STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Thomas A. Russo, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LANCE LEON MILES,

APPELLANT

APPELLATE CASE NO. 2015-000308

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. The trial court erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone; rather, for Appellant to be guilty of trafficking, the State only needed to prove that Appellant knew the package contained any illegal drugs.

II. The trial erred reversibly by refusing to grant a directed verdict acquitting Appellant of trafficking in illegal drugs where the State presented no direct or substantial circumstantial evidence that Appellant knew that the package he possessed contained oxycodone as required by S.C. Code Ann. § 44-53-370(e)(3)(a).

III. Appellant's right against self-incrimination as guaranteed by the Fifth and Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*[1] rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.

A. The court erred in admitting statements made by Appellant prior to officers advising Appellant of his *Miranda* rights and obtaining a valid waiver of those rights where Appellant clearly was in custody based upon the totality of the circumstances.

B. The trial court erred in admitting statements made by Appellant subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Appellant in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.

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

STATEMENT OF THE CASE

On March 10, 2014, the Lexington County Grand Jury indicted Appellant Lance L. Miles for one count of trafficking in illegal drugs. R. 326-327.

On February 11-12, 2015, Appellant proceeded to trial before the Honorable Thomas A. Russo and a jury. Robert "Theo" Williams represented Appellant, and Assistant Solicitors Micah Caskey and Casey Rankin represented the State.

The jury found Appellant guilty as charged. R. 314, ll. 2-13. The trial court sentenced Appellant to twenty-five years imprisonment. R. 321, ll. 1-8.

STATEMENT OF FACTS

On the morning of September 13, 2013, Agent Doug Edmonson of the Lexington County Sheriff's Department was at a FedEx warehouse near the Columbia Metropolitan Airport looking at arriving packages in an effort to determine if they contained drugs. R. 65, ll. 6 - 67, ll. 13. Edmonson would allege that one particular package had "indicators of maybe containing some type of illegal narcotic." R. 8, ll. 12-19.

According to Edmonson the package was suspicious because: (1) it was "excessively" taped, (2) it was being sent overnight from California, (3) the sender paid in cash; and (4) the sender waived the signature requirement for the recipient. R. 44, ll. 6-23. Edmonson noted the recipient, the address and released the package for delivery. *Id.* He then ran the name of the recipient through a law enforcement database. The name did not match the delivery address. R. 50, ll. 18 - p 51, ll. 23.

Based on this information, Edmonson decided to conduct surveillance of the delivery address. Edmonson enlisted the help of Lexington City Police Officer Marc Miramontes and Lexington County Deputy Travis Bass. Miramontes, sitting in an undercover vehicle, observed the package being delivered and witnessed a never-identified black female, who was talking on a cell phone, step out of the apartment where the package was delivered. R. 31, ll. 3 - 32, ll. 14.

The unknown female looked at the package briefly, then went back inside the apartment. Shortly thereafter, Miramontes saw Appellant walk up to the apartment and pick-up the package. *Id.* Appellant then began to walk towards the back of the apartment complex. Edmonson and Bass drove into the complex's parking lot to intercept Appellant. R. 19, ll. 1 - 21, ll. 19.

Both officers exited their vehicles with guns drawn and ordered Appellant "to the ground." R. 37, ll. 1 - 38, ll. 13. When Appellant failed to immediately do so, the officers forced him to the

ground and handcuffed him. Edmonson interrogated Appellant.[2] *Id.* Without administering *Miranda* warnings, Edmonson demanded Appellant explain what he was doing with the package and what he thought was in it. R. 10, ll. 4-25.

Appellant initially denied knowing what was in the package. *Id.* Edmonson posited that he believed the package contained narcotics. *Id.* Still handcuffed, Appellant conceded that the package might contain drugs. *Id.* At trial Edmonson would recall, ***"[a]fter he told me that it might have drugs in it, then I Mirandized."*** *Id.* at ll. 22-25 (*emphasis added*). Edmonson then told Appellant "I said 'we need to talk about this . . . I want to talk about this. I want you to tell me everything you know about this." R. 12, ll. 19-24. Edmonson alleged that Appellant still wanted to talk about the package.

Having extracted a confession from the recently tackled and handcuffed Appellant without administering *Miranda* warnings, Edmonson then reiterated his initial questions asking Appellant again what did he believe was in the package. R. 11, ll. 10 - 12, ll. 24. Appellant repeated that he believed the package probably contained drugs. *Id.* Crucially, Appellant did not know what kind of drugs were in the package. *Id.* There was no evidence that Edmonson explained to Appellant that his *pre-Miranda* statements were very likely inadmissible.

According to Edmonson, Appellant then gave permission for police to open the package. However, because he "has no problem going the extra mile," Edmonson requested that a K-9 unit

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[2] During trial, the assistant solicitor joked with Edmonson that he must be "the largest physicist in the world," referencing Edmonson's undergraduate degree. R. 81, ll. 10-11. Edmonson agreed, adding that he was "one of the strongest ones in the world. That's a fact." *Id.* at ll. 12-13.

Defense counsel noted on cross-examination that, at the time of his arrest, Appellant would have seen two cars converging on him, "one with a rather large strong black man" coming out and is immediately forced to the ground and handcuffed. R. 122, ll. 14-22. Edmonson agreed with the characterization. *Id.*

inspect the package. R. 21, ll. 21 - 22, ll. 21. Once deployed the dog gave a "positive alert" indicating that there may be narcotics in the package. *Id.*

Then, rather than opening the package, Edmonson called Deputy Dennis Tracy who completed a pre-formatted search warrant and presented it to a magistrate. R. 125, ll. 1- 126, ll. 12. The magistrate signed the search warrant and Edmonson finally opened the package. Inside the package were a tee-shirt, a teddy bear, and a wax candle. R. 131, ll. 8 -24; R. 136, ll. 16-24. Police broke open the wax candle and discovered three hundred tablets of oxycodone, with total drug weight amounting to nine grams of oxycodone. R. 251, ll. 8 - 252, ll. 12.

