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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN R.T. WILSON,

APPELLANT

APPELLATE CASE NO. 2019-002105

ANDERS BRIEF OF APPELLANT

JOANNA K. DELANY
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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred where it admitted Appellant's incriminating statements, where it was undisputed that Appellant was in police custody and had not been provided with *Miranda*[1] warnings when he made the statements, and where Deputy Bennett's words to Appellant were the functional equivalent of interrogation, since interrogation includes words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response?

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

STATEMENT OF THE CASE

On October 8, 2018, a Spartanburg County Grand Jury indicted Appellant for the offense of assault and battery of a high and aggravated nature (ABHAN). R. 269 – 270. Appellant was also indicted for the offense of threatening the life of a public official. R. 7, l. 24 – 8, l. 5. Appellant was tried before the Honorable J. Derham Cole and a jury, from December 16 – 19, 2019. R. 1. Appellant was represented by Joshua Schultz. R. 1. The state was represented by Spenser Smith. R. 1.

The jury found Appellant not guilty of ABHAN but guilty of the lesser-included offense of assault and battery in the first degree. R. 246, ll. 7-17. The jury found Appellant not guilty of threatening the life of a public official. R. 246, ll. 7-17. Appellant was sentenced to ten years' imprisonment suspended upon the service of five years' imprisonment, the payment of one hundred dollars, and five years of probation. R. 266, ll. 10-20; R. 271.

This appeal follows.

STANDARD OF REVIEW

"On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a confession will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." *State v. Rochester*, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990); *see also State v. Reed*, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998). Put another way, the reviewing court will reverse a trial judge's ruling on the voluntariness of the confession when the ruling is "so erroneous as to constitute an abuse of discretion." *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004). "In criminal cases, appellate courts are bound by fact finding in response to preliminary motions where there has been conflicting testimony or where the findings are supported by the evidence and not clearly wrong or controlled by an error of law." *State v. Asbury*, 328 S.C. 187, 193, 493 S.E.2d 349, 352 (1997).

ARGUMENT

The trial court erred where it admitted Appellant's incriminating statements, where it was undisputed that Appellant was in police custody and had not been provided with *Miranda*[2] warnings when he made the statements, and where Deputy Bennett's words to Appellant were the functional equivalent of interrogation, since interrogation includes words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response.

It was undisputed that Appellant was in custody and that he was not provided with *Miranda* warnings when he made incriminating statements to Deputy Bennett. It was also undisputed that Deputy Bennett cursed at Appellant while placing him the patrol car. Appellant only spoke because felt goaded into responding to Bennett, and the court's failure to exclude the statements was error.

Relevant facts

Appellant was tried for ABHAN and threatening a public official based on an incident in the stairwell of Spartanburg Regional Medical Center wherein Appellant was alleged to have tackled Officer Gary Foster (Complainant). R. 51, l. 16 – 57, l. 22. The incident caused tendons in Complainant's arm to become detached and required surgery. R. 59, l. 11 – 60, l. 24; R. 81, ll. 18-19. While being taken to jail, Appellant made incriminating remarks about his confrontation with Complainant. State's Exhibit #7. The State also alleged Appellant made a threatening comment about another officer involved in Appellant's arrest. R. 152, ll. 6-23.

Appellant was apprehended after police searched the area surrounding the hospital and when Appellant was arrested by Deputy Bennett, body-worn cameras recorded the interactions

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

between Appellant and arresting officers. R. 147, l. 12 – 151, l. 6. State's Exhibit #8 contains a copy of video and audio recordings which captured Deputy Bennett cursing at Appellant while taking him to the police car, and that exhibit is on file with this Court. Specifically, Bennett told Appellant, "You already broke an officer's arm, you shut your fucking mouth." State's Exhibit #8.

After Appellant was put into the police car, Appellant made incriminating statements which were captured in audio and video recordings by Bennett's body-worn camera. State's Exhibit #7. State's Exhibit #7 is a copy of that recording and is on file with this Court. The recording captured, inter alia, Appellant's incriminating statements that, "If that broke his arm, I'll snap every one of them in half," and "He shouldn't have been trying to block the door." State's Exhibit #7.

Defense counsel objected to the admission of the recorded statements, and argued, "My client was under arrest. He was not free to leave, but he was not properly *Mirandized* when he was arrested." R. 123, ll. 8-9. "[T]here's a body cam of some comments that my client makes . . . and we contest the voluntary nature of that." R. 123, ll. 5-7. A hearing was held on the matter out of the presence of the jury. R. 124, ll. 24-25.

During the hearing, Deputy Bennett admitted that Appellant was not free to leave and that Appellant had not been provided *Miranda* warnings when he made the incriminating statements. R. 130, ll. 10-14. According to Bennett, Appellant became upset while he was being taken to the police car. "He started making comments to us, started just antagonizing us. And then I responded to him and told him that he needed to be quiet in no uncertain terms and then led him to the car and completed a search and put him in the car and drove him to the jail." R. 125, ll. 13-21. Bennett claimed he did not ask Appellant any questions. R. 125, ll. 22-24.

Appellant testified that he believed Bennett's remarks to him while he was under arrest were interrogation. R. 135, ll. 16-18. Appellant felt that cursing at someone was an act likely to cause the person to "flare a temper." R. 135, ll. 21-24.

Defense counsel argued that Appellant was subjected to interrogation because Bennett's offensive language could have elicited a response, such that *Miranda* warnings should have been provided. R. 138, l. 1 – 139, l. 1. Defense counsel argued that Bennett was "trying to go[ad] [Appellant] into saying stuff." R. 139, ll. 15-17.

