pressure or coercion by Deputy McKinnon. (TT, pp. 19-21; R., pp. 19-21).

After hearing testimony from the store manager and Deputy McKinnon, the jury convicted Appellant as charged, and the circuit court sentenced her to incarceration for six years. (TT, pp. 56-69, 94, 102-103; R., pp. 56-69, 94, 102-103). This appeal followed.

ARGUMENT

The circuit court properly admitted testimony regarding Appellant's statement to police and items removed she from her purse and person, because Appellant was not in custody when she made the statement and removed the items, and Miranda warnings were not required.

Appellant contends the circuit court erred in denying her motion to exclude evidence regarding her statement to Deputy McKinnon and the items removed from her purse and person, because they were obtained pursuant to an improper police interrogation without Miranda warnings. This contention is meritless.

Miranda warnings are required for official interrogations only when an individual "has been taken into custody or otherwise deprived of his freedom of action in any way." State v. Easler, 327 S.C. 121, 128, 489 S.E.2d 617, 621 (1997); *see also* State v. Williams, 405 S.C. 263, 747 S.E.2d 194, 199 (Ct. App. 2013) (same). This language means a formal arrest or a detention associated with a formal arrest. Williams, 747 S.E.2d at 199 (citing Maryland v. Shatzer, 559 U.S. 98 [2010]).

To determine whether an individual is in custody, the trial judge is required to examine the totality of the circumstances, including factors such as the place, purpose, and length of interrogation, as well as whether the individual was free to leave the place of questioning. State v. Evans, 354 S.C. 579, 582 S.E.2d 407, 409 (2003) (custodial determination is an objective analysis based on reasonable man standard). "The fact the investigation has focused on the suspect does **not** trigger the need for Miranda warnings **unless** he is in custody." Easler, 327 S.C. at 128, 489 S.E.2d at 621 (citing Minnesota v. Murphy, 465 U.S. 420 [1984] (emphasis added); Oregon v. Mathiason, 429 U.S. 492

[1977]) (same); *see also* Williams, 747 S.E.2d at 199 (the interrogating officer's suspicions have little to do with the focus of Miranda, and inquiry into the officer's suspicions is not relevant for Miranda purposes) (*citing* Stansbury v. California, 511 U.S. 318 [1994]). On appeal, the trial court's findings as to custody must be upheld where they are supported by the record. State v. Navy, 386 S.C. 294, 688 S.E.2d 834, 843 (2010) (*citing* Evans).

In this case, it is virtually undisputable Appellant was **not** in custody when Deputy McKinnon approached her in the store, asked her if she had anything on her, and she replied "yeah" and started removing items from her purse and person. Even though Deputy McKinnon suspected Appellant of shoplifting based on the store manager's report, since Appellant was not in custody, she was not entitled to Miranda warnings before Deputy McKinnon proceeded to investigate the report. *See* Evans, 582 S.E.2d at 409; see also State v. Sprouse , 325 S.C. 275, 478 S.E.2d 871, 875 (Ct. App. 1996) (even if the investigation has focused on a suspect, he is not entitled to Miranda warnings unless he is in custody). Deputy McKinnon placed Appellant in custody only **after** she produced the items hidden in her purse and bra, which the store manager confirmed belonged to the store, and he did not ask Appellant any questions after she was arrested.

The essence of Appellant's contention is that the mere fact Deputy McKinnon was wearing a uniform and badge and identified himself as a police officer automatically transformed the encounter with Appellant from an investigation into a custodial situation. This is not, and has never been, the law under federal constitutional law, or the law of this

state.[2] There is no evidence Deputy McKinnon threatened Appellant in any way, or attempted to stop her from leaving prior to answering his simple, single question. Rather, apparently realizing she had been caught shoplifting, Appellant immediately, and voluntarily, admitted she had something on her and produced the items she had hidden in her purse and on her person.

There was ample evidence supporting the circuit court's determination Appellant was not in custody at the time Deputy McKinnon asked her if she had anything on her, Miranda warnings were not required, and Appellant's subsequent statement, as well as the items she removed from her purse and person, were admissible. Therefore, the circuit court's ruling should be affirmed.

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[2]Appellant's emphasis on the word "confront" does not alter the analysis. Arguably, police officers always "confront" someone suspected of a crime, but mere confrontation does not translate into custody for Miranda purposes.

CONCLUSION

Based on the foregoing, Respondent submits Appellant's conviction should be affirmed.

Respectfully submitted,

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ATTORNEYS FOR RESPONDENT

February 24, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lancaster County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2012-213675

The State,

Respondent,

vs.

INDIA SOWELL,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled, "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

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February 24, 2013

STATE OF SOUTH CAROLINA

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Appeal from Lancaster County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case No. 2012-213675

The State,

Respondent,

vs.

INDIA SOWELL,

Appellant.

PROOF OF SERVICE

I, Sally B. Ellison, certify I served the Final Brief of Respondent and Designation of Matter on Appellant by depositing two copies in the United States mail, postage prepaid, addressed to:

LaNelle Cantey DuRant
Assistant Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
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I further certify all parties required by Rule to be served have been served.

This 24th day of February, 2014.

Sally B. Ellison

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February 24, 2014

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RE: State v. India Sowell
Appellate Case No. 2013-213675

Dear Ms. DuRant:

Enclosed are two (2) copies of the Final Brief of Respondent, with proof of service, in the above-referenced case.

Sincerely,

Deborah R.J. Shupe
Senior Assistant Deputy Attorney General
S.C. Bar No. 5098

DRJS/sbe
Enclosures

cc: Honorable Jenny A. Kitchings (original and 9 enclosed)
Victim Services