STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNATHAN RAKIM BRIGHT,

APPELLANT

APPELLATE CASE NO 2020-000076

INITIAL BRIEF OF APPELLANT

TAYLOR D GILLIAM
Appellate Defender

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

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court erred in admitting a video recording of Appellant, where Appellant was in custody following his arrest, where Miranda warnings were never given, and where the state used Appellant's post-arrest, custodial statements against him at trial?

II. Whether the trial court erred in denying Appellant's motion to bifurcate his trial, where a prior conviction was used against him to meet an element of S.C. Code Ann. § 16-23-30, where the admission of the prior conviction was unduly prejudicial, and where the trial court had the authority to bifurcate the trial?

STATEMENT OF THE CASE

Appellant was indicted by an Horry County grand jury in February 2019 for two counts of possession of a stolen pistol, one charge of unlawful possession of a pistol, and one count of unlawful carrying of a pistol. R. __ (Indictments). He proceeded to trial before the Honorable Steven H. John on January 8, 2020. Tr. 1. Jonathan M. Hiller represented Appellant. Thomas G. Terrell, III appeared on behalf of the state.

The jury found Appellant guilty on all four offenses. Tr. 121, l. 23 – 122, l. 14. Judge John sentenced him to five years on the three possession of a pistol charges and one year on the unlawful carrying of a pistol. Tr. 129, ll. 2 – 21.

This appeal follows.

ARGUMENT

I. The trial court erred in admitting a video recording of Appellant, where Appellant was in custody following his arrest, where Miranda warnings were never given, and where the state used Appellant's post-arrest, custodial statements against him at trial.

Standard of Review

The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion." State v. Hatcher, 392 S.C. 86, 91, 708 S.E.2d 750, 753 (2011) ("quoting State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006)). " An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." Id.; see also State v. Brockmeyer, 406 S.C. 324, 340, 751 S.E.2d 645, 653 (2013).

Relevant facts

On November 6, 2018, Raymond Schoonmaker, an officer with the Myrtle Beach Police Department, drove to a gas station after receiving a call about a possibly intoxicated individual in a car. Tr. 42, l. 22 – 43, l. 17. Schoonmaker testified that he noticed Appellant behind the wheel of a white Chevrolet car with his head down. Tr. 44, ll. 13 – 18. Appellant was arrested for public intoxication, and a subsequent search of the car located two pistols. Tr. 53, ll. 11 – 24; Tr. 55, ll. 3 – 25. Body camera and dash cam video footage was played for the jury at Appellant's trial.

The dash cam footage, State's Exhibit 2, was published to the jury while Schoonmaker was on the stand. Tr. 46, ll. 10 – 16. As it began showing Appellant's arrest and placement into

custody, counsel for Appellant objected. Tr. 46, l, 17 – 51, l. 13. The jury was excused, and the solicitor outlined the remainder of the video to the judge. Id.

The state took the position that Appellant was not being interrogated, so therefore the statements were voluntary. Id. Counsel for Appellant responded that Appellant was in custody. Id. Counsel pointed out how the officers' conduct elicited a response from Appellant. Id. The video does not contain a Miranda warning. The judge asked to view the remainder of the video. Id.

Counsel for Appellant clarified his request afterwards, noting that Appellant twice requested an attorney by name. Id. Counsel correctly argued that although this was not a formal interrogation, Appellant was in custody and therefore entitled to receive Miranda warnings after being arrested:

> I understand that it's not like an interrogation as such, but, you know, through his interaction with law enforcement, the failure to Mirandize could have prevented him from continuing this colloquy with law enforcement, some of which is innocent enough, all of which is colorful, but that would be my argument.

Tr. 49, l. 20 – 50, l. 1. The state responded that "the case law on Miranda is very specific. It's got to be a custodial interrogation." Tr. 50, ll. 3 – 5. Seemingly overlooking the purpose of Miranda warnings, the solicitor noted how Appellant's behavior assisted the state's case:

> He's not responding to any of the questions he is being asked and the questions he's being asked are not for interrogative purposes. The - - the video is important because it shows his - - his demeanor and his reaction when they start going through his car. That makes it - - or at least, I would argue that that is evidence that he knows what's in there is something he should not have. I think it's - - it's highly probative of the elements that the state is forced to prove and it's just not a response to being interrogated by law enforcement. It's - - they're voluntary statements.

Tr. 50, ll. 5 – 14.

The trial judge ruled that although "clearly Miranda was not given to the defendant at the time he was placed into custody," the post-arrest comments by Appellant in the video are nonetheless admissible. Tr. 50, l. 15 – 51, l. 10. In particular, the trial court conducted an analysis of prejudice and probative value and concluded "the circumstantial nature of the video outweighs any prejudicial value to the defendant." Tr. 50, l. 15 – 51, l. 10. The majority of the video was played for the jury. Id.

The solicitor relied on the video footage during closing argument as well, improperly utilizing post-arrest statements against Appellant even though no Miranda warnings were ever given:

> The guns were in his car. You don't have to take my word for it; you watched the video. You watched the entire - - just about the entire track - - it was captured on bodycam and on dash cam and you heard him say, my car, my keys - - I wrote some of them down - - my vehicle, my money, my shit, my property. He says all of those things.

