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Jul 26 2021

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Allendale County
Honorable R. Lawton McIntosh, Circuit Court Judge
Appellate Case No. 2017-001347

THE STATE,

Respondent,

vs.

ROBERT LEE MILLER, III,

Appellant.

RETURN TO APPELLANT'S PETITION FOR REHEARING

On June 16, 2021, this Court issued a published opinion in which it unanimously affirmed Appellant Robert Lee Miller, III's conviction for murder, which stemmed from the brutal killing of an eighty-six-year-old man during the course of a violent home invasion, along with the fifty-five-year sentence that accompanied it. State v. Miller, Op. No. 5824 (S.C. Ct. App. filed June 16, 2021). In affirming Miller's conviction, this Court properly followed the applicable standard of review and correctly concluded the trial judge's ruling regarding the voluntariness of Appellant's statements to law enforcement did not constitute an abuse of discretion under the circumstances involved. Likewise, in affirming Miller's sentence, this Court correctly found the trial judge did not err when imposing Appellant's sentence based on the fact he conducted an individualized sentencing hearing and considered the appropriate factors before sentencing Appellant to a term of years for his brutal crime.

Even though this Court accurately analyzed the issues raised in Miller’s case and correctly affirmed, Miller has now submitted a petition for rehearing solely challenging this Court’s ruling on the admissibility of his statements to law enforcement. Through that petition, Miller has largely repeated the arguments contained in his appellate brief in a highly-similar manner to the manner in which they were originally presented and reasserts his position the totality of the circumstances—based on his own personal view of how those circumstances should be considered and weighed—established his statements to law enforcement were not, in fact, voluntary and admissible. In addition to that, Miller now also claims this Court purportedly failed to appropriately consider the totality of the circumstances surrounding his statements to law enforcement because it allegedly evaluated the circumstances singularly instead of collectively.

Contrary to what Miller currently claims, this Court did *not* fail to appropriately consider the circumstances surrounding Miller’s statements collectively and in totality. Instead, this Court: (1) demonstrated its understanding of the appropriate test for voluntariness determinations by explicitly stating the proper test involves an examination of the totality of the circumstances; (2) thoroughly recounted all the facts and circumstances that surrounded Appellant’s statements to law enforcement; and (3) listed the specific facts and circumstances the trial judge identified as being most significant to his ultimate voluntariness finding. Accordingly, as this Court’s analysis clearly demonstrates, this Court viewed the “surrounding circumstances” in totality and evaluated them in combination “with all the other facts” before determining—“[b]ased on the foregoing” circumstances it had identified and discussed—the trial judge did not abuse his discretion by finding Miller’s statements to be voluntary, and, therefore, this Court conducted a proper totality of the circumstances analysis.

Meanwhile, in challenging the correctness of this Court’s affirmance of the trial judge’s voluntariness determination through his petition for rehearing, Miller maintains a proper analysis of the totality of circumstances purportedly “*weighs* in favor” of a finding his statements to law enforcement were involuntary before identifying various facts and circumstances he believes support a conclusion his will was overborne. (emphasis added). Thus, in essence, Miller appears to seek for this Court to conduct de novo review of the circumstances involved in his case, weigh the factors he believes warrant a finding of involuntariness heavily in his favor, and ignore or assign little weight to the factors the trial judge found supported a finding of voluntariness. Significantly though, if this Court had conducted the analysis Miller seems to suggest it should have conducted, that analysis would have exceeded the scope of the deferential standard of review applicable to voluntariness rulings and, as a result, would itself have been improper. See, e.g., State v. Makins, Op. No. 28039 (S.C. Sup. Ct. filed June 23, 2021) (Shearouse Adv. Sh. No. 21 at 23, 28) (stressing the “critical” nature of the standard of review applicable to an issue being challenged on appeal).

Looking to the pertinent standard of review, an appellate court reviewing a trial judge’s ruling concerning the voluntariness of a statement “does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court’s ruling is supported by *any evidence*.” State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (emphasis added). Thus, pursuant to that highly-deferential standard of review, the appellate court is *not* tasked with reviewing the record to determine whether it believes any evidence existed that could have supported a contrary conclusion from the one reached by the trial judge or that would have lead it to rule differently if it—and not the trial judge—had been the one tasked with deciding the voluntariness question in the first instance. See State v. Breeze, 379

S.C. 538, 543, 665 S.E.2d 247, 250 (Ct. App. 2008) (“Our role when reviewing a trial court’s ruling concerning the admissibility of a statement upon proof of its voluntariness is not to reevaluate the facts based on our view of the preponderance of the evidence.”). Instead, the appellate court must simply review the record to determine whether any evidence supported the factual conclusion reached by the trial judge and may *only* reverse when the trial judge’s ruling is lacking in evidentiary support or otherwise manifestly erroneous. Id.; see State v. Reed, 332 S.C. 35, 43, 503 S.E.2d 747, 751 (1998) (“The trial judge’s determination of the voluntariness will not be disturbed unless so manifestly erroneous as to show an abuse of discretion amounting to an error of law.”).