Approximately, thirty to forty-five minutes after he was seized and interrogated without being given *Miranda* warnings, law enforcement had Appellant provide written answers to a series of questions regarding the package. R. 176, ll. 8-18; R. 195, ll. 6-15. Edmonson would recall ordering Appellant, for a third time, to "tell me everything that you know about this and write it down for me." R. 12, ll. 19-24. Appellant was then belatedly *Mirandized* for a second time. *Id.* Appellant's written statement indicated that he believed there were drugs in the package, but did not know what kind of drugs they were. R. 13, ll. 3 - 15, ll. 12.

At law enforcement's prompting, Appellant admitted that he had retrieved packages on three different occasions. R. 25, ll. 8-14. Further, Appellant stated that he did not know the legal name of the drug dealer that directed him to pick up the package. R. 107, ll. 2-13. In addition, police never asked him where he delivered packages on prior occasions and did not ask him where he was to deliver the package at issue.

Law enforcement never identified the black female located in the apartment and never attempted to contact California law enforcement to determine where the package had been sent from. R. 119, ll. 5 - 121, ll. 4. Police ended their investigation once Appellant was arrested. *Id.*

***Jackson v. Denno*[3] Hearing**

Appellant moved pre-trial to suppress the oral and written statements he made to police at the time of his arrest. The State conceded that Appellant's pre-*Miranda* oral statements made during custodial interrogation were inadmissible. R. 7, ll. 1-10. However, the State argued that the written statement, which was substantially similar to Appellant's pre-*Miranda* statements, was freely and voluntarily given. R. 41, ll. 4-19.

Edmonson, Miramontes, and Bass all testified. The officers agreed that Appellant gave his written statement approximately thirty to forty-five minutes after he was tackled and handcuffed by law enforcement. R. 176, ll. 8-18; R. 195, ll. 6-9. Edmonson was the only officer able to provide a complete timeline of Appellant's seizure and interrogation.

He conceded that he first interrogated Appellant without giving *Miranda* warnings. R. 19, ll. 16 - 21, ll. 19. Edmonson testified that he only *Mirandized* Appellant after Appellant stated, in response to Edmonson's questioning, that he believed that the package likely contained drugs. Edmonson then had Appellant repeat his confession post-*Miranda*. *Id.* Then for a second time Edmonson belatedly re-*Mirandized* Appellant prior to having him provide written responses to a series of questions - which were virtually identical to his pre-*Miranda* questions. R. 12, ll. 19 - 15, ll. 12.

The trial court ruled that the written statement was "entered into freely and voluntarily without coercion" and that Appellant had been adequately advised of his rights. R. 42, ll. 16-23. However, the court also ruled that Appellant's statements regarding other occasions when he had previously picked-up packages must be redacted from the statement before it was submitted to the jury. *Id.*

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[3] *Jackson v. Denno*, 378 U.S. 368 (1964).

Trial

Edmonson, Miramontes, and Bass all testified for the State. Deputy Ted Xanthakis also testified to the positive alert by the drug dog.[4] R. 8, ll. 12 - 9, ll. 7.

Trial Testimony of Doug Edmonson

Edmonson was the State's first and most important witness. Edmonson testified as to the factors that made the package suspicious and how he assembled several other police officers to begin surveillance of the delivery address. R. 88, ll. 7-21. Edmonson recalled that after he was notified that Appellant had taken the package, he and Bass drove up to Appellant, exited their cars with guns drawn, and "secured" him by forcing him to the ground and handcuffing him. R. 94, ll. 3-19.

Edmonson claimed that he believed Appellant was going to run and that Appellant had attempted to discard the package once he saw police. R. 95, ll. 3-13. Edmonson testified that Appellant confessed that he knew "narcotics" were in the package and that he gave permission for Edmonson to open it. R. 95, ll. 1-19. Edmonson then explained the "extra-mile" that he went to have a dog inspect the package and to call in a search warrant. *Id.*

Over the renewed objection of defense counsel, the State introduced Appellant's written statement. R. 102, ll. 4 - 106, ll. 16. When reviewing the statement with Edmonson, the State stressed that Appellant admitted he knew the package contained drugs. R. 106, ll. 24 - 110, ll. 11. However, Appellant's statement never indicated that Appellant knew the drugs were oxycodone. *Id.* In fact, Edmonson conceded on cross-examination that even he believed the package contained

[4] Curiously, Xanthakis testified that the dog was never tested on its ability to identify oxycodone. R. 228, ll. 3-8.

marijuana. R. 126, ll. 13 - 127, ll. 4. During cross-examination, Edmonson testified that Appellant initially denied knowing what was in the package. R. 123, ll. 1-12.

Additional *Voir Dire* Testimony on Appellant's Pre-*Miranda* Statements

During a break in questioning, the State argued that the defense had opened the door to all of Appellant's pre-*Miranda* statements by asking Edmonson if Appellant had initially denied knowing the contents of the package. R. 146, ll. 3-21. The State now claimed that Appellant had apparently made additional, lengthy pre-*Miranda* statements going beyond simply denying knowledge of the package's contents and then conceding that the package likely contained drugs. *Id.*

Specifically, the State sought to introduce previously undisclosed pre-*Miranda* statements by Appellant that he was acting as a "mule" to support his family, that he handled packages before, that he had just been released from prison, and that he could not find a job. R. 149, ll. 20 - 150, ll. 6. On *voir dire*, Edmonson reiterated that Appellant did not know what types of drugs were in the package. R. 156, ll. 7-12.

The State claimed that they had not disclosed these statements because they had conceded that the all pre-*Miranda* statement were inadmissible. R. 158, ll. 2-8. However, now that the defense had opened the door on cross-examination, the statements provided proof of trafficking by conspiracy. R. 154, ll. 15 - 155, ll. 25. The trial court voiced concerns that the State could not prove that the other instances were sufficiently close in time to be admissible under the common scheme or plan exception. R. 160, ll. 13 - 161, ll. 7.