The solicitor argued that Bennett's words were not designed to elicit a response and thus, were not interrogation. R. 139, ll. 4-13.

The court ruled that, "clearly [Appellant] was in custody; clearly *Miranda* warnings were not provided; and clearly there was no interrogation . . . [Appellant] was told by the officer to shut up." R. 139, ll. 18-25. "[E]very statement he made was clearly voluntary and a spontaneous utterance by the defendant, not the subject of a question or any conduct on the police that would initiate that response." R. 140, ll. 3-6. The court denied defense counsel's motion to exclude the statements. "The statements shall be admitted as voluntarily made by the defendant." R. 140, ll. 7-9.

Appellant's statements were played for the jury[3] and Appellant was convicted of assault and battery in the first degree. R. 154, l. 20 – 155, l. 14; R. 246, ll. 7-12.

[3] Appellant recognizes that defense counsel did not contemporaneously object to the statements' admission when they were played for the jury and realizes this Court may therefore find this issue should be addressed during post-conviction relief (PCR) rather than on direct appeal. However, Appellant respectfully submits that concepts of fundamental fairness and judicial economy should apply here, and the Court should find this issue was preserved for appellate review.

Discussion

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights. *Miranda v. Arizona*, 384 U.S. at 498-500; U.S. CONST. amend. V. Prior to questioning, the suspect "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 . . ." *Id*. at 444.

An accused in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by him prior to the submission of such statements to the jury. *Jackson v. Denno*, 378 U.S. 368, 395 (1964). "Part of the State's burden during this hearing is to prove that the statement was voluntary and taken in compliance with *Miranda*." *State v. Creech*, 314 S.C. 76, 84, 441 S.E.2d 635, 639 (Ct. App. 1993). "If a defendant makes a custodial statement, then the trial court must not only make an inquiry into the voluntariness of the statement, but also conduct an inquiry to ensure the police complied with the mandates of *Miranda* and its progeny." *State v. Ledford*, 351 S.C. 83, 88, 567 S.E.2d 904, 906–07 (Ct. App. 2002).

Miranda warnings are required before a person in custody is to be subjected to interrogation. *Miranda v. Arizona*, 384 U.S. at 467–68. "Interrogation is the express questioning, or its functional equivalent which includes words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response." *State v. Kennedy*, 333 S.C. 426, 431, 510 S.E.2d 714, 716 (1998) (internal alterations and quotations omitted). *See Rhode Island v. Innis*, 446 U.S. 291 (1980). *Miranda* warnings are inapplicable to volunteered statements which are not the product of interrogation. "Volunteered statements of any kind are not barred by the Fifth Amendment . . ." *Miranda v. Arizona*, 384 U.S. at 478.

"*Miranda* conditioned the admissibility at trial of any custodial confession on warning a suspect of his rights: failure to give the prescribed warnings and obtain a waiver of rights before custodial questioning generally requires exclusion of any statements obtained." *Missouri v. Seibert*, 542 U.S. 600, 608 (2004).

Here, it was undisputed that Appellant was in custody and he had not been provided with *Miranda* warnings prior to making the recorded statements. Deputy Bennett's words, in cursing at Appellant, were the functional equivalent of questioning since Bennett should have known they were likely to elicit an incriminating response—Bennett goaded Appellant into making the incriminating remarks. "[T]he term 'interrogation' under *Miranda* refers not only to express questioning, but also to any words or actions on the part of the police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response from the suspect." *Rhode Island v. Innis*, 446 U.S. at 301 (footnotes omitted). The trial court's admission of this evidence was error.

The admission was not harmless. "The failure to suppress evidence for possible *Miranda* violations is harmless if the record contains sufficient evidence to prove guilt beyond a reasonable doubt." *State v. Medley*, 417 S.C. 18, 29, 787 S.E.2d 847, 853 (Ct. App. 2016) (quoting *State v. Lynch*, 375 S.C. 628, 636, 654 S.E.2d 292, 296 (Ct. App. 2007)). Here, there were no eyewitnesses to the alleged assault other than Appellant and Complainant. No forensic evidence tied Appellant to the crime.

Absent Appellant's recorded confession, it is quite possible the jury might have found him not guilty of first degree assault and battery. In fact, the jury did find Appellant not guilty of threatening a public official where the alleged threats were not captured by officers' body-worn cameras. Under these circumstances, the court's error cannot be considered harmless.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his conviction and sentence and remand for a new trial.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

ATTORNEY FOR APPELLANT

This 24th day of August, 2020.

STATE OF SOUTH CAROLINA

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PETITION TO BE RELIEVED AS COUNSEL

Counsel for John R.T. Wilson 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 J. Derham Cole, which was held on December 16-19, 2019, 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 John R.T. Wilson.

Respectfully Submitted,

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT

This 24th day of August, 2020.

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SC Court of Appeals

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."

August 24, 2020.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender

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CERTIFICATE OF SERVICE

Pursuant to the Supreme Court's Order "RE: Operation of the Appellate Courts During the Coronavirus Emergency," dated March 20, 2020, the undersigned hereby certifies a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon William M. Blitch, Jr., Esquire, at the primary e-mail address listed in the Attorney Information System (AIS); and a copy of the Anders Brief of Appellant and Designation of Matter have been served on John R.T. Wilson, 381933, at Tyger River Correctional Institution, 200 Prison Road, Upper Yard, Enoree, SC 29335-9308, this 24th day of August, 2020.

s/ *Joanna K. Delany*
Joanna K. Delany
Appellate Defender
ATTORNEY FOR APPELLANT