With that standard of review in mind, the trial judge was presented with evidence and testimony from which he could legitimately have found Miller’s statements to law enforcement were knowingly, freely, voluntarily, and intelligently made following a valid waiver of his rights. Specifically, the evidence and testimony presented—which included testimony from Chief Williams, Agent Johnson, and Agent Merrell—established: (1) Miller was informed of his rights prior to being subjected to any interrogation and appeared to understand those rights; (2) Miller initialed and signed a waiver form; (3) Miller was expressly advised he was free to leave at the outset of interrogation; (4) Miller had a trusted adult present with him for some of the interrogation conducted; (5) Miller personally volunteered information about his victim’s murder, including during the course of an interview that was not even being conducted in regard to that crime; (6) Miller did not appear to have any trouble communicating or understanding during the interviews and did not seem to be under the influence of any substances; (7) the conversation was relaxed for the most part and Miller even laughed at some points during it; (8) no force, threats, or promises were used to extract a statement from Miller; and (9) Miller was

savvy enough to attempt to manufacture an alibi for himself during the course of the interrogation, which reflected an understanding of the situation he was in. (R. pp. 30-35; p. 42; p. 45; pp. 48-53; pp. 59-60; pp. 62-63; pp. 446-453). Meanwhile, the trial judge was not presented with any testimony from Miller himself to support a conclusion he made the statements he made to law enforcement in anything other than a free, knowing, intelligent, and voluntary manner. Cf. Breeze, 379 S.C. at 545, 665 S.E.2d at 251 (“Conversely, Breeze did not contradict [the officer]’s testimony with respect to the issue of whether the statement was voluntary. . . . Faced with [the officer]’s undisputed testimony the trial court concluded the State had showed that Breeze voluntarily made the statement. Based on [the officer]’s testimony, we cannot conclude the trial court’s ruling is unsupported by any evidence.”). Accordingly, since there was evidence in the record supporting the trial judge’s finding of voluntariness, the applicable standard of review *required* this Court to affirm the trial judge’s ruling. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 (recognizing a trial judge’s ruling in regard to the voluntariness of a statement will be affirmed on appeal when supported by *any* evidence); State v. Arrowood, 375 S.C. 359, 365, 652 S.E.2d 438, 441 (Ct. App. 2007) (“Factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion.”); see also Berkemer v. McCarty, 468 U.S. 420, 433, n. 20 (1984) (“[C]ases in which a defendant can make a colorable argument that a self-incriminating statement was ‘compelled’ despite the fact that the law enforcement authorities adhered to the dictates of Miranda are rare.”).

However, even if this Court’s conclusion regarding the admissibility of Miller’s statements to law enforcement was somehow erroneous, any error resulting from the admission of the statements in Miller’s case nonetheless would have been harmless beyond a reasonable

doubt in light of the cumulative nature of those statements to Miller's other out-of-court statements coupled with the fact other overwhelming evidence of Miller's guilt was presented during trial, which included evidence establishing Miller's handprint was found on the wall of the elderly victim's home *in the victim's blood*. See State v. Fletcher, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008) ("Error is harmless beyond a reasonable doubt where it did not contribute to the verdict obtained."); State v. Blackburn, 271 S.C. 324, 329, 247 S.E.2d 334, 337 (1978) ("Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence."); cf. State v. Tench, 353 S.C. 531, 537, 579 S.E.2d 314, 317 (2003) ("Given the abundant evidence of Tench's guilt, we find any error in admission of the seized items clearly harmless beyond a reasonable doubt."); State v. Easler, 327 S.C. 121, 129, 489 S.E.2d 617, 621-622 (1997) ("[A]ny error in the failure to suppress his statements was harmless beyond a reasonable doubt. . . . The overwhelming evidence of Easler's guilt renders any Miranda violation harmless."), overruled on other grounds by State v. Greene, 423 S.C. 263, 814 S.E.2d 496 (2018); State v. White, 410 S.C. 56, 60, 762 S.E.2d 726, 728 (Ct. App. 2014) (finding any error in the trial judge's failure to suppress White's statement placing White at the scene of a murder as the product of impermissible "question first and warn later" questioning was harmless beyond a reasonable doubt because, "notwithstanding White's statement, cell phone evidence clearly placed [the victim] and White together at the time and place of the murder" and further finding any error to be harmless in light of the witness testimony linking White to the murder). Under such circumstances, there is no need for rehearing.

In light of all the foregoing reasons coupled with the arguments raised in both the State's appellate brief and during oral argument before this Court, this Court correctly affirmed Miller's

conviction and sentence. Therefore, no legitimate grounds exist warranting a grant of rehearing in Miller's case. Miller's petition for rehearing should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

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Senior Assistant Attorney General

By: 

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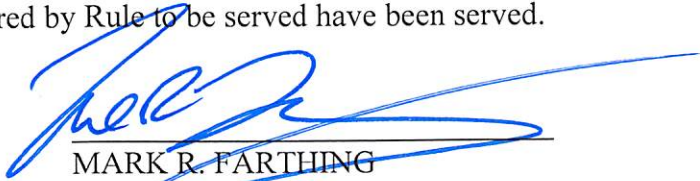
Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Return to Appellant's Petition for Rehearing on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify all parties required by Rule to be served have been served.
This 26th day of July, 2021.



MARK R. FARTHING
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From: [Mark Farthing](#)
To: shackett@sccid.sc.gov
Subject: State v. Robert Lee Miller, III (Appellate Case # 2017-001347) -- Return to Petition for Rehearing
Date: Monday, July 26, 2021 7:48:00 PM
Attachments: [Miller.Return to Pet for Rehearing \(02654732xD2C78\).PDF](#)
[image003.png](#)

Susan,

Attached is the State's Return to Petition for Rehearing in the [State v. Robert Lee Miller, III](#) appeal. I'll be filing it electronically with the Court of Appeals shortly. Hope all is well, and please let me know if you have any questions or need anything else.

Sincerely,
Mark

MARK R. FARTHING, Senior Assistant Attorney General
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