STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2014-001499

THE STATE,

Respondent,

v.

MATTHEW S. MEDLEY,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

The trial court properly admitted Appellant's incriminating statements because the statements were not made in response to an interrogation. Any error by the judge in their admission is harmless, however, as the State provided overwhelming evidence of Appellant's guilt without regard to the statements.

STATEMENT OF THE CASE

Appellant was indicted for failure to stop for a blue light and DUI second by a Cherokee County grand jury. On June 10, 2014, Appellant was tried before the Honorable G. Edward Welmaker and found guilty before a jury. Assistant Solicitor Matt Kendall represented the State, and Assistant Public Defender Michael Berry represented Appellant. (R. p.1) Judge Welmaker sentenced Appellant to five years' imprisonment suspended on the service of twenty seven months and five years' probation. (R. p.159, lines 13-17.) Appellant was sentenced to a consecutive three years' imprisonment suspended upon the service of three months and probation for failure to stop for a blue light. (R. p. 159, lines 24-25 and p. 160, lines 1-2.) Judge Welmaker revoked Appellant's probation on another charge, and sentenced him to a consecutive one years' imprisonment. (R. p. 159, lines 9-12.) Appellant filed a timely Notice of Appeal, and this Appeal follows.

STATEMENT OF FACTS

On the evening of April 20, 2013, officers with the Cherokee County Sheriff's Department were working a traffic checkpoint on Highway 150 North in Cherokee County. (R. p. 30, lines 3-25 and p. 31, lines 1-5.) At approximately 12:45 am, April 21, 2013, Lieutenant Steven Bright was writing citations for two other vehicles at the checkpoint. (R. p. 31, lines 10-10.) He had just finished writing citations for two other drivers when he heard the sound of a motorcycle engine approach. (R. p. 31, lines 10-16.) His colleague, Lieutenant Mullinax, was in the roadway at the intersection. (R. p. 31, lines 13-14.) When Bright looked up, he noticed Mullinax attempting to get out of the way of the motorcycle, which was not stopping at the stop sign checkpoint. (R. p. 31, lines 19-22.) Bright, who saw Appellant ride through the intersection and accelerate away, activated his siren and blue lights and gave chase. (R. p. 32, lines 3-11.) The dashboard video camera in Bright's patrol car captured the events. (R. p. 32, lines 12-22; State's Exhibit 1.) Bright attempted to pull to the side of Appellant in an effort to preserve his safety should the motorcycle crash. (R. p. 36, lines 16-19.)

Lieutenant Mullinax also participated in the pursuit and apprehension of Appellant. (R. p. 49, lines 20-25; State's Exhibit 2, 2:30.) Mullinax eventually took lead as Bright pulled to the side of a road to block Appellant. Mullinax's dashboard camera shows Appellant's erratic driving, as he crossed the center yellow line on numerous occasions. (State's Exhibit 2, 2:45, 2:52,3:03, 3:10, 3:24, 4:11, 4:14, 4:17, 4:24, 5:18, 5:39, 5:42, 5:47, 5:50, 5:53, 5:59, 6:04, 6:08, 6:17, 6:21, 6:26, 6:31, 6:39, 6:45, 6:57.) The pursuit reached a top speed of 109 miles per hour. (R. p. 37, line 8.) Appellant drove through multiple stop signs. (State's Exhibit 2, 3:19.) At one point during the chase, a can of beer was either thrown or fell out of Appellant's saddle bag and flew backward toward

the police cars. (R. p. 53, lines 8-19, State's Exhibit 2, 3:35.) Appellant led the deputies to his parent's mobile home. (State's Exhibit 2, 8:00)