Tr. 97, ll. 5 – 11. Throughout the state's closing, Appellant's post-arrest statements were repeatedly used against him:

> I would submit to you that he knew everything that was in that car. He knew about everything because he told you about everything, except for the guns. He was yelling at the officers; we all saw the video. He knew the money was his. The ID was found in his vehicle; he knew that was his. I would submit to you, everything in your car is - - is yours or you know you're in possession of it.

Tr. 100, ll. 6 – 13. Additional references were made to Appellant's post-arrest conduct: "What made his demeanor flip as soon as he was put in the back of that car and he knew the officers were going inside his vehicle. There was something that he knew about illegal inside that vehicle." Tr. 102, ll. 8 – 13.

Discussion

A suspect in custody "must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires." Miranda v. Arizona, 384 U.S. 436, 479, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966). The purpose of the Miranda warnings is to apprise the defendant of his constitutional privilege to not incriminate himself while in the custody of law enforcement. Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed 694 (1966); 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." Id. The Fourth Circuit Court of Appeals has similarly held that Miranda warnings are required when an individual is subjected to custodial interrogation, and any statements made in the absence of prior Miranda warnings are admissible. U.S. v. Leshuk, 65 F.3d 1105, 1108 (4th Cir. 1995). A suspect is in custody if he has been formally arrested or questioned under circumstances in which his freedom of action is curtailed to the degree associated with formal arrest. Id. The custodial determination is an objective analysis based on whether a reasonable person would have concluded that he was in police custody. Bradley v. State, 316 S.C. 255, 257, 449 S.E.2d 492, 493-94 (1994); State v. Sprouse, 325 S.C. 275, 282, 478, S.E.2d 871, 875 (Ct. App. 1996).

To trigger the requirement of Miranda warnings, an individual's "freedom of action [must be] curtailed to a ''degree associated with formal arrest.' Whether this individual is in custody depends on whether a reasonable person in the individual's position would believe he was in custody." Berkemer v. McCarty, 468 U.S. 420, 440, 104 S.Ct. 3138, 3150, 82 L.Ed.2d

317 (1984). The South Carolina Supreme Court addressed the issue of questioning following a traffic stop in State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984):

> The Miranda warnings are not required if the defendant is not in custody or significantly deprived of his freedom. State v. Neeley, 271 S.C. 33, 40, 244 S.E.2d 522, 526 (1978). When a defendant is not in custody or significantly deprived of his freedom, and inculpatory statements made at the time are not inadmissible because of the failure to give Miranda warnings.

Morgan, 282 S.C. at 411-412, 319 S.E.2d at 336.

The special procedural safeguards outlined in Miranda are not required if a suspect is simply taken into custody, but only if a suspect in custody is subjected to interrogation. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App. 1996), aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998). It includes words or actions on the part of police (other than those normally attendant to arrest and custody) that the police should know are reasonably likely to elicit an incriminating response. Rhode Island v. Innis, 446 U.S. 291, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980). See also State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). "[T]he Miranda safeguards come into play whenever a person in custody is subjected to either express questioning or its functional equivalent," which includes "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. 291, 301, 100 S.Ct. 1682, 64 L.Ed.2d 297 (1980) (footnote omitted).

The analysis in this case incorrectly revolved around whether Appellant's remarks were elicited by law enforcement questioning instead of noting that the officers failed to advise Appellant of his Miranda rights upon arrest and then searched the car while he watched. As seen in both officers' interactions with Appellant, law enforcement was too preoccupied with searching the car and failed to offer Appellant the required Miranda warnings after he was

arrested and placed into custody. The solicitor outright admitted that he wanted the jury to hear the statements. The officers failed to Mirandize an individual they arrested, and the state used Appellant's post-arrest words and actions against him. Appellant was never provided the required warnings, and the officers forced him to watch as they searched his mother's car. Tr. 59, ll. 13 – 14. As a result, the trial court erred in admitting the exhibit in its entirety.

II. The trial court erred in denying Appellant's motion to bifurcate his trial, where a prior conviction was used against him to meet an element of S.C. Code Ann. § 16-23-30, where the admission of the prior conviction was unduly prejudicial, and where the trial court had the authority to bifurcate the trial.

Standard of Review

In criminal cases, appellate courts sit to review errors of law only. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). "The appellate court reviews a trial [court's] ruling on admissibility of evidence pursuant to an abuse of discretion standard and gives great deference to the trial court." State v. Torres, 390 S.C. 618, 625, 703 S.E.2d 226, 230 (2010). "An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law." State v. Douglas, 369 S.C. 424, 429-30, 632 S.E.2d 845, 848 (2006). "[T]he conduct of a trial is largely within the discretion of the presiding judge, to the end that a fair and impartial trial may be had." State v. Heath, 232 S.C. 384, 391, 102 S.E.2d 268, 272 (1958).

