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ALABAMA COURT OF CRIMINAL APPEALS

OCTOBER TERM, 2015-2016

CR-14-1332

Eugene Lee Jones

v.

State of Alabama

**Appeal from Lauderdale Circuit Court
(CC-14-405)**

KELLUM, Judge.

The appellant, Eugene Lee Jones, was indicted by a Lauderdale County grand jury for murder, see § 13A-6-2, Ala. Code 1975. Following a trial by jury, Jones was convicted of the lesser-included offense of manslaughter. The circuit

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court sentenced Jones as a habitual felony offender to life imprisonment and ordered Jones to pay \$3,485 in restitution, \$50 to the crime victims compensation fund, and court costs. This appeal followed.

The dispositive issue on appeal in this case is whether the circuit court erred in denying Jones's motion to suppress an October 7, 2013, statement he made to police. Specifically, Jones contends that his October 2013 statement to police should have been suppressed because, he says, once he invoked his right to counsel during his first statement to police on July 29, 2013, the State had no right to question him on October 7, 2013, without first providing him counsel.

The evidence presented at the suppression hearing established the following pertinent facts. On July 29, 2013, police responded to a call after a dead body was found under a bed at the City Lodge Motel in Florence. The police confirmed that the deceased was Lula Addison. During the investigation into Addison's death, Jones made two statements to law-enforcement officials. On July 29, 2013, Jones voluntarily went to the district attorney's office after finding out that he was a suspect in Addison's death. Officer

Gerald Pearson learned of Jones's presence and went to the district attorney's office to discuss the murder with Jones. After Officer Pearson learned from Jones that Jones had been with Addison shortly before her death, Pearson asked Jones to accompany him to the police department to talk with him about the case. Jones agreed. According to Pearson, Jones was not under arrest at that time. Once at the police station, Jones was advised of, and waived, his Miranda¹ rights. Jones then gave a statement to police. After approximately two hours of questioning, Jones asked for an attorney, stating: "I know where this is going. I need a lawyer. I came here on my own free will." (R. 216.) Officer Pearson immediately stopped questioning Jones about Addison's murder. Jones was not provided with a lawyer at that time. After Jones invoked his right to counsel and the questioning ended, Pearson offered to give Jones a ride to the Salvation Army shelter facility. However, before Officer Pearson could give Jones a ride, Officer Pearson learned that there was an arrest warrant for Jones from Bessemer stemming from what Officer Pearson believed was a drug-paraphernalia charge. At that point, Jones

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

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was taken into police custody and was transferred from Florence to Bessemer. Jones was subsequently released from custody in Bessemer once his case concluded. While in Bessemer, Jones was arrested again on a warrant obtained by Officer Pearson charging Jones with a burglary that occurred in Florence. Jones was subsequently transported back to Florence.

On October 7, 2013, Marty Leeth, a special agent with the Federal Bureau of Investigation and a polygraph examiner, was contacted by the Florence Police Department to administer a polygraph test to a suspect in Addison's unsolved-murder investigation, i.e., Jones. Jones was in police custody at the time. Jones was again advised of, and waived, his Miranda rights. Leeth told Jones that he had been asked to conduct a polygraph test to determine Jones's involvement with Addison's death. Jones informed Leeth that Jones did not have a lawyer, but that his sister had told him that a lawyer had told her to tell Jones not to submit to a polygraph test. Leeth agreed that Jones did not have to submit to a polygraph test, but Leeth informed Jones that they would continue in the form of an interview, and, according to Leeth, Jones agreed to be

interviewed. Leeth testified that the beginning of the interview concerned Jones's life history, but toward the end of the interview Leeth asked questions regarding Addison's death. Jones was asked if he had anything to do with Addison's death and Jones said that he did not. Leeth then told Jones,

"If that's the case you shouldn't have any problem taking a polygraph examination or passing the polygraph examination if that's what happened, and I said so would you be willing to take a polygraph examination regarding just -- just going to keep it simple to those questions. He sort of threw up his hands and said something to the effect screw it. Yeah, I'll take it."

(R. 188.) Leeth asked Jones during the polygraph test if Jones killed Addison and placed her body under the bed in the hotel room. Jones "failed" the polygraph test because it was determined that he had not answered one or more of the test questions truthfully. Jones subsequently admitted during a "post test interview interrogation" that he killed Addison.

(R. 192.)

"This Court reviews de novo a circuit court's decision on a motion to suppress evidence when the facts are not in dispute. See State v. Hill, 690 So. 2d 1201, 1203 (Ala. 1996); State v. Otwell, 733 So. 2d 950, 952 (Ala. Crim. App. 1999)."
State v. Skaggs, 903 So. 2d 180, 181 (Ala. Crim. App. 2004).

In the instant case, the facts are uncontested; the only issue is the circuit court's application of the law to those facts. Therefore, this Court affords no presumption in favor of the circuit court's ruling.

"As our Supreme Court has stated:

"The Fifth Amendment to the United States Constitution provides that "[n]o person ... shall be compelled in any criminal case to be a witness against himself." U.S. Const. Amend. V. In Miranda, the United States Supreme Court held that the right against self-incrimination "is fully applicable during a period of custodial interrogation." 384 U.S. at 460. The Supreme Court in Miranda further held that "the right to have counsel present at the interrogation is indispensable to the protection of the Fifth Amendment privilege...." 384 U.S. at 469. Before a custodial interrogation, a suspect must be informed of these rights, now commonly referred to as Miranda rights. 384 U.S. at 444 ("Prior 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 Supreme Court in Miranda recognized that "the defendant may waive effectuation of these rights, provided that the waiver is made voluntarily, knowingly, and intelligently." Id.'

