

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Beaufort County

William Jeffrey Young, Circuit Court Judge

RECEIVED

JAN 10 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

WILLIAM EDWARD PRICE,

APPELLANT

APPELLATE CASE NO. 2013-000185

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to suppress Appellant's statement given to Investigator Kelleher without the benefit of Miranda warnings?

STATEMENT OF THE CASE

On June 28, 2012, the Beaufort County Grand Jury indicted Price for burglary second degree non-violent, indictment #2012-GS-07-1104. On January 22, 2013, Price proceeded to jury trial before the Honorable W. Jeffrey Young. Attorney Andrew S. Platte represented Price at trial. Attorneys Mary Concannon and Patrick Hall prosecuted the case on behalf of the State. The jury returned with a verdict of guilty. Judge Young sentenced Price to eight (8) years imprisonment. A timely notice of intent to appeal was served on January 25, 2013. This appeal follows.

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ARGUMENT

The trial judge erred in refusing to suppress Appellant's statement given to Investigator Kelleher without the benefit of Miranda warnings.

Appellant was charged with the burglary of Carolyn Lyn's home on the morning of May 10, 2012. That morning Carolyn Lyn's grandson, David Lyn, was cooking breakfast when he heard a loud noise in the laundry room. (R. pp. 126-127). When David Lyn went to investigate the noise he saw a man climbing in the window of the laundry room. (R. p. 127, lines 6-17). According to David Lyn, he immediately called the police and the man ran out the back door. (R. p. 128, lines 1-25). David Lyn identified Appellant as the man who broke into the laundry room. (R. p. 133, lines 1-5)

Prior to trial the judge held a Jackson v. Denno hearing to determine the admissibility of several statements made by Appellant upon his detainment and arrest by the police. (R. pp. 31-54). Sergeant Robert DiCarlo testified that once Appellant was in custody he immediately advised Appellant of his Miranda rights. (R. p. 35, line 13 – p. 36, lines 1-14). Sergeant DiCarlo, however, did not obtain a written *Miranda* waiver from Appellant. (R. p. 36, lines 8-9) Sergeant DiCarlo testified that Appellant gave inconsistent statements in regard to why he was in the area where the burglary took place. (R. pp. 36-39). When Sergeant DiCarlo advised Appellant of the penalties for providing false information to the police, Appellant stopped the interview completely and asked to speak to Investigator Kelleher alone. (R. p. 39, lines 14-18). In his statements to Sergeant DiCarlo Appellant did not admit going into the Lyn house.

Investigator Kelleher also testified at the Jackson v. Denno hearing. Investigator Kelleher did not Mirandize Appellant but testified, "When I met the defendant, I asked

him if he was advised of his Miranda rights and if he understood them, and he told me he did.” (R. p. 49, lines 11-13). Investigator Kelleher recorded his conversation with Appellant and the recording was played for the judge during the hearing. (R. p. 51, lines 4-13). The judge denied the motion to suppress Appellant’s statements stating, “I’ve got sworn testimony that he was given his rights from the card that he normally gives. He then later, you know, shut down. He was asked by another officer was he given his rights, and then he starts talking again. I find that his statements were freely and voluntarily given and will be admissible in court.” (R. p. 53, lines 16-23)

Appellant’s statement to Investigator Kelleher was played for the jury during trial. (R. p. 178, lines 5-16). In the statement Appellant admitted going into the house to look for a stereo system and clothing that had been stolen from him. (R. p. 179, lines 15-20). The trial judge erred in admitting the statement Appellant gave to Investigator Kelleher.

In Miranda v. Arizona, 384 U.S. 436, 473-474, 86 S.Ct. 1602, 1627-1628 (1966)

the United States Supreme Court wrote:

Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege; any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise. Without the right to cut off questioning, the setting of in-custody interrogation operates on the individual to overcome free choice in producing a statement after the privilege has been once invoked.

If the individual decides, after receiving Miranda warnings, that he wishes to cease questioning, the custodial officers must scrupulously honor his right to cut off questioning. Michigan v. Mosley, 423 U.S. 96, 96 S.Ct. 321, 46, L.Ed.2d 213 (1975)

Appellant was in custody when he made statements to both Sergeant DiCarlo and Investigator Kelleher. Appellant invoked his right to remain silent when he told Sergeant DiCarlo that he no longer wanted to speak with him. The Beaufort County Sheriff's Department, however, did not scrupulously honor Appellant's right to cut off questioning. Although, according to Sergeant DiCarlo, Appellant asked to speak with Investigator Kelleher alone, the subsequent interrogation by Investigator Kelleher required additional Miranda warnings. Investigator Kelleher's reference to the earlier Miranda warnings was not sufficient.

In State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261 (2001), the South Carolina Supreme Court wrote:

Courts interpreting Mosley have set forth five factors to analyze to ascertain whether the defendant's right to cut off questioning was "scrupulously honored": (1) whether the suspect was given Miranda warnings at the first interrogation; (2) whether police immediately ceased the interrogation when the suspect indicated he did not want to answer questions; (3) whether police resumed questioning the suspect only after the passage of a significant period of time; (4) whether police provided a fresh set of Miranda warnings before the second interrogation, and (5) whether the second interrogation was restricted to a crime that had not been a subject of the earlier interrogation.

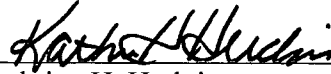
In Benjamin the Court found, under the totality of the circumstances, that the police scrupulously honored the defendant's right to remain silent despite the fact that the subsequent interrogation concerned the same crime as the first interrogation. Importantly in Benjamin, Miranda warnings were given before the second interrogation and an hour passed between the two interrogations. In contrast in the present case, Investigator Kelleher did not Mirandize Appellant before the second custodial interrogation, the second interrogation concerned the same crime as the first interrogation and there was no

passage of time between Appellant's invocation of his right to remain silent and the second interrogation. The statement given to Investigator Kelleher was taken in violation of Miranda and should have been suppressed.

CONCLUSION

Based on the above argument the conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of January, 2014.

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for William Edward Price states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on January 23, 2013, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She 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, she asks the Court to relieve her as counsel for William Edward Price.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 10th day of January, 2014.

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IN THE COURT OF APPEALS

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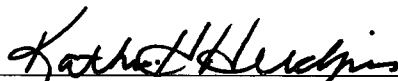
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript,
- (3) State's Exhibit #1, DVD of statement – to be transported to the Court.

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

January 10th, 2014



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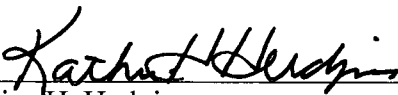
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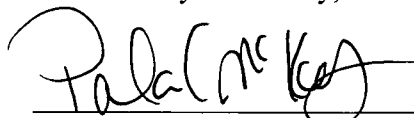
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on William Edward Price, #266030 at Coastal Work Center, 2462 Leeds Avenue Charleston, SC 29405 this 10th day of January, 2014.


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 10th day of January, 2014.

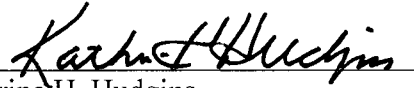


Notary Public for South Carolina
My Commission Expires: July 24, 2022.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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 "

January 10th 2014



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
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