Appellant stopped his motorcycle and ran to the front porch of the residence where the chase ended. (R. p. 54, lines 1-3.) Mullinax ran after him and told him to get on the ground. (R. p. 54, lines 2-4.) He was apprehended on the porch of his parent's mobile home. Bystanders began to congregate around the scene. (R. p. 54, lines 7-13.) Bright secured the scene around them by ordering people to get back. (R. p. 54, lines 7-13, State's Exhibit 2, 8:14.) Mullinax asked Appellant if he had a license and how much he had been drinking. (R. p. 55, lines 6-7, State's Exhibit 2, 9:10.) Appellant responded that he did not have a license and "too much." (R. p. 55, line 7, State's Exhibit 2, 9:11.) Officers Mirandized[1] Appellant and again asked him how much he had to drink. (State's Exhibit 2, 10:00.) Appellant's answer was inaudible. (State's Exhibit 2, 10:35.) At one point during his detention, Appellant asked the officers if he could answer his phone. (R. p. 58, lines 16-20, State's Exhibit 2, 11:28.) Appellant was directed off the ground and to the front of the patrol car, where he was told he was under arrest and read his Miranda rights again. (State's Exhibit 2, 12:35.) Officers discovered that the saddlebags on either side of the motorcycle were full of beer. (R. p. 38, lines 3-4, State's Exhibit 2, 13:40.) In unloading the saddlebags, officers placed approximately eighteen cans of beer on the hood of the patrol car. (State's Exhibit 2, 15:35.)

Bright, who has frequently encountered intoxicated citizens in his ten years of experience as a law enforcement officer, testified he smelled a strong odor of alcohol about the Appellant, and his behavior and demeanor was that of someone intoxicated. (R. p. 37, line 23 and p. 46, lines 14-25.) Mullinax testified Appellant's speech was slow and

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

his eyes were glassy, and a strong odor of alcohol emanated from him. (R. p. 56, lines 16-18.) Mullinax testified over the course of his career he has encountered over a thousand intoxicated individuals. (R. p. 56, lines 19-25.) He believed Appellant was intoxicated that night on the basis of his smell, his glassy eyes, his driving, and his overall demeanor. (R. p. 57, lines 1-24.)

Mullinax transported Appellant to the Cherokee County Detention Center while Bright arranged for Appellant's motorcycle to be towed. (R. p. 59, lines 3-6.) In the car, as Mullinax attempted to navigate his way back to the main roads, Appellant initiated conversation with the officer, apologizing and asking to make a phone call. (State's Exhibit 2, 27:35.). He asked Mullinax if they could drop off his house keys with his girlfriend on the way to the detention center. (State's Exhibit 2, 29:32.) Appellant continuously asked questions about his charges and the sentence he faced, while Mullinax, focused on making his way back to the detention center, only occasionally responded. (State's Exhibit 2, 26:45-31:22) When Mullinax approached a stop sign, Appellant said, "Take a right." (State's Exhibit 2, 31:22) Within seven seconds, he volunteered "I don't drink much anymore, man." (State's Exhibit 2, 31:29.) Mullinax did not hear him clearly, and said "What's that?" and Appellant repeated the statement. (State's Exhibit 2, 31:32.) Mullinax then asked him how much he had that day, and Appellant responded. "I didn't keep count." (State's Exhibit 2, 31:37.) During the course of the conversation, Appellant admitted to having around four and one half drinks. (R. p. 61, lines 14-17, State's Exhibit 2, 32:13.)

At the detention center, Mullinax printed Appellant's advisement of implied consent form, the SLED breath alcohol analysis report with Appellant's biographical data, and the SCDMV's notice of suspension, all of which were signed by Appellant. (R.

p. 63, lines 11-25.) After the obligatory twenty minute wait period, during which recently consumed alcohol is given time to dissipate from the breath, Appellant refused to take the breathalyzer. (R. p. 63, lines 1-4 and p. 65, lines 2-4.) The breathalyzer testing procedure was videotaped. (R. p. 65, lines 20-21, State's Exhibit 3) For much of the waiting period, Appellant was slumped over to one side.

