

ORIGINAL

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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Appeal from Lexington County

Donald B. Hocker, Circuit Court Judge  
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**RECEIVED**  
OCT 06 2014  
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

COURTNEY MICHELLE WOODARD,

APPELLANT,

APPELLATE CASE NO. 2014-000145  
\_\_\_\_\_

ANDERS BRIEF OF APPELLANT  
\_\_\_\_\_

SUSAN BARBER HACKETT  
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 judge err in allowing the prosecution to introduce into evidence Appellant's statement to law enforcement where she was in custody and subject to interrogation, but not advised of her rights to remain silent or to counsel?

### STATEMENT OF THE CASE

On May 6, 2013, the Lexington County grand jury indicted Appellant for assault and battery in the second degree in violation of section 16-3-600(D)(1) of the South Carolina Code. R. 495. Appellant went to trial on January 14, 2014 before the Honorable Don Hocker and a jury. Suzanne Mayes represented the state, and Bennett Casto and Erik Drylie represented Appellant. R. 1. The jury found Appellant guilty as charged. R. 481, line 25 – R. 482, line 4. Judge Hocker sentenced Appellant to the maximum – three years' imprisonment. R. 492, line 25 – R. 493, line 2; R. 497.

Appellant filed a timely notice of appeal. This brief follows.

## ARGUMENT

The trial judge erred in allowing the prosecution to introduce into evidence Appellant's statement to law enforcement where she was in custody and subject to interrogation, but not advised of her rights to remain silent or to counsel.

### **Relevant facts**

Lexington County Sheriff's Deputy Adam Spires responded to a trailer park following a 911 call<sup>1</sup> on February 17, 2013. R. 38, lines 20-24; R. 39, lines 10-16. Spires was dressed in full law enforcement regalia and in a marked car. R. 55, lines 11-25. Upon his arrival at the specific trailer, Spires was met by Heidi Oberg, the resident. R. 40, lines 2-21. Spires insisted on entering the home when Oberg resisted his initial efforts. R. 41, lines 3-16. When Spires entered the living room, he found Appellant sitting on the couch holding a baby, Minor 2. R. 41, line 20 – R. 42, line 5; R. 42, lines 10-18.<sup>2</sup> Spires found Minor 2, Heidi's five-year old son, also sitting in the living room. R. 42, lines 6-10; R. 42, lines 19-22.

Spires went first to Minor 1. He picked Minor 1 up from a chair and turned Minor 1 over to emergency medical personnel who had arrived on the scene shortly after Spires. R. 45, line 19 – R. 46, line 13. Spires observed "multiple markings" on Minor 1,

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<sup>1</sup> Chelsi Swartz lived in a trailer next door to Oberg. R. 121, lines 14-23. On February 17, 2013, while standing outside of her home, she "heard a child screaming and crying and crying." R. 127, lines 20-21. She heard two different voices yelling. Upon hearing this commotion, Swartz called 911. R. 127, line 19 – R. 128, line 2. While on the phone with 911, Swartz heard "big, loud booms, crying, screaming, slaps" coming from the house next door. R. 132, lines 2-4.

<sup>2</sup> Woodard, who had two children, lived on the same street as Oberg. R. 388, line 22 – R. 389, line 16. Woodard met Oberg approximately two months before her arrest. R. 389, lines 20-22. The two would spend time together while their children played twice a week. R. 390, lines 11-13.

including a “discolored eye” and “multiple welt marks on his body.” R. 48, line 24 – R. 49, line 5.

Thereafter, Spires “began speaking to” Appellant “to evaluate what she had witnessed.” R. 46, lines 14-19. Spires claimed Appellant was not “in custody” and was not “being formally detained.” R. 46, line 24 – R. 47, line 3; see also R. 53, lines 19-23. However, Spires said that if Appellant had “made an attempt to leave, she would have been detained.” R. 59, lines 3-11. Thereafter, Spires asked Appellant “if she knew why the police would have been called.” R. 47, lines 9-10. According to Spires, Appellant responded that Minor 1 “was screaming but she didn’t know why anyone would have called the police.” R. 47, lines 11-13.