Conveniently, Edmonson claimed - for the first time - that Appellant had told him pre-*Miranda* that he had picked-up other packages "within that year." R. 161, ll. 18-25. Edmonson helpfully added, also for the first time, that when he interrogates people he always tries to get a timeline "so it won't be so vague." *Id.* Edmonson further alleged, again for the first time, that

Appellant confessed pre-*Miranda* to having done pick-ups between three and seven times in the past year, rather than the three times recorded in the written statement. R. 162, ll. 2-13.

A surprised defense counsel noted ruefully "that's the first time we have heard this discussion . . . . It's getting better." R. 162, ll. 14-17. Ultimately, the trial court ruled that the prejudicial impact of Appellant's alleged admission that he had previously picked-up packages outweighed its probative value. R. 163, ll. 4-13. The court did allow Edmonson to testify that Appellant told him he knew he was being paid to pick-up a package containing drugs. *Id.*

Directed Verdict

At the close of the State's case, defense counsel moved for a directed verdict arguing that the State presented no evidence that Appellant knew that the drugs in the package were oxycodone. R. 264, ll. 22-24. The State countered that Appellant's written statement, "clearly acknowledges that he knew the drugs were in there." R. 265, ll. 3-6. Without taking further argument, the court denied the motion. *Id.* at ll. 7.

The defense rested without presenting any testimony and defense counsel renewed the directed verdict motion. R. 269, ll. 4-17. Defense counsel reiterated that the State had failed to present any evidence that Appellant knew that the package contained oxycodone and that all the testimony presented during the trial indicated that Appellant and the police believed the package contained marijuana. *Id.* The court again denied the motion. *Id.* at ll. 18-24.

Jury Instructions

Defense counsel argued that Appellant was entitled to an instruction that "before you commit a crime, you must have criminal intent to commit the crime, meaning you must have knowledge." R. 273, ll. 23 - 295, ll. 3. The court disagreed, believing that the trafficking statute did not require an accused "to intend to possession oxycodone." R. 274, ll. 4-15. Instead, the court

determined that trafficking only required Appellant to know that there are illegal drugs in the package. *Id.* at ll. 23-24.

Unsurprisingly, the State agreed with the court's reasoning. The assistant solicitor averred - without citing to any supporting legal authority - that, "the law is clear, as long as [Appellant] knows they are illegal drugs, we have satisfied that element." R. 276, ll. 12-17.

Jury Question

During its deliberation the jury submitted a two-part question: "[d]oes the State have to prove that the defendant knowingly brought into the State four grams or more of oxycodone or just any amount of illegal drugs in order to consider this trafficking?" R. 317, ll. 1-6. In response the court suggested:

> [T]he State does not have to prove that the defendant knowingly brought into the state this particular drug, just that the statute requires knowing that it was illegal drugs. . . . [Appellant] [d]oes not have to know the particular drug that is in question. Simply that he knew they were illegal drugs. . . . My proposed response would be that the State does not have to prove that the Defendant knew the drugs were oxycodone, just that the package contained illegal drugs.

R. 317, ll. 7 - 318, ll. 4.

Defense counsel argued that the legislature created the trafficking statute, with its enhanced penalties, to punish individuals who knowingly possess a large amount of a certain drug; meaning that the defendant must know what drug they are possessing. R. 321, ll. 9-14. The court voiced concern that requiring the State to prove that a defendant knowingly trafficked in a certain drug would render the law unenforceable except in circumstances where the defendant confessed to knowing the type of drug he was trafficking. R. 322, ll. 11-24.

Defense counsel, looking to the trafficking statute, argued that the statute clearly required that the defendant "knowingly sells, et. cetera, then it says four grams or more of morphine." R. 323

5-15. Defense counsel noted that interpreting the statute in order to fit the facts of the case was improper and that straightforward reading of the trafficking statute evidenced that the legislature intended to require the State to prove that a defendant accused of trafficking, knowingly committed any of the enumerated acts with a specific drugs. R. 320, ll. 5-11; R. 323, ll. 5-15; S.C. Code Ann. § 44-53-370(e)(1)-(8).

The Court ultimately decided that because § 44-53-370(e)(3), the statute under which Appellant was indicted, was titled "Trafficking in Illegal Drugs" that the State need only prove that the Appellant knew that the package contained illegal drugs, not that it contained oxycodone. R. 323, ll. 16-22; R. 326, ll. 16 - 327, ll. 16. Focusing on the facts of Appellant's case, the court concluded that, "[y]ou also have to assume that the legislature didn't draft statutes that are meaningless." R. 324, ll. 11-13.

In summary the court noted that, "my interpretation is that the burden of proof on the State, it does not have to prove that a person knew that those particular drugs were oxycodone. . . Simply that they were illegal drugs." R. 326, ll. 21-25. The Court then instructed the jury: "the law in South Carolina is the State does not have to prove that the Defendant knew that the drugs in the package were oxycodone, just that he knew that the package contained illegal drugs." R. 329, ll. 21-25.

ARGUMENTS

I.

The trial court erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone; rather, for Appellant to be guilty of trafficking, the State only needed to prove that Appellant knew the package contained any illegal drugs.

As seen during deliberations, the jury inquired if the State had to prove beyond a reasonable doubt that "the defendant knowingly brought into the State four grams or more of oxycodone or just any amount of illegal drugs in order to consider this trafficking?" R. 317, ll. 1-6. There was no evidence put forward at trial that Appellant knew the box contained oxycodone. Agent Edmonson recalled that Appellant admitted to him that he believed the package contained "narcotics." R. 95, ll. 1-19. Crucially, Edmonson also recalled that Appellant told him he did not know what kind of drugs were in the package. R. 11, ll. 10-18; R. 21, ll. 13-15; R. 156, ll. 11-15. Edmonson personally believed that the package contained marijuana. R. 179, ll. 1-8.

Defense counsel argued that in order to be guilty of trafficking the State had to prove Appellant knew that the package contained oxycodone. R. 318, ll. 5 - 328, ll. 22. The trial court disagreed, specifically noting that § 44-53-370(e)(3) defined an offense known as "trafficking in illegal drugs" and reasoning that adopting the defense's argument would render trafficking cases "unprosecutable." *Id.* Thus, the court instructed the jury that "the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs." R. 329, ll. 22-25.