During a pre-trial motion, Appellant objected to the admission of his statements to Mullinax concerning his drinking on the night of his arrest. Appellant argued he was the subject of a custodial interrogation when the officers detained him from his parents' porch and then again later in the patrol car on the way to the detention center. (R. p. 7, lines 11-25 and p. 8, lines 1-10.) The trial judge denied the motion, ruling:

> I have listened to it carefully and I think it was admissible—both were admissible statements, that I think an officer ... stops being a – this was not a temporary stop, obviously, but any time that you have a stop of this nature, generally on the scene for questioning, I mean for health issues, for safety issues, for whether or not EMS needs to be called, I think the questions he asked pre-Miranda were certainly not – would not meet the definition of custodial interrogation.

(R. p.23, lines 13-22.) During deliberations, the jury asked to review the portion of State's Exhibit 2 in which Appellant's motorcycle is righted and the officers "removed certain things,"[2] from the saddlebags. (R. p. 151, lines 3-6.) Appellant was found guilty of driving under the influence and failure to stop for a blue light. (R. p. 153, lines 1-7.)

[2] By "certain things," the jury is likely referring to the beer cans, which were the only things removed from the motorcycle on camera.

ARGUMENT

The trial court properly admitted Appellant's incriminating statements because the statements were not made in response to an interrogation. Any error by the judge in their admission is harmless, however, as the State provided overwhelming evidence of Appellant's guilt without regard to the statements.

Appellant contends the statement should not have been admitted because he was subject to a custodial interrogation and had not been informed of his constitutional rights pursuant to Miranda v. Arizona, 384 U.S. 436 (1996), when he made the first statement. He further claims the second, post Miranda incriminating statement should have been excluded pursuant to Missouri v. Seibert[3] and State v Navy[4] because the statement was the result of the prohibited two step interrogation technique. Appellant's argument fails, however. Though the State conceded Appellant was in custody at the time he offered the statements, Lieutenant Mullinax's first rhetorical, exclamatory statements were not interrogation, nor were the second conversational questions in the back of the patrol car. Even if this Court concludes the statements are inadmissible, their admission at trial was harmless, as the State presented overwhelming evidence Appellant was intoxicated the night of his arrest.

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). Decisions to admit or exclude evidence rest in the sound discretion of the trial judge and will only be reversed on appeal for an abuse of discretion. State v. Gaster, 349 S.C. 545, 557, 564 S.E.2d 87, 93 (2002). "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. McDonald, 343 S.C.

[3] 542 U.S. 600 (2004)
[4] 386 S.C. 294, 688 S.E.2d 838 (2010)

319, 325, 540 S.E.2d 464, 467 (2000). "A trial judge has considerable latitude in ruling on the admissibility of evidence and his rulings will not be disturbed absent a showing of probable prejudice." State v. Kelley, 319 S.C. 173, 176, 460 S.E.2d 368, 370 (1995). "Prejudice occurs when there is reasonable probability the wrongly admitted evidence influenced the jury's verdict." State v. Byers, 392 S.C. 438, 444, 710 S.E.2d 55, 58 (2011). "On appeal, the conclusion of the trial judge on issues of fact as to the voluntariness of a statement will not be disturbed unless so manifestly erroneous as to show an abuse of discretion." State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). "[T]he appellate court does not re-evaluate the facts based upon its own view of the preponderance of the evidence, but simply determines whether the trial judge's ruling is supported by any evidence." State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2008).

Analysis

A. Miranda Interrogation Requirement

Respondent submits the trial court properly admitted Appellant's statement finding Appellant was not subject to a custodial interrogation at the time he made the statement. The findings of the trial court in this regard are supported by the record and must be affirmed by this Court.

The Miranda warnings are designed to protect several constitutional rights of an accused, most importantly, the privilege against self-incrimination. State v. Howard, 296 S.C. 481, 374 S.E.2d 284 (1988). In order to assure that an accused's right to remain silent is not compromised during custodial interrogation, the United States Supreme Court ruled that "[p]rior 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 the right to the presence of an attorney, either retained or appointed."

Miranda v. Arizona, 384 U.S. 436, 444 (1966). "A statement, whether exculpatory or inculpatory, obtained as a result of custodial interrogation is inadmissible unless the person was advised of and voluntarily waived his rights under Miranda . . . ." State v. Kennedy, 325 S.C. 295, 302, 479 S.E.2d 838, 842 (Ct. App. 1996) aff'd as modified, 333 S.C. 426, 510 S.E.2d 714 (1998).

