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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Petition for Writ of Certiorari to the Court of Appeals
Appeal from Georgetown County
Honorable Larry B. Hyman, Jr., Circuit Court Judge
S.C. Ct. App. Appellate Case No. 2018-002056

THE STATE,

Petitioner,

vs.

RANDY COLLINS,

Respondent.

Opinion No. 5861 (S.C. Ct. App. filed September 8, 2021)

PETITION FOR WRIT OF CERTIORARI

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

Post Office Drawer 1276
Conway, SC 29526
(843) 915-5460

ATTORNEYS FOR PETITIONER

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CERTIFICATION OF COUNSEL

Counsel for Petitioner hereby certifies that a Petition for Rehearing was filed in the South Carolina Court of Appeals on September 22, 2021. The Petition for Rehearing was denied by an Order filed September 29, 2021.

STATEMENT OF ISSUE ON CERTIORARI

Did the Court of Appeals err by holding the trial judge erroneously found Collins' confession was voluntarily given when the issue of whether Collins' confession was improperly obtained through a promise of confidentiality by law enforcement was not preserved for appeal? Even if preserved, did the Court of Appeals nonetheless err in finding the trial judge erred when there was evidence in the record to support the trial judge's ruling that Collins' confession was voluntarily given? Finally, did the Court of Appeals err in denying the State's motion to supplement the record on appeal with Collins' subsequent confession of guilt at his codefendant's trial when the subsequent confession eliminated any prejudice Collins could have suffered from the admission of his prior confession?

STATEMENT OF THE CASE

Procedural History

In August 2014, a Georgetown County Grand Jury indicted Collins for one count of first degree arson, one count of criminal conspiracy, and one count of murder. On November 5-9, 2018, a jury trial was held in the Georgetown County Court of General Sessions with the Honorable Larry B. Hyman, presiding. Collins was represented by Ralph Wilson, Jr., Esquire. The State was represented by Assistant Solicitors Alicia Richardson and Randerson Stephens of the Fifteenth Circuit Solicitor's Office. The State proceeded to trial on the charges of first degree arson and criminal conspiracy, but declined to proceed with the murder charge. At the conclusion of trial, the jury convicted Collins of both counts. Following the verdict, the trial judge sentenced Collins to thirty years' imprisonment for first degree arson and five years' imprisonment for criminal conspiracy. Each sentence ran concurrently with the other resulting in an aggregate term of thirty years' imprisonment. Collins then timely filed a notice of appeal and an initial brief.

On appeal, Collins alleged the trial judge erred by admitting his confession when it was "induced by deception regarding [its] use, promises of leniency, threats of severe punishment, and other factors" which rendered the statement involuntary. (App. 861). Collins also alleged the trial judge erred by not requiring an additional evaluation of his competency to stand trial. (App. 861). After the Final Briefs of both parties were filed with the Court of Appeals, Collins testified against his codefendant, Marissa Cohen, at her trial on January 8, 2020. (App. 971-96). On February 25, 2020, the State filed a motion to supplement the record on appeal with Collins' testimony from Cohen's trial. (App. 963-68). The Court of Appeals initially granted the State's motion on March 6, 2020. (App. 998). However, Collins filed a motion in opposition to the State's request on March 9, 2020. (App. 999-1005). The Court of Appeals rescinded their prior

order on March 31, 2020. (App. 1008). The State filed a return to Collins' motion on April 8, 2020. (App. 1009-14). The Court of Appeals denied the State's motion via a written order on April 29, 2020. (App. 1016). On September 8, 2021, the Court of Appeals reversed Collins' convictions in a published opinion and found the trial judge erred in finding Collins' confession was voluntarily given. State v. Collins, Opinion No. 5861 (S.C. Ct. App. filed September 8, 2021) (Howard Adv. Sh. No. 31) (App. 933-50). Because the issue of whether Collins' confession was involuntary was dispositive, the Court of Appeals declined to address the second issue raised on appeal. (App. 950).

Factual Background

In the early hours of March 29, 2014, a trailer located at 10 James