The trial court erred in erred reversibly by instructing the jury that the State did not need to prove that Appellant knew the drugs in the package he possessed were oxycodone for Appellant to be guilty of trafficking. The court's instructions inaccurately stated the law and were based on a forced interpretation of § 44-53-370(e)(3), as well as South Carolina's other trafficking statutes. The

clear legislative intent of the trafficking statutes is to ***severely punish individuals who knowingly undertake a broad variety of activities involving certain amounts of specific drugs***. *State v. Taylor*, 323 S.C. 162, 164-166, 473 S.E.2d 817 (Ct. App. 1996) (court's erroneous instruction that defendant could be convicted of trafficking in crank if she acted with criminal negligence was not harmless where the trafficking statute specifically required that a defendant act "knowingly" and the main issue before jury was whether defendant was merely present but not participating in drug transaction or whether she was an active participant) (*emphasis added*).

Accordingly, to be guilty of trafficking oxycodone under § 44-53-370(e)(3), the State must prove beyond a reasonable doubt that Appellant knowingly possessed oxycodone and the trial court's instructions to the contrary were an incorrect statement of the law.

Jury Instructions and Rules of Statutory Construction

A trial judge must narrowly tailor his or her response to the specific question asked by the jury. *State v. Smith*, 304 S.C. 129, 132, 403 S.E.2d, 162, 164 (Ct. App 1991). The answer provided by a trial judge must not mislead the jury as to an element charged in the indictment or improperly suggest the answer to a question of fact. *Id.* at 131, 403 S.E.2d at 163. "Judges shall not charge juries in respect to matters of fact, but shall declare the law." S.C. Const. art. V, § 21 (2009).

The Court has the responsibility to answer the jury's question correctly and in a way that clarifies the issues for the jury. *State v. Huckabee*, 388 S.C. 232, 244, 694 S.E.2d 781, 787 (Ct. App. 2010). In answering a question from the jury, the trial court must also keep in mind the juror's reliance on the Court to instruct them on the applicable law and the great weight that jurors give to the judge's pronouncements. *State v. Campbell*, 297 S.C. 24, 26, 374 S.E.2d 668, 669 (1988).

The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct.App.2002) (*citing State v.*

Baucom, 340 S.C. 339, 531 S.E.2d 922 (2000)). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *State v. Hudson*, 336 S.C. 237, 519 S.E.2d 577 (Ct.App.1999) *cert. denied as improvidently granted, State v. Hudson*, 346 S.C. 139, 551 S.E.2d 253 (2001).

The legislature's intent should be ascertained primarily from the plain language of the statute. *Morgan* at 366, 574 S.E.2d 203, 547 S.E.2d at 206. Words must be given their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation. *Id.*

Courts should consider, not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law. *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997). The terms must be construed in context and their meaning determined by looking at the other terms used in the statute. *Hudson*, 336 S.C. 237, 519 S.E.2d 577.

Finally, penal statutes must be strictly construed against the State and in favor of the defendant. *Hair v. State*, 305 S.C. 77, 406 S.E.2d 332 (1991). Any doubt as to the proper construction should be resolved in favor of the citizen against the state. *State v. Cutler*, 374 S.C. 376, 264 S.E.2d 420 (1980); *see also Yates v. United States*, 135 S.Ct. 1074 (2015) (ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity).

To be Convicted of Trafficking under § 44-53-370(e)(3), the State must prove that Appellant knew that the drugs in the package he possessed were Oxycodone. It was reversible error for the trial court to instruct the jury that the State only needed to prove Appellant knew that he was possessing an illegal substance.

The structure of § 44-53-370(e)(3) makes clear that the legislature intended to punish individuals who are "knowingly[5] in actual or constructive possession" of four grams or more of "any morphine, opium, salt, isomer, or salt of an isomer thereof." South Carolina's trafficking offenses are divided by drug type and then further divided by the amount of the specific drug with sentencing ranges also determined based, in part, on the number of the defendant's prior offenses. § 44-53-370(e)(1)-(8). A plain reading of the § 44-53-370(e)(3) requires the State to prove that Appellant knew he was possessing oxycodone.

The trial court's distress over the prospect of rendering trafficking statutes unenforceable was misplaced. R. 321, ll. 4 - 325, ll. 10. The Court's preoccupation with the specific facts of Appellant's case resulted in a forced and inconsistent interpretation of § 44-53-370(e)(3) at odds with the plain language of the trafficking statute and its purpose. In crafting its interpretation, the trial court repeatedly stressed that § 44-53-370(e)(3) defined a crime titled "trafficking in illegal drugs;" consequently, the State only had to prove that Appellant knew there were some kind of illegal drugs in the package. R. 329, ll. 13 - 351, ll. 14.

On the contrary, applying the court's interpretation to the other seven drug specific sub-sections of § 44-53-370(e) demonstrates that the legislature clearly intended the "knowingly"

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[5] Our Supreme Court has held that "knowledge" can to be equated with a defendant having a "firm belief" or awareness of a particular element or fact. *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947)(former receipt of stolen goods statute required that State to prove that defendant knew he was receiving stolen goods). It will often be proved by circumstantial evidence. *Id.* Our courts have rejected a definition of "knowledge" that encompasses "willful blindness" as it would improperly "broaden the meaning of knowledge.'" *Ducworth v. Neely*, 319 S.C. 158, 456 S.E.2d 896 (Ct. App. 1995).

requirement to encompass not only the criminal act, but a defendant's knowledge of the specific drug being trafficked. For example, § 44-53-370(e)(1) defines "trafficking in marijuana;" § 44-53-370(e)(2) defines "trafficking in cocaine;" § 44-53-370(e)(8) defines "trafficking in MDMA;" and so on.