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). The interrogation requirement of Miranda is met by express questioning or its functional equivalent, and includes words or actions the police should know are reasonably likely to elicit incriminating responses from a criminal suspect. Rhode Island v. Innis, 446 U.S. 291 (1980); State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989); State v. Kennedy, 333 S.C. 426, 510 S.E.2d 714 (1998). Volunteered statements not made in response to custodial interrogation do not require Miranda warnings. Arizona v. Mauro, 481 U.S. 520 (1987). Miranda warnings are inapplicable to volunteered statements not the product of interrogation. State v. Franklin, 299 S.C. 133, 382 S.E.2d 911 (1989). In State v. Howard, the court stated:

> In formulating a definition of interrogation, the [Innis] Court pointed out that "the concern of the Court in Miranda was that the 'interrogation environment' created by the interplay of interrogation and custody would 'subjugate the individual to the will of his examiner' and thereby undermine the privilege against compulsory self-incrimination." The Court noted that interrogation must reflect a measure of compulsion above and beyond that inherent in custody itself.

296 S.C. at 488, 374 S.E.2d at 288 (emphasis added).

When courts make an objective determination of whether police statements would be perceived as interrogation by a reasonable person in the same circumstances, courts have distinguished between statements that merely rephrase a defendant's remarks or constitute rhetorical questions, see Commonwealth v. Foley, 833 N.E.2d 130 (2005), cert. denied, 548 U.S. 927 (2006), and those that are aimed at eliciting information likely to be incriminating. See Commonwealth v. Larkin, 708 N.E.2d 674 (1999). Commonwealth v. Martin, 467 Mass. 291, 309 (2014). Compare Commonwealth v. Mitchell, 711 N.E.2d 924 (1999) (statement commenting on poor timing of defendant's arrest merely an "observation"), with Commonwealth v. Chadwick, 664 N.E.2d 874 (1996) (officer's statement disputing defendant's denial of rape charges was functional equivalent of custodial interrogation). Martin, 467 Mass. 291 at 309.

In Commonwealth v. Foley, following the defendant's arrest, the defendant was loud, screaming, and "motioning aggressively" while he was handcuffed in the backseat of a police car. 833 N.E.2d 130, 133(2005). Observing the defendant's antics, an officer commented: "You seem pissed off...[a]re you having a rough day man?" Id. In response, the defendant exclaimed: "I choked her out, but she deserved it" and "I should beat her f'ing brains in." Id. The defendant argued his statements should be excluded because he made the statements in response to interrogation before being advised of his Miranda rights. Id. The court concluded the officer's question was merely rhetorical. Thus, the officer's question did not constitute the functional equivalent of interrogation and was not likely to elicit an incriminating response. Id. at 133.

In Smith v. United States, an inmate convicted of various weapons offenses in a penal institution challenged the admissibility of his statement to a corrections officer, which he contended was a product of custodial interrogation obtained without Miranda

warnings. 586 A.2d 684 (D.C. Cir. 1991). The corrections officer conducted a "property check" on the appellant to ensure the appellant did not carry contraband into the halfway house. Id. at 685. The corrections officer became suspicious of the shoe box that appellant left on his bathroom floor because the appellant seemed to be concealing the shoebox from the officer. Id. After a struggle ensued with the appellant, the officer eventually opened the shoebox and observed it contained a handgun, ammunition, and a clip. Id. In shock, the officer yelled: "Man, are you crazy. You got a gun in here. What the hell are you going to do with a gun in here?" Id. The appellant responded: "I need it to protect myself." Id. The District of Columbia Court of Appeals characterized the officer's remark as an "instinctive question" asked ". . . reflexively in a context of wonderment," as opposed to one that would be likely to elicit an incriminating response. Id. The court noted the officer's question – more in the nature of an exclamation than a question – was a "reflex reaction" to his discovery of a gun inside the box appellant brought into the halfway house, and did not qualify as interrogation for purposes of Miranda. Id.