Relevant facts

Appellant moved to bifurcate his trial. Tr. 25, l. 22 – 28, l. 2. Having been charged under S.C. Code Ann. § 16-23-30 as a person who has been convicted of a crime of violence and therefore unable to possession a handgun legally, Appellant sought to separate out the guilt determination on his other pending charges for which he was on trial from the prior conviction element of the prohibited person offense. As argued by counsel for Appellant pre-trial:

> [T]he defense has a concern that the information presented to the jury during the course of the trial will be more prejudicial than probative as to the possession of a stolen pistol charges times two and then the unlawful carry charge. I would make a motion respectfully to bifurcate the trial so the jury reaches a decision on the

> three indictments, two unlawful possession of a stolen pistol charges and unlawful carry. And if the jury does reach a verdict on that… then to move forward with the third part, which would basically keep the state from presenting evidence that my client's been convicted - - is a convicted felon during the case in chief.

Tr. 26, ll. 7 – 19.

Without conducting a balancing test or seeking input from the state, the trial judge denied the request. Tr. 26, l. 20 – 27, l. 17. After the state offered the testimony of two officers during its case-in-chief, the solicitor indicated his intent to publish State's Exhibit 1 to the jury. Tr. 75 l. 3 – 77, l. 24. State's Exhibit 1 was a certified conviction for an armed robbery charge in 1995 from North Carolina. Id. R. __ (State's Exhibit 1). Counsel for Appellant reminded the trial court of his prior motion to bifurcate. Id. The trial court ruled that the exhibit was admissible. Tr. 76, l. 23 – 77, l. 7. The exhibit was admitted over defense counsel's objection. Tr. 78, ll. 8 – 20.

Discussion

"[A] bifurcated proceeding is not required in a non-capital case." Chubb v. State, 303 S.C. 395, 397, 401 S.E.2d 159, 161 (1991).[4] "[A bifurcated trial] is not required by either the common law, the statutory law, or the constitution of this State. It has now been settled by the United States Supreme Court that a bifurcated trial is not required by the United States Constitution." State v. Bennett, 256 S.C. 234, 242, 182 S.E.2d 291, 295 (1971). In Spencer v. Texas, 385 U.S. 554, 568, 87 S.Ct. 648, 17 L.Ed.2d 606 (1967), the United States Supreme Court stated, "Two-part jury trials are rare in our jurisprudence; they have never been compelled by this Court as a matter of constitutional law, or even as a matter of federal procedure."

In State v. Cross, the South Carolina Supreme Court held that the trial court erred by denying the defendant's motion to bifurcate a criminal sexual conduct trial. 427 S.C. 465, 832 S.E.2d 281 (2019). Under S.C. Code Ann. § 23-3-430(c), a person is guilty of criminal sexual

conduct with a minor in the first degree if the person engages in sexual battery with a victim less than sixteen years old and the person has previously been convicted of a similar offense under the statute. Cross had a prior conviction for first degree criminal sexual conduct with a minor from 1992. 427 S.C. 470, 832 S.E.2d 283-84. The Court held that "evidence of Cross's 1992 conviction for first-degree CSC with a minor had insurmountable probative value in proving the prior conviction element of first-degree CSC with a minor. However, evidence of the 1992 conviction was in no way probative of whether Cross committed the underlying sexual battery upon Minor in 2005." Id. at 477-78, 832 S.E.2d at 287-88. Citing State v. Brooks, 341 S.C. 57, 62, 533 S.E.2d 325, 328 (2000), the Court noted "the danger of unfair prejudice arising form the admission of the 1992 conviction at this stage of the trial was exceedingly high, as Cross was standing trial on charges of first-degree CSC with a minor and committing a lewd act on a minor." Id.

Applying a similar rationale to the matter at bar, the trial court erred in denying Appellant's motion to bifurcate the trial. Instead of a 1992 conviction like in Cross, Appellant had a 1995 conviction used against him at a trial twenty-five years later. The danger of unfair prejudice from the jury learning about this conviction was exceedingly high, as Appellant was on trial for possession of stolen pistols. The mention of a prior conviction on a robbery offense likely weighed on the jury's mind during the guilt determination. Admitting the prior conviction in a non-bifurcated trial was error.

CONCLUSION

Based on the foregoing, Appellant respectfully requests that this Court reverse his convictions and remand for a new trial.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender

ATTORNEY FOR APPELLANT

This 28th day of October, 2020.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Horry County

Honorable Steven H. John, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHNATHAN RAKIM BRIGHT,

APPELLANT

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 Initial Brief of Appellant and Designation of Matter has been served upon opposing counsel this 28th day of October, 2020 by sending to opposing counsel's primary e-mail address as listed in the Attorney Information System (AIS); and a copy of the Initial Brief of Appellant and Designation of Matter have been served on Johnathan Rakim Bright, #382085, at Evans Correctional Institution, 610 Hwy. 9 West, Bennettsville, SC 29512.

s/Taylor D. Gilliam
Taylor D Gilliam
Appellate Defender
ATTORNEY FOR APPELLANT