"Ex parte Landrum, 57 So. 3d 77, 81 (Ala. 2010)."

Thompson v. State, 97 So. 3d 800, 805 (Ala. Crim. App. 2011).

In Edwards v. Arizona, 451 U.S. 477 (1981), Edwards was arrested on charges of robbery, burglary, and murder. After Edwards was read his Miranda rights and waived them, Edwards told the interrogating officer that he was willing to answer questions and that he wanted to "make a deal." Later during questioning, Edwards stated that he wanted to speak to an attorney; the officer stopped questioning Edwards, and he was taken to the county jail. The following day, however, two detectives came to the jail and asked to speak with Edwards. Edwards initially refused to talk to the detectives but was told by a guard at the jail that he "had" to talk to the detectives. The detectives informed Edwards of his Miranda rights, and Edwards agreed to talk to the detectives. Edwards subsequently incriminated himself during the interrogation and was later convicted on all charges.

The United State Supreme Court in Edwards held:

""[W]hen an accused has invoked his right to have counsel present during custodial interrogation, a valid waiver of that right cannot be established by showing only that he responded to further police-initiated custodial interrogation even if he has been advised of his rights.... [A]n accused, ... having expressed his desire to deal with the police only through counsel, is not subject to further interrogation by the

authorities until counsel has been made available to him, unless the accused himself initiates further communication, exchanges, or conversations with the police."

"'451 U.S. at 484-85, 101 S.Ct. 1880, 68 L.Ed.2d 378 (footnote omitted). The purpose of this rule is to protect an accused in police custody from "'badger[ing]' or 'overreaching'—explicit or subtle, deliberate or unintentional—[that] might otherwise wear down the accused and persuade him to incriminate himself notwithstanding his earlier request for counsel's assistance." Smith v. Illinois, 469 U.S. 91, 98, 105 S.Ct. 490, 83 L.Ed.2d 488 (1984), quoting Oregon v. Bradshaw, 462 U.S. 1039, 1044, 103 S.Ct. 2830, 77 L.Ed.2d 405 (1983).

"'"This 'rigid' prophylactic rule, Fare v. Michael C., 442 U.S. 707, 719, 99 S.Ct. 2560, 61 L.Ed.2d 197 (1979), embodies two distinct inquiries. First, courts must determine whether the accused actually invoked his right to counsel. See, e.g., Edwards v. Arizona, supra, 451 U.S. [477], at 484-485, 101 S.Ct. 1880, 68 L.Ed.2d 378 [(1981)] (whether accused 'expressed his desire' for, or 'clearly asserted' his right to, the assistance of counsel); Miranda v. Arizona, 384 U.S. [436], at 444-445, 86 S.Ct. 1602, 16 L.Ed.2d 694 [(1966)] (whether accused 'indicate[d] in any manner and at any stage of the process that he wish[ed] to consult with an attorney before speaking'). Second, if the accused invoked his right to counsel, courts may admit his responses to further questioning only on finding that he (a) initiated further discussions with the police, and (b) knowingly and intelligently waived the right he had invoked. Edwards v.

Arizona, supra, [451 U.S.,] at 485, 486, n. 9."

"Smith v. Illinois, 469 U.S. at 95, 105 S.Ct. 490, 83 L.Ed.2d 488.'"

Phillips v. State, 65 So. 3d 971, 1020 (Ala. Crim. App. 2010).

"The Supreme Court in Edwards made it clear that a suspect may waive his previously asserted right to counsel and respond to interrogation. However, when an accused has invoked his right to counsel, a valid waiver of that right cannot be established by showing only that the accused responded to police-initiated interrogation after again being advised of his Miranda rights. The Supreme Court held that, based on a totality of the circumstances, Edwards's Fifth Amendment rights were violated and his confession due to be suppressed because Edwards had not been appointed counsel and the police had initiated contact with Edwards after he had requested counsel."

Ex parte Williams, 31 So. 3d 670, 676 (Ala. 2009).

In the instant case, Jones invoked his right to counsel during the July 29, 2013, interrogation with Officer Pearson. Officer Pearson understood that Jones had invoked his right to counsel and immediately stopped questioning Jones. Jones, however, was not appointed counsel at that time. On October 7, 2013, police initiated contact with Jones to question him again regarding Addison's unsolved murder and to conduct a polygraph test. Jones informed Leeth that he did not have a lawyer. Leeth continued to question Jones until Jones agreed

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to submit to a polygraph test and ultimately confessed to Addison's murder.

The undisputed evidence shows that Jones clearly asserted his right to counsel when he was interrogated by police on July 29, 2013, regarding Addison's murder. Jones did not initiate contact with the police before he was interrogated a second time on October 7, 2013, and there is no indication in the record that he subsequently waived the right to counsel he invoked on July 29, 2013. Jones's response to the police-initiated interrogation on October 7, 2013, after again being read his Miranda rights did not constitute a valid waiver of his right to counsel he invoked on July 29, 2013. See Ex parte Williams, supra. Therefore, police violated Edwards v. Arizona when they reinitiated contact with Jones after he had requested counsel. Accordingly, the circuit court erred when it denied Jones's motion to suppress his October 7, 2013, statement to police.

Based on the foregoing, Jones's conviction is reversed and this case is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

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Windom, P.J., and Welch, Burke, and Joiner, JJ., concur.