Similar to the officer's question in Smith and in Foley, Mullinax's question was merely a rhetorical and reflexive action following the chaos of the high speed chase and apprehension. Also analogous to the remarks in Smith, Mullinax's question to Appellant about his drinking was instinctive, and made "in a context of wonderment." The Supreme Court of the United States noted in Innis one of the main purposes of Miranda warnings is to protect against a compulsive "interrogation environment" that subjects the individual "to the will of his examiner." Howard, 296 S.C. at 488, 374 S.E.2d at 288. Mullinax's spontaneous, reflexive remarks do not create the "interrogation" environment the Supreme Court of the United States envisioned to prevent. See Smith, 586 A.2d at

686 ("we regard appellant's 'instantaneous response' as 'more akin to a volunteered statement which Miranda deems admissible than an incriminatory statement wrung from an accused [whose will] is overborne" [internal citations omitted]). Mullinax's statements were not made with the intention of interrogating Appellant but were rhetorical, unpremeditated exclamations of disbelief made in the heat of the moment and which did not call for an answer or invite an incriminating response. U.S. v. Johnson, 734 F.3d 270 (4th Cir. 2013); U.S. v. Farlee, 910 F.Supp2d 1174 (D.S.Dakota 2012); Wert v. State, 383 S.W.3d 747 (TX 2012).

Thus, the trial court properly concluded that Appellant did not make the first statement in response to an interrogation, and the statement was admissible.

B. Public Safety Exception to Miranda

Should the court conclude the statements made by Mullinax were interrogative in nature, the State submits the questions fall within the public safety exception to Miranda delineated in New York v. Quarles 467 U.S. 649 (1984). In Quarles, a woman approached two police officers who were on road patrol and told them that she had just been raped. Id. at 649. The victim described her assailant, and told them that the man had just entered a nearby supermarket and was carrying a gun. Id. While one of the officers radioed for assistance, the other entered the store and saw the defendant, who ran toward the rear of the store. Id. The officer pursued him but lost sight of him for several seconds. Id. Upon apprehending the defendant, the officer frisked him and discovered that he was wearing an empty shoulder holster. Id. After handcuffing him, the officer asked him where the gun was. Id. Defendant nodded toward some empty cartons and responded that "the gun is over there." Id. The officer then retrieved the gun from one of the cartons,

formally arrested respondent, and read him his Miranda rights. Id. The court created a public safety exception to the Miranda warnings, saying:

> The need for answers to questions in a situation posing a threat to the public safety outweighs the need for the prophylactic rule protecting the Fifth Amendment's privilege against self-incrimination. We decline to place officers such as Officer Kraft in the untenable position of having to consider, often in a matter of seconds, whether it best serves society for them to ask the necessary questions without the Miranda warnings and render whatever probative evidence they uncover inadmissible, or for them to give the warnings in order to preserve the admissibility of evidence they might uncover but possibly damage or destroy their ability to obtain that evidence and neutralize the volatile situation confronting them.

New York v. Quarles 467 U.S. 649 (1984).

The trial court judge applied this reasoning in the instant case. Appellant led officers on a two state, high speed chase in which at least one beer can came flying off the back of his motorcycle, and he was traveling in excess of one hundred miles per hour. When he finally stopped the motorcycle, he did not surrender peacefully, but instead ran to someone's front porch. Officers had to pull Appellant off of the porch to detain him, and the commotion attracted bystanders within close proximity to the arrest. The officers had good reason to believe he was under the influence of some intoxicant, but they did not know the nature or the amount of the substance Appellant consumed. For his safety, and for those of the bystanders around them, the officers needed to assess the volatile situation quickly. Mullinax had Appellant on the ground, but Appellant had just evaded arrest in the moments before, and he could have posed a flight risk again. The officers, in attempting to make sense of the situation, might have needed emergency medical services for Appellant or sensed a greater danger to themselves, depending on the Appellant's level of intoxication. As in Quarles, the officers found themselves in "a kaleidoscopic

situation... where spontaneity rather than adherence to a police manual [was] necessarily the order of the day." Id., 467 U.S. 649, 656 (1984). Appellant's erratic, substance-driven behavior posed a threat to the arresting officers, the bystanders, and Appellant himself. Thus, should the Court find Mullinax's initial question was asked during a custodial interrogation, the question and its incriminating response falls within the narrow public safety exception to Miranda, and is thereby admissible.