Spires and the other officers who arrived at the scene interviewed witnesses who had congregated around the home. R. 49, lines 18-21. An officer interviewed Colin Piselli who claimed he saw Appellant assault Minor 1. Then, Appellant was clearly a suspect. R. 50, lines 4-10. After speaking to the witnesses at the scene, Spires arrested Appellant. R. 53, lines 12-18.

On Appellant’s motion to suppress the statement, the trial judge found “the very brief statement had been given voluntarily.” R. 68, lines 3-5. Further, “notwithstanding the officer’s testimony that [Appellant] was not free to leave, I have to go further beyond that to determine whether or not a reasonable person such as [Appellant] would have believed that she was not free to leave.” R. 68, lines 5-10. Thereafter, the trial judge made the following findings of fact and conclusions of law:

And I consider where the question took place, that was at the home. The length of the question was very short, so viewing the totality of the circumstances, I’m going to find that she was not in custody, thus

requiring Miranda to be given, and I will deny the motion [to] suppress this verbal statement.

R. 68, lines 10-16.<sup>3</sup>

During closing argument, the solicitor began her argument with Appellant's alleged statement to Spires at the scene: "I don't know why the police were called. I don't know why the police were called. That was the statement of [Appellant] at the scene of this crime, and it was a lie." R. 450, lines 5-8. The solicitor repeated this alleged statement throughout her closing claiming that Appellant was covering for Minor 1's mother when she told police "I don't know why the police were called. [Minor 1] was screaming, but I don't know why the police were called." R. 450, lines 10-15. In arguing that Appellant must be held accountable for the injuries to Minor 1, the solicitor argued, "She lied at the scene, she's tried to cover up her involvement, but it stops now." R. 462, lines 14-23.

### **Discussion**

In Miranda v. Arizona, 384 U.S. 436, 444 (1966), the United States Supreme Court held "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination." The Court explained that "custodial interrogation" meant "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." Id. Thereafter, the Court required that

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<sup>3</sup> Appellant renewed her objection to Spires' testimony regarding her alleged statement when Spires testified on behalf of the state before the jury. R. 198, lines 18-23; R. 199, lines 10-13.

[p]rior to any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed. The defendant may waive effectuation of these rights, provided the waiver is made voluntarily, knowingly and intelligently.

Id. This is because “in-custody interrogation[s]” place “inherently compelling pressures” on the persons interrogated. Id. at 467.

The Supreme Court concluded “the Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent.” Rhode Island v. Innis, 446 U.S. 291, 300-301 (1980). According to the Court, “[t]he latter portion of this definition focuses primarily upon the perceptions of the suspect, rather than the intent of the police.” Id. at 301. “[T]he definition of interrogation can extend only to words or actions on the part of police officers that they should have known were reasonably likely to elicit an incriminating response.” Id. at 302 (emphasis in original). The determination of whether a person is “in custody” for Miranda purposes requires “[t]wo discrete inquiries”: “first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.” Thompson v. Keohane, 516 U.S. 99, 112 (1995). “In determining whether an individual was in custody, a court must examine all of the circumstances surrounding the interrogation, but the ultimate inquiry is simply whether there [was] a formal arrest or restraint on freedom of movement of the degree associated with a formal arrest.” Stansbury v. California, 511 U.S. 318, 322 (1994)(internal quotations omitted).

“To determine whether a suspect is in custody, the trial court must examine the totality of the circumstances, which include factors such as the place, purpose, and length of

interrogation, as well as whether the suspect was free to leave the place of questioning.” State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 410 (2003). “The custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody.” Id.

In Evans, the defendant went to the police station accompanied by her family. Id. at 581, 582 S.E.2d at 408. Two police officers took the defendant “into a back office to take her statement.” The officers never advised the defendant of her Miranda rights. Id. at 581, 582 S.E.2d at 409. The police knew that the deadly fire they were investigating started with an accelerant. Id. at 581 n.2, 582 S.E.2d at 408 n. 2. The police told the defendant they did not believe her explanations for the fire. Id. at 581, 582 S.E.2d at 409. The two policemen left the room and sent in a female SLED agent, who used a sympathy tactic. Id. The two women were in the room for at least forty-five minutes. Id. at 582, 582 S.E.2d at 409. The SLED agent followed the defendant to the bathroom and waited outside the door. Id.

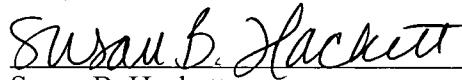
The Evans Court found that the defendant was in custody even though she was not formally arrested until shortly after making the statement. Id. at 584, 582 S.E.2d at 410. When analyzing whether the defendant was free to leave, the Court emphasized that the SLED agent accompanied her to the restroom and waited outside the door. Id. The Court was also persuaded that the defendant was “in custody” because she was interviewed in a back office in the police station, her cousin was not allowed to go into the interview room, and the interview lasted three hours. Finally, the officers’ purpose of the interview changed from a routine inquiry to questioning of a suspect when the female officer entered the interrogation room. Id.

The trial judge erred in admitting Appellant's statement where the undisputed evidence demonstrated that Appellant was in custody at the time Spires interrogated her. Spires candidly admitted that Appellant was not free to leave. That is the hallmark of the in-custody inquiry. Further, the totality of the circumstances revealed that a reasonable person would have believed that she was not at liberty to terminate the interrogation and leave. Spires was standing between Woodard and the door. Spires entered by the front door while Woodard sat on the couch holding a baby. Additionally, Spires was dressed in full law enforcement attire, clearly identifying Spires as the person in control of the scene. Woodard heard Oberg's attempts to dissuade Spires from entering the residence and Spires' refusal to abide by the homeowner's requests. If the homeowner could not prevent Spires from even entering the home, then Woodard had no chance of simply leaving the area. Further, Spires had removed Minor 1 from the residence prior to speaking to Woodard. Spires clearly displayed his authority and power as a law enforcement officer by removing a child from his home and his mother based simply on a phone call and a brief observation. Without question, Appellant was in custody when Spires interrogated her about her knowledge of what took place at the residence prior to his arrival. The solicitor used Appellant's response to Spires in her closing argument to the jury to claim that Appellant had lied, but that her lies had to stop with the jury; thus, the jury had to hold her responsible for the injuries to Minor 1 and for lying about her alleged involvement. Based upon the foregoing circumstances, this Court should reverse the trial judge's finding and find the statement was inadmissible.

CONCLUSION

Appellant respectfully requests this Court reverse her conviction for assault and battery in the second degree and remand for a new trial.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of October, 2014.

STATE OF SOUTH CAROLINA  
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Appeal from Lexington County  
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PETITION TO BE RELIEVED AS COUNSEL

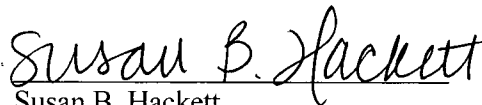
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Counsel for Courtney Michelle Woodard states:

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 Donald B. Hocker, which was held on January 14-16, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. Pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), she has, briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Courtney Michelle Woodard.

Respectfully submitted,



Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of October, 2014.

STATE OF SOUTH CAROLINA

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Appeal from Lexington County

Donald B. Hocker, Circuit Court Judge

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

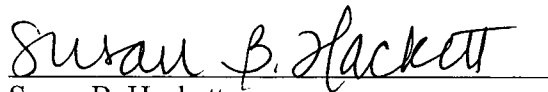
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Appellant proposes the following be included in the Record on Appeal:

- (1) Entire trial transcript dated January 14, 2014;
- (2) True-billed indictment; and
- (3) Sentence sheet

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

October 6th, 2014



Susan B. Hackett  
Appellate Defender

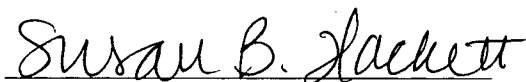
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Attorney for Appellant

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 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."

October 6, 2014



Susan B. Hackett  
Appellate Defender

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CERTIFICATE OF SERVICE

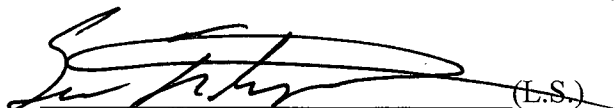
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Courtney Michelle Woodard, #358458 at Leath Correctional Institution, 2809 Airport Road, Greenwood, SC 29649, this 6th day of October, 2014.

*Susan B. Hackett*

Susan B. Hackett  
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 6<sup>th</sup> day of October, 2014.

 (L.S.)

Notary Public for South Carolina  
My Commission Expires: October 30, 2022