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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal from Greenville County
Court of General Sessions

The Honorable Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2022-000806

State of South Carolina, ... Petitioner,

v.

Phillip Wayne Lowery, ... Respondent.

Opinion No. 5903 (S.C. S.Ct. filed July 17, 2024)

RETURN TO PETITION FOR REHEARING

Petitioner Phillip Lowery filed a petition for rehearing in response to this Court's July 17, 2024, opinion affirming his conviction for DUI. This Court requested a return to the petition on August 2. The State respectfully submits that this Court properly ruled on the admissibility of Lowery's statements.

This Court correctly found Lowery's statements were admissible because they were volunteered inculpatory statements that were not in response to custodial interrogation and therefore were not subject to Miranda. Now, Lowery requests that this Court grant rehearing because the issue of whether his statements were spontaneous and volunteered was not specifically briefed or argued before the Court of Appeals or this Court.

Pursuant to our appellate court rules, "[t]he appellate court may affirm any ruling, order,

decision or judgment upon any ground(s) appearing in the Record on Appeal." Rule 220(c), SCACR. Based on Rule 220(c), SCACR, this Court has specifically recognized it has the authority to affirm the rulings of a **trial judge** for any reason appearing in the record. See Law v. South Carolina Dep't of Corr., 368 S.C. 424, 440, n. 3, 629 S.E.2d 642, 651 (2006) ("This Court may affirm **the trial court** based on any ground found in the record." (emphasis added)); Upchurch v. New York Times Co., 314 S.C. 531, 538, 431 S.E.2d 558, 562 (1993) ("We may affirm **the trial judge** for any reason appearing in the record." (emphasis added)). The logical basis for the rule permitting appellate courts to affirm the ruling of a trial judge for any ground appearing in the record is that it would be nonsensical, injudicious, and inefficient to reverse a correct result reached by a trial judge simply because the trial judge reached the right conclusion for the wrong reasons. See Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 88 (1943) ("[W]e do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason.' The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." (citations omitted)).

In this case, the trial judge found that Lowery was not in custody at the time he was questioned and further that he **volunteered** his incriminating statements. (Emphasis added). Therefore, this Court properly exercised its authority pursuant to Rule 220(c), SCACR in affirming that Lowery's statements were admissible based on the grounds appearing in the record.

Lowery further asserts that this Court did not fully consider the factors required under the Seibert[1] factors to determine whether the statements were in fact spontaneous in nature or the result

[1] Missouri v. Seibert, 542 U.S. 600 (2004)

of improper interrogation. The Seibert factors are inapplicable in this case. The rationale behind the Court's ruling in Seibert is a person who has confessed and is only informed of his Miranda rights before being asked to repeat what he has already said has received no effective advisement. State v. Daniels, 439 S.C. 500, 888 S.E.2d 9 (2023). This does not apply in this case. This Court found that the first 33 seconds of questioning of Lowery were "interrogation" as they were reasonably likely to elicit incriminating questions. This Court further found that they did not need to decide whether Lowery was in custody during the initial incriminating statements because Lowery later spontaneously made equally incriminating statements that he was driving without being questioned or prompted by Trooper Vallin. Therefore, this Court properly found that the statements were admissible and Lowery's petition for rehearing should be denied.

CONCLUSION

For all the foregoing reasons, Lowery's petition for rehearing should be denied.

Respectfully submitted,

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