C. Post Miranda Statements

Appellant argues if the first statement concerning his drinking was the result of an impermissible Miranda violation, then his subsequent statements made in the patrol car en route to the detention center were also impermissible pursuant to Missouri v. Siebert[5] and State v. Navy.[6] In Siebert and Navy, the courts prohibited the two step interrogation technique in which investigators question a suspect until an incriminating statement is made, Mirandize the suspect, then continue the questioning until the suspect repeats his incriminating statement. In effect, officers are not allowed to side step the Miranda requirements by eliciting an unwarned admission, knowing the suspect is not likely to put the "cat back in the bag" once the admission is made.

In Seibert, the Court said the factors to be considered in determining whether a constitutional violation occurred in this setting are: 1) the completeness and detail of the question and answers in the first round of interrogation; 2) the timing and setting of the first questioning and the second; 3) the continuity of police personnel; and 4) the degree to which the interrogator's questions treated the second round as continuous with the first. See also State v. Navy, 386 S.C. 294, 302, 688 S.E.2d 838, 841-42 (2010).

[5] 542 U.S. 600 (2004)
[6] 386 S.C. 294, 688 S.E.2d 838 (2010)

Application of the Siebert analysis to this case assumes two things: 1) the first statement was impermissibly obtained during a custodial interrogation and 2) the second statement occurred during a post Miranda custodial interrogation. As argued previously in Subsections A and B, the first incriminating statement made by Appellant in response to Mullinax's exclamatory question was admissible because it was not the result of an interrogation. Should the court find, however, the first statement inadmissible, the court should nonetheless allow the later statements in the patrol car to stand because Appellant volunteered the information about his alcohol consumption.

During the return to the detention center following his arrest, Appellant initiated conversation with Mullinex on multiple occasions. Indeed, Appellant was determined to engage the officer, though Mullinax seemed to concentrate heavily on finding his way around the rural roads. Appellant is heard rambling in the background, eliciting a response from Mullinex only on occasion. Ultimately, when Appellant casually volunteered "I don't drink much anymore, man," Mullinex was caught off guard. (State's Exhibit 2, 31:29.) Mullinax does not hear him clearly, and says "What's that?" and Appellant repeats the statement. (State's Exhibit 2, 31:32.) Mullinax then asked him how much he had that day, and Appellant responded. "I didn't keep count." (State's Exhibit 2, 31:37.) In their discussion, Appellant stated he drank about four and one half beers. (R. p. 61, lines 14-17, (State's Exhibit 2, 32:13.) The conversation was not an interrogation, as Appellant contends, but an attempt on his part to convince Mullinax he is not a bad person. The officer was not interrogating Appellant as much as humoring him.

Should the court conclude, however, the first unwarned statement was inadmissible and the second warned statement was a result of a custodial interrogation instead of a voluntary admission, the court must apply the Siebert standard to determine

whether the second statement was so closely interwoven with the first so as to result in a constitutional violation. The statements were approximately twenty two minutes apart. (State's Exhibit 2, 9:11 and 32:13.) The first statement was not the result of a complete and detailed interrogation, but instead was made in the heat of the moment immediately following Appellant's detention. In contrast, the second statement was made in the quiet of a patrol car, in which Appellant was doing most of the talking. Finally, the second statement was in no manner contiguous with the first, as the questions were no longer asked in an excited state of disbelief, but were only in response to Appellant's volunteered comments about his drinking. Appellant had been warned, twice at this point, about his right to remain silent. Appellant may not have even remembered his response to the first question twenty minutes later, so it is doubtful Appellant felt compelled to continue to incriminate himself at the hands of a coercive police interrogative technique.

