

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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 ORIGINAL

Appeal from Laurens County

Honorable Donald B. Hocker, Circuit Court Judge

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THE STATE,

APPELLANT,

V.

LEON LAGWAN BARKSDALE,

RESPONDENT

APPELLATE CASE NO. 2017-002306

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FINAL BRIEF OF RESPONDENT

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DAVID ALEXANDER  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

ATTORNEY FOR RESPONDENT

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**APPELLANT THE STATE OF SOUTH CAROLINA'S STATEMENT OF THE ISSUE**

**ON APPEAL**

The circuit court erred in suppressing all of Respondent's statements when they were not the result of custodial interrogation requiring Miranda warnings to be given, but instead were the result of routine investigation into an accident and a DUI.

**RESPONDENT LEON L. BARKSDALE'S COUNTERSTATEMENT OF THE ISSUE ON**

**APPEAL**

Whether the trial court's ruling that Leon Barksdale was in custody at the scene of an accident with injuries, where the police officer said on camera that Barksdale could not leave and suspected Barksdale of drinking, is supported by the evidence such that this Court's standard of review compels affirmance of Judge Hocker's pre-trial ruling?

**STATEMENT OF THE CASE**

Respondent agrees with Appellant's statement of the procedural history of the case.

### **STANDARD OF REVIEW**

“Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record.” State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003).

## ARGUMENT

The trial court's ruling that Leon Barksdale was in custody at the scene of an accident with injuries, where the police officer said on camera that Barksdale could not leave and suspected Barksdale of drinking, is supported by ample evidence and this Court's standard of review compels affirmance of Judge Hocker's pre-trial ruling.

The State attempts to convert Judge Hocker's ruling based on the facts before him into a purely legal issue by urging this Court to issue a decision that would eliminate a trial judge's discretion to determine whether a suspect is in custody for purposes of Miranda at the scene of an accident where the police suspect alcohol was involved. The determination of custody under Miranda is largely a factual inquiry. This Court's standard of review reflects that fact-specific inquiry. This Court will not reverse a trial judge's determination of whether a defendant is in custody unless the ruling is not supported by the evidence. See State v. Evans, 354 S.C. 579, 583, 582 S.E.2d 407, 409 (2003) ("Appellate review of whether a person is in custody is confined to a determination of whether the ruling by the trial judge is supported by the record.").

The United States Supreme Court decision which the State contends demonstrates a "clear error of law" by Judge Hocker explicitly declined to adopt a categorical rule for whether motorists are in custody during traffic stops, much less during the investigation of an accident scene. See Berkemer v. McCarty, 468 U.S. 420 (1984) and Br. App. at 11-12. Berkemer began with a traffic stop. Berkemer, 468 U.S. at 422-23. A police officer saw the defendant's car weaving, followed him for two miles, stopped him, and directed the defendant to get out of his car. Id. at 423. The defendant was obviously intoxicated. Id. In response to the officer's questioning, the defendant said he drank two beers and smoked marijuana. Id. The officer

arrested the defendant and he made further incriminating statements at the jail. Id. at 423-24. At no point did the police give him Miranda warnings. Id. at 424.

The Court first rejected the argument that Miranda should not apply to misdemeanor arrests. Id. at 429-34. After rejecting this argument, the Court concluded that the defendant's post-arrest statements at the jail were inadmissible. Id. at 434-35.

The Court then turned to the more difficult question of the admissibility of the defendant's statements during the traffic stop. Id. at 435-42. Distinguishing traffic stops from "stationhouse interrogation," the Court found that roadside detentions are brief, public, and motorists do not feel "completely at the mercy of the police." Id. The Court then analogized "the usual traffic stop" to a Terry stop. Id. at 439-40. With the notion of a brief, limited Terry stop in mind, the Court wrote, "The comparatively nonthreatening character of detentions of this sort explains the absences of any suggestion in our opinions that Terry stops are subject to the dictates of Miranda." Id. at 440. The holding found that motorists detained in "ordinary" traffic stops were not in custody pursuant to Miranda. Id.