Moreover, the South Carolina Judicial Department's suggested jury charges support this consistent interpretation of § 44-53-370(e): "[t]he Defendant is charged with trafficking in _____ [*drug*]. The State must prove beyond a reasonable doubt that the Defendant knowingly sold . . . was knowingly in actual or constructive possession, [or] knowingly attempted to become in actual or constructive possession of _____ [*drug*]." *Suggested Jury Instructions - Criminal*, South Carolina Judicial Department (November 4, 2015), http://www.sccourts.org/juryCharges/GSInstructions.2015.pdf.

In contrast, the trial court's interpretation of § 44-53-370(e) would require the State to prove a defendant knew the specific drug at issue in every trafficking case, ***except when a defendant is accused of trafficking under § 44-53-370(e)(3)***. *See Lancaster Cnty. Bar Ass'n v. S.C. Comm'n on Indigent Defense*, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (courts must reject an interpretation which leads to an absurd result that could not have been intended by the legislature) (*emphasis added*).

This inconsistent outcome could not have been the intent of the legislature. The specific drugs identified in § 44-53-370(e)(3) show that "trafficking in illegal drugs" is more accurately described as trafficking in heroin or opiates, or its derivatives. Heroin was among the first drugs - along with marijuana, cocaine, LSD, and crack cocaine, included in the trafficking statute. McAninch, Fairey & Coggiola, *The Criminal Law of South Carolina* 447 (5th ed. 2007).

Over the years, the General Assembly has revised the trafficking statute to increase the number of prohibited acts and to include new drugs such as GHB and MDMA. *Id.* The evolution and expansion of § 44-53-370(e) strongly suggests that the "trafficking in illegal drugs" title of § 44-53-370(e)(3) is simply ill-conceived and out-of-date. *State v. Sweat*, 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008) ("language of a statute must be read in a sense which harmonizes with its subject matter and accords with its general purpose").

The title of the statute does not indicate that the General Assembly intended to inexplicably lessen the degree of knowledge required when a person is found in possession of a qualifying amount of oxycodone as opposed to a qualifying amount of any other of the enumerated drugs.

Trafficking Statutes in Other States

States with trafficking statutes substantially similar to South Carolina's require prosecutors to prove that the defendant knew what drug he was trafficking. *See Way v. State*, 475 So.2d 239 (Fl. 1987) (trafficking statute requires "knowing" possession of cocaine); *Young v. Commonwealth*, 659 S.E.2d 308 (Va. 2008) (defendant must have knowledge of the nature and character of the substance in his possession); *Calhoun v. State*, 460 So.2d 268 (Al. Ct. Crim. App. 1984) (prosecutors must prove that "the accused knew he was in possession of more than one kilogram of marijuana"); *Wilson v. State*, 718 S.E.2d 31 (Ga. Ct. App. 2011) (cocaine trafficking statute explicitly requires that defendant know substance possessed and know it is cocaine); *State v. Zetina-Torres*, 400 S.W.2d 343 (Mo. Ct. App. WD 2013) (must prove defendant knew methamphetamine was in vehicle and that defendant exercised control over it); *Martin v. Commonwealth*, 409 S.W.2d (Ky. 2013) (defendant must know that substance he possessed was cocaine); *State v. Coleman*, 742 S.E.2d 346 (N.C. Ct. App. 2013) (court erred in failing to give instruction that the State must prove defendant's knowledge of the type of contraband he was carrying); *State v. Dudick*, 213 S.E.2d 458

(W.V. 1975) (must prove beyond a reasonable doubt defendant knew there was marijuana where police found it and that defendant exercised control over it); *State v. Henry*, 63 P.3 490 (Id. Ct. App. 2003) (trafficking requires defendant to have knowledge that the substance was methamphetamine).

Conversely, trafficking statutes that only require proof a defendant knew the substance trafficked was an illegal substance, rather than a specific drug, are organized and worded differently than § 44-53-370. For example, the Illinois' trafficking statute states:

> Except for purposes as authorized by this Act, **any person who knowingly brings or causes to be brought into this State** for the purpose of manufacture or delivery or with the intent to manufacture or deliver **a controlled substance** other than methamphetamine or counterfeit substance in this or any other state or country **is guilty of controlled substance trafficking**.

720 Ill. Comp. Stat. Ann. § 570/401.1(a) (*emphasis added*).

Massachusetts' trafficking statute provides: "[a]ny person who knowingly or intentionally manufactures, distributes, dispenses, or possesses with intent to manufacture, distribute or dispense a **controlled substance in Class B** of section thirty-one shall be punished by imprisonment. . ." Mass. Gen. Laws Ann. ch. 94C, § 32A (***emphasis added***). Likewise, Maine's trafficking statute holds, "[A] person is guilty of **unlawful trafficking in a scheduled drug** if the person intentionally or **knowingly trafficks in what the person knows or believes to be a scheduled drug**." Me. Rev. Stat. tit. 17-A, § 1103(1-A) (*emphasis added*).

Accordingly, the trial court committed reversible error by instructing the jury that the State did not need to prove beyond a reasonable that Appellant knowingly possessed oxycodone, rather the State needed only to prove that the Appellant knowingly possessed a controlled substance. This response was a misstatement of the applicable law and based on an improper construction of § 44-53-370(e) and § 44-53-370(e)(3).

II.

The trial erred reversibly by refusing to grant a directed verdict acquitting Appellant of trafficking in illegal drugs where the State presented no direct or substantial circumstantial evidence that Appellant knew that the package he possessed contained oxycodone as required by S.C. Code Ann. § 44-53-370(e)(3)(a).

Discussion

Our Supreme Court has held that when reviewing a trial judge's refusal of a defendant's motion for a directed verdict, that it is required to consider "not whether there is 'any' evidence to support the conviction, but whether viewing the evidence in the light most favorable to the prosecution, there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt." *State v. Stewart*, 278 S.C. 296, 295 S.E.2d 627, 632 (1982), citing *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781 (1979); *see, also, State v. Asbury*, 328 S.C. 187, 493 S.E.2d 349 (1997). The accused is entitled to a directed verdict when the State fails to present evidence to support every element of the charged offense. *See State v. Brown*, 360 S.C. 581, 586, 602 S.E.2d 392, 395 (2004); *see also State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011).

When considering a motion for directed verdict of acquittal, "the trial court is concerned with the existence or non-existence of evidence, not its weight." *Brown*, 360 S.C. at 586, 602 S.E.2d at 395. "When the State fails to produce ***substantial circumstantial evidence*** that the defendant committed a particular crime, the defendant is entitled to a directed verdict." *State v. Odems*, 395 S.C. 582, 720 S.E.2d 48 (2011) (*emphasis added*). In *Odems*, the Court cited *State v. Bostick*, 392 S.C. 134, 708 S.E.2d 774 (2011) and *State v. Lollis*, 343 S.C. 580, 541 S.E.2d 254 (2001) as "jurisprudence . . . instructive in explaining the proof required in cases built wholly on circumstantial evidence." *Id.* Specifically, the trial court "should grant a directed verdict motion when the evidence *merely raises a suspicion* that the accused is guilty." *Odems*, 395 S.C. at 586, 720 S.E.2d at 50 (emphasis added) (citation omitted).

"Suspicion implies a belief or opinion as to guilt based upon facts or circumstances which do not amount to proof." *See State v. Buckmon*, 347 S.C. 316, 322, 555 S.E.2d 402, 404-05 (2001) (citing *Lollis*, 343 S.C. 580, 541 S.E.2d 254). Therefore, a case based solely upon circumstantial evidence should be submitted to the jury only "if there is any substantial circumstantial evidence which reasonably tends to prove the guilt of the accused or from which his guilt may be fairly and logically deduced." *Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777 (citing *State v. Mitchell,* 341 S.C. 406, 409, 535 S.E.2d 126, 127 (2000)).

The evidence presented by the State merely raised the suspicion of Appellant's guilt, as the State failed to present evidence any substantial circumstantial evidence that Appellant knew that the package he was taking possession of contained oxycodone. R. 11, ll. 10-18; R. 21, ll. 13-15; R. 156, ll. 11-15.

Appellant was indicted for trafficking in illegal drugs under S.C. Code Ann. § 44-53-0370(e)(3)(a):

> That [Appellant] did in Lexington County, South Carolina on or about September 23, 2013 **knowingly, intentionally, willfully**, and unlawfully sell, cultivate, manufacture, deliver, purchase, or bring into this State; or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase, or bring into this State, or **was knowingly and intentionally in actual or constructive possession of or did knowingly and intentionally attempt to become in actual or constructive possession** of any morphine, salt, isomer, or salt of an isomer thereof . . . To Wit: **Oxycodone**, in a quantity of four (4) grams or more but less than fourteen (14) grams.

R. 347-348 (***emphasis added***). Section 44-53-370(e) requires a defendant to act "knowingly, mere criminal negligence is not sufficient." *Taylor*, 323 S.C. at 164-166 (Ct. App. 1996) (trafficking statute specifically required defendant act "knowingly"). "If there is a reasonable doubt as to whether the defendant was aware of the nature of substance possessed or being manufactured, [the

defendant] would not be guilty of the offense. Willaim S. McAninch, W. Gaston Fairey & Lesley M. Coggiola, *The Criminal Law of South Carolina* 448 - 449 (5th ed. 2007)

The State presented no direct or substantial circumstantial evidence that Appellant knew that the package he took possession of contained oxycodone. Edmonson testified that Appellant told him that he believed the package contained narcotics, but that he did not know what kind. R. 13, ll. 3 - 15, ll. 12. There was no testimony that Appellant knew or had any reason to know that the package contained oxycodone.

The trial court did not explain his reason for denying the motion, but, in crafting an answer to a question from the jury on the same issue, the court expounded on its reasoning and concerns to defense counsel:

> Let me ask you this: Because I also believe that under statutory interpretation you have to go with the presumption that the legislature did not enact a statute that is unenforceable or unprosecutable in this case of a criminal statute. Let's use this case as an example. **If we use your interpretation of the statute and we use the facts of this case based on what has been presented in this case, then it would have required this Court to direct a verdict of acquittal** because there is no way that even under the intent statute it even talks about how you can't cut open a person's brain to figure out what's in there.

R. 332, ll. 2-8.

Absent a confession or first-hand witness, a defendant's guilty knowledge must often be proved by circumstantial evidence. *State v. White*, 311 S.C. 276, 44 S.E.2d 741 (1947). "The knowledge element may be proved circumstantially by evidence of acts, declarations, or conduct of the accused from which an inference may be drawn that the accused knew of the existence of the prohibited substance." *State v. Mollison*, 319 S.C. 41, 45, 459 S.E.2d 88, 91 (Ct. App. 1995) (*citing State v. Attardo*, 263 S.C. 546, 211 S.E.2d 868 (1975)).

As discussed above, the trial court's instructed to the jury that "the State does not have to prove that the Defendant knew that the drugs in the package were Oxycodone, just that he knew that the package contained illegal drugs" wrongly stated the law. R. 329, ll. 22-25. To be guilty of trafficking, the State must prove that Appellant knowingly committed one of the prohibited acts, knew the specific drug involved, and that the total amount of that drug exceeded the drug-specific statutory minimums. § 44-53-370(e)(1) - (8). The trial court's denial of Appellant's directed verdict motion rests on the same improper statutory interpretation.

The State presented no direct or substantial circumstantial evidence reasonably tending to prove Appellant's guilt, or from which his guilt may be fairly and logically deduced. *See Bostick*, 392 S.C. at 139, 708 S.E.2d at 776-777. Accordingly, the trial court erred in refusing to grant a directed verdict on Appellant's indictment for trafficking in oxycodone where the State failed to present any evidence that Appellant was "knowingly and intentionally in actual or constructive possession" of oxycodone, as required under § 44-53-370(e)(3).

III.

Appellant's right against self-incrimination as guaranteed by the Fifth and the Fourteenth Amendments to the U.S. Constitution was violated by the introduction of his statements to police where the first statement was the product of an interrogation by officers who failed to advise Appellant of his *Miranda*[6] rights and his subsequent statements were tainted by the initial violation and the product of an involuntary waiver.

Police interrogated Appellant immediately after forcing him to the ground and placing him in handcuffs. The interrogating officer, Doug Edmonson, admitted that he confronted Appellant about the contents of the package before administering *Miranda* warnings. R. 10, ll. 4-25. Appellant first denied any knowledge of the package's contents, but under continued interrogation, eventually admitted that he believed the package contained illegal drugs. *Id.*

Approximately thirty to forty-five minutes after being seized by law enforcement, Appellant was finally advised of his *Miranda* rights and signed a waiver of those rights. R. 12, ll. 19 - 15, ll. 12. There was no break in the interrogation. At law enforcement's instigation, Appellant made a written statement virtually identical to the admissions he made pre-*Miranda*. *Id.*

During the *Jackson v. Denno* hearing, Edmonson claimed that the pre-*Miranda* interrogation was limited to a few questions about the contents of the package. R. 10, ll. 4-25. The State conceded that the pre-*Miranda* statements were inadmissible. R. 41, ll. 4-19. However, the State argued that the post-*Miranda* statements were freely given and thus admissible. *Id.* The trial court agreed. R. 42, ll. 16-23.

After Edmonson was cross-examined at trial, the State sought to introduce the pre-*Miranda* statements arguing the defense had opened the door to those statements. R. 146, ll. 3-21. The State revealed and alleged for the first time that the pre-*Miranda* interrogation was significantly more extensive than portrayed at the *Denno* hearing and that Appellant had, according to the State,

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

implicated himself in a year-long drug trafficking conspiracy. R. 149, ll. 20 - 150, ll. 6. Ultimately, the trial court ruled portions of Appellant's *pre*-Miranda statements where Appellant allegedly claimed that he knew "he was being paid to pick up a box of drugs" and that he was unable to find employment were admissible. R. 148, ll. 15-21; R. 163, ll. 4-13.

Discussion

A. The court erred in admitting statements made by Appellant prior to officers advising Appellant of his *Miranda* rights and obtaining a valid waiver of those rights where Appellant clearly was in custody based upon the totality of the circumstances.

The Fifth Amendment provides that no person shall be compelled to be a witness against himself in a criminal matter. U.S. Const. amend. V. The Fourteenth Amendment secures against state invasion of the same privilege that the Fifth Amendment guarantees against federal infringement. *Malloy v. Hogan*, 378 U.S. 1, 8 (1964); *see also* U.S. Const. amend. XIV.

"[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, 376 (1964). Prior to any questioning by law enforcement, "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." *Miranda*, 384 U.S. at 444.

"Law enforcement must state the *Miranda* warnings 'after a person has been taken into custody or otherwise deprived of his freedom of action in any way.'" *State v. Evans*, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003) (quoting *Miranda*, 384 U.S. at 444). Custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Miranda*, 384 U.S. at 445; *see also Stansbury v. California*, 511 U.S. 318, 322 (1994).

Determining whether a defendant is in custodial interrogation is an objective assessment of the facts and circumstances surrounding the questioning:

> [W]hat were the circumstances surrounding the interrogation; and . . . given those circumstances, would a reasonable person have felt he or she was at liberty to terminate the interrogation and leave. . . . [T]he court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

Thompson v. Keohane, 516 U.S. 99, 112 (1995); *see Bradley v. State*, 316 S.C. 255, 257, 449 S.E.2d 492, 493-494 (1994). In order 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. 436 (1966); *see also State v. Moses*, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010).

Clearly, Appellant was in custody when Edmonson interrogated him. Bass and Edmonson (the self-described largest and strongest physicist/police officer in the world) exited their vehicles with guns drawn and ordered Appellant to the ground. R. 37, ll. 1- 38, ll. 13. Appellant was physically forced to the ground and handcuffed. *Id.* Edmonson's interrogation started immediately thereafter.

Accordingly, the court erred in permitting the introduction of any portion of Appellant's pre-*Miranda* statements due to the officer's failure to inform Appellant of his rights prior to subjecting Appellant to a custodial interrogation.

B. The trial court erred in admitting statements made by Appellant subsequent to the officer advising him of his *Miranda* rights and obtaining an involuntary waiver of those rights because the statement was tainted by the initial violation where the same officer questioned Appellant in the same location with no temporal break between the post-advisement interrogation and the prior, unwarned interrogation.

The waiver has two distinct dimensions. It must be "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception," and it must

be "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986).

In *Missouri v. Seibert*, 542 U.S. 600 (2004), the United States Supreme Court confronted a case very similar to the present case. Officers awakened Seibert at 3 a.m. and transported her to the police station. There, an officer questioned Seibert for thirty to forty minutes without giving her *Miranda* warnings and obtained an admission from Seibert that she knew a mentally-ill teenager living with her family was meant to die in a house fire, which was started to cover up the death of Seibert's own disabled child. The officer then gave Seibert a twenty-minute break. *Id.* at 604-605.

When the interrogation resumed, the officer turned on a tape recorder and gave Seibert the *Miranda* warnings. He also obtained a written waiver from her. The officer restarted questioning by confronting Seibert with her pre-warning statements. Again, the officer obtained the desired answer – that Seibert knew the teenager was supposed to die in the fire. *Id.* at 605.

At trial, the judge suppressed Seibert's pre-warning statements, but admitted the post-warning statements. *Id.* at 606. The United States Supreme Court held this was in error because "[t]he object of question-first is to render *Miranda* warnings ineffective by waiting for a particularly opportune time to give them, after the suspect has already confessed." *Id.* at 611. The Court held "when *Miranda* warnings are inserted in the midst of coordinated and continuing interrogation, they are likely to mislead and 'deprive a defendant of knowledge essential to his ability to understand the nature of his rights and the consequences of abandoning them.'" *Id.* at 613-614 (quoting *Moran*, 475 U.S. at 424).

The facts presented in Seibert were that the unwarned interrogation was conducted in the police station, and "the questioning was systematic, exhaustive, and managed with psychological skill." *Id.* at 602. Officers paused only for twenty minutes before resuming questioning after

administering the warnings and "said nothing to counter the probable misimpression that the advice that anything Seibert said could be used against her also applied to the details of the inculpatory statement previously elicited." *Id.* at 617.

The style of questioning, including repeated references to past responses, fostered the impression that resumed questioning was a continuation of the earlier interrogation. *Id.* at 616 - 617. Thus, "these circumstances must be seen as challenging the comprehensibility and efficacy of the *Miranda* warnings to the point that a reasonable person in the suspect's shoes would not have understood them to convey a message that she retained a choice about continuing to talk." *Id.*

Our Supreme Court confronted this issue in *State v. Navy*, 386 S.C. 294, 688 S.E.2d 838 (2010). After the death of his son, Navy gave a statement to police at the hospital. Officers later learned that the cause of death was smothering or suffocation. *Id.* at 297, 688 S.E.2d at 839. The next day, Navy was driven by police to the station and gave a statement in which he described the child having breathing problems and his ensuing panic. *Id.* at 297-298, 688 S.E.2d at 839.

Afterwards, officers informed Navy that the child had suffocated and that there was evidence of broken ribs. Navy was told he was not under arrest. The officers then asked follow-up questioning. "At this juncture, the nature of the interrogation and [Navy]'s status changed, and what had begun as a voluntary question and answer session matured into custodial interrogation." In this second statement, Navy admitted to popping the child on the back and possibly patting the child on the mouth. *Id.* at 298-299, 688 S.E.2d at 840.

After a short break, officers then advised Navy of his *Miranda* warnings. Thereafter, Navy gave his second statement, this time in writing. The statement mirrored the first adding only that Navy admitted to placing his hand over the child's mouth to stop the crying multiple times and to "popping" the child on the back. *Id.* at 299-300, 688 S.E.2d at 840. Officers contacted the

pathologist who stated the actions detailed in Navy's second statement could not have caused the child's death. In response, officers obtained a third written statement from Navy admitting that he could have held his hand over the child's nose and mouth for longer than he first said. *Id.* at 300, 688 S.E.2d at 840-841.

The Court held the first statement at the hospital was admissible because there was evidence to support the trial judge's finding that Navy was not in custody. However, the second and third statements were inadmissible as they were obtained in violation of *Seibert*. Courts examine four factors to determine whether a constitutional violation occurred in this setting, including (1) the completeness and detail of the questions and answers in the first interrogation; (2) the timing and setting of the first and second interrogations; (3) the continuity of police personnel; and (4) the degree to which the interrogator's questions treated the second round as continuous with the first. *Navy*, 386 S.C. at 302, 688 S.E.2d at 841-842.

The Court found the officers initiated the questioning with the knowledge of the cause of death and with the intention of eliciting a confession. *Id.* at 303, 688 S.E.2d at 842. Once Navy was at the police station, officers "began an unwarned custodial interrogation designed to elicit incriminating information." *Id.* After receiving incriminating statements, officers permitted Navy a break, and then administered *Miranda* warnings. The interrogation resumed with the same officers, who made no attempt to cure by warning Navy that his statement made prior to the administration of the warnings may not be admissible or by providing a substantial break in time or change in circumstances. The Court found all four *Seibert* factors were satisfied. *Navy*, 386 S.C. at 303, 688 S.E.2d at 842.

The interrogation of Appellant presents a similar factual scenario as in *Seibert* and *Navy*. Officers interrogated Appellant for an extended period of time prior to advising him of his rights. At

the onset of the pre-advisement interrogation, Appellant initially denied knowing the contents of the package. R. 10, ll. 4-25. Unsatisfied with this answer, Agent Edmonson continued to probe Appellant, telling him that he believed there were drugs in the package. *Id.*

Appellant eventually conceded that there were very likely drugs in the package. *Id.* In response to continued questioning, Appellant also allegedly admitted that he had previously picked-up other packages in the past year, and that he did so because he could not find other employment to support his family. R. 149, ll. 20 - 150, ll. 6. As law enforcement was not forthcoming at trial regarding the extent of its pre-*Miranda* interrogation, the exact contours of the pre-*Miranda* interrogation are unclear.

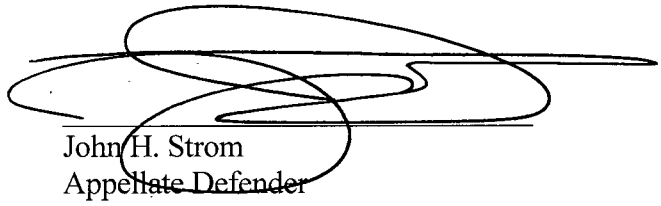
What is clear is that after obtaining a written waiver of Appellant's rights, the same officer, Edmonson, continued to ask Appellant the same questions and Appellant's post-*Miranda* statements were virtually identical to his pre-*Miranada* statements. Moreover, there was no break whatsoever between the unwarned statements and the warned statements as Appellant made his written statement only thirty to forty-five minutes after being tackled and handcuffed by police. R. 176, ll. 8-18; R. 195, ll. 6-15. The setting of the interrogation did not change. The arresting officers did not attempt to cure their error by informing Appellant that his pre-*Miranda* statements could not be used against him.

Accordingly, the trial court erred reversibly in admitting Appellant's post-*Miranda* statements because the statements were tainted by the initial violation as the same officers questioned Appellant in the same location and in close temporal proximity to the prior unwarned interrogation.

CONCLUSION

Based on the foregoing arguments, Appellant Lance L. Miles respectfully requests that this Court reverse Appellant's conviction and remand this case to the Lexington County Court of General Sessions (Issues I and III), or in the alternative, issue an Order of acquittal (Issue II).

Respectfully submitted,



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This 2nd day of June, 2016.

CERTIFICATE OF COUNSEL FOR APPELLANT

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

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