Thus, even if the first statement should not have been admitted into evidence by the trial court, the judge properly allowed the statements made after Appellant was Mirandized as a free and voluntary waiver of his rights.

D. Harmless Error

Error, if any, in refusing to suppress the statements in question is harmless because the record contains sufficient evidence of Appellant's guilt beyond a reasonable doubt. See State v. Lynch, 375 S.C. 628, 654 S.E.2d 292 (Ct. App. 2007)(stating that any error in failing to suppress evidence for possible Miranda violations is harmless if the record before the appellate court contains sufficient evidence to prove Appellant's guilt beyond a reasonable doubt). The record shows Appellant was under the influence of alcohol on the night of his arrest with the following evidence: 1) the dashboard video showed Appellant reckless operation of his motorcycle, as he crossed the yellow line on

numerous occasions, reached a top speed of over one hundred miles per hour, and blew through stop signs; 2) both officers who pursued Appellant testified he appeared intoxicated from his slurred speech, his glassy eyes, and his overall demeanor; 3) officers testified Appellant smelled of alcohol 4) Appellant actually asked if he could answer his cell phone during while he was on the ground surrounded by officers; 5) Appellant's saddlebags contained at least eighteen beers, in addition to the one that flew from the back of the motorcycle during the pursuit; 6) Appellant was slumped over in his chair for the duration of the breathalyzer waiting period; and 7) Appellant refused to take the breathalyzer test. Appellant's overwhelming evidence of guilt renders any possibility of a Miranda violation harmless.

Most trial errors, even those which violate a defendant's constitutional rights, are subject to harmless-error analysis. State v. Rivera, 402 S.C. 225, 246, 741 S.E.2d 694, 705 (2013), reh'g denied (Apr. 3, 2013) In State v. Easler, our supreme court intimated that any error in the failure to suppress a statement allegedly taken in violation of Miranda is subject to a harmless error analysis. 327 S.C. 121, 129, 489 S.E.2d 617, 621–22 (1997); see also State v. Newell, 303 S.C. 471, 477, 401 S.E.2d 420, 424 (Ct.App.1991) (finding failure to suppress evidence for Miranda violation harmless where record contained overwhelming evidence of guilt); State v. Lynch, 375 S.C. 628, 636, 654 S.E.2d 292, 296 (Ct.App.2007) Harmless error rules, even in dealing with constitutional errors, "serve a very useful purpose insofar as they block setting aside convictions for small errors or defects that have little, if any, likelihood of having changed the result of the trial. State v. White, 410 S.C. 56, 59-60, 762 S.E.2d 726, 728-29 (Ct. App. 2014), reh'g denied (Sept. 18, 2014), cert. denied (Mar. 19, 2015).

Appellant contends he was prejudiced by the statements because the solicitor referred to them in his closing arguments (Appellant's Brief, p. 9.) However, notwithstanding the solicitor's statement, the evidence clearly showed Appellant was under the influence of alcohol on the night of his arrest. Considering the entire record on appeal, any error by the trial judge in the admission of his statements was harmless, as the Appellant's guilt beyond a reasonable doubt was shown from multiple sources of evidence.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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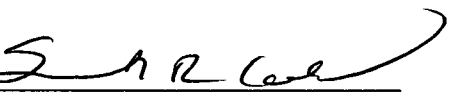
BY: 
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September 2, 2015

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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ATTORNEYS FOR RESPONDENT

September 2, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County
The Honorable G. Edward Welmaker, Circuit Court Judge

Appellate Case No. 2014-001499

THE STATE,

Respondent,

v.

MATTHEW S MEDLEY,

Appellant.

PROOF OF SERVICE

I, Anne Mueller, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to David Alexander, Esquire, S.C. Commission on Indigent Defense, Division of Appellate Defense, Post Office Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served. This 2nd day of September, 2015.

Anne Mueller

ANNE MUELLER
Legal Assistant

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