However, the Court recognized that some traffic stops could be so similar to an arrest that Miranda could be required and declined to create a categorical rule. Id. at 440-41. "If a motorist who has been detained pursuant to a traffic stop thereafter is subjected to treatment that renders him 'in custody' for practical purposes, he will be entitled to the full panoply of protections prescribed by Miranda." Id. at 440. The Court recognized that, "Either a rule that Miranda applies to all traffic stops or a rule that a suspect need not be advised of his rights until he is formally placed under arrest would provide a clearer, more easily administered line," but expressly declined to adopt such a rule and entrusted the lower courts with making custody determinations on a case-by-case basis. Id. at 441.

Our Supreme Court recognized Berkemer's important distinction between routine traffic stops and accidents in State v. Easler, 327 S.C. 121, 489 S.E.2d 617 (1997). In Easler, the Supreme Court found the Court of Appeals overly emphasized Berkemer in a case involving an accident investigation. Id. After noting that routine traffic stops do not constitute custodial interrogation, the Court wrote that the situation in Easler was different because "the officers, having been advised there had been an accident and that someone had left the scene, went looking for that individual based upon a description given by two eyewitnesses." Id. at 127, 489 S.E.2d at 620-21. The Court found that the officers interrogated Easler, but ultimately upheld the trial judge's ruling that Easler was not in custody. Id. See also State v. Medley, 417 S.C. 18, 787 S.E.2d 847 (Ct. App. 2016) (holding that the circuit judge erred in finding a defendant was not in custody and that officers should have known that questions about drinking were likely to elicit an incriminating response); State v. Coyle, 567 A.2d 870, 874-75 (Del. 1989) (describing custodial encounter at an accident scene as in "that twilight zone" left by Berkemer's decision not to adopt a bright-line rule).

Judge Hocker's ruling is amply supported by the facts, many of which were captured on video. (State's Ex. 1). At least one other officer and emergency personnel are at the scene when Officer Craven arrives. (State's Ex. 1). Officer Craven asks Barksdale multiple questions about what happened. (State's Ex. 1). Another police car arrives during this questioning about what happened during the accident. (State's Ex. 1).

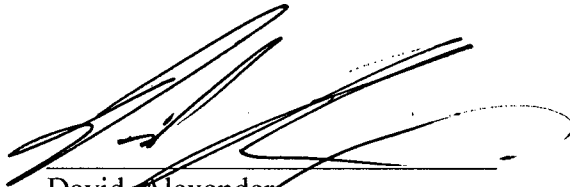
After asking Barksdale for his insurance and registration card and Barksdale says he will find it, seconds later Officer Craven says to someone else, "I think he's been drinking. Hey, that boy's been drinking." (State's Ex. 1). Officer Craven then said that he thinks Barksdale smells like alcohol and he got a "whiff" of it. (State's Ex. 1). Officer Craver multiple times repeats his

question asking Barksdale how much he had had to drink that night including asking him whether he drank the “forty” at home or while he was in the car. (State’s Ex. 1). Officer Craven asks another officer whether he has gloves and says they need to pick up an empty bottle of Bud Ice in an attempt to get fingerprints from it. (State’s Ex. 1).

Officer Craven tells another officer, “Don’t let him walk off.” (State’s Ex. 1). Barksdale’s car appears to be blocked in by other cars and police and emergency vehicles. (State’s Ex. 1). Officer Craven then moves his car so that he can capture field sobriety tests on camera. (State’s Ex. 1). During the field sobriety tests, multiple police officers are visible. (State’s Ex. 1). The officer does not read Barksdale his Miranda rights until after the field sobriety tests and placing him under arrest. (State’s Ex. 1). No reasonable person would have felt free to leave the scene. All of these facts support Judge Hocker’s custody determination and this Court’s standard of review constrains this Court to affirm.

**CONCLUSION**

For the foregoing reasons, the lower court's ruling should be affirmed and this appeal dismissed.



David Alexander  
Appellate Defender

ATTORNEY FOR RESPONDENT

This 20th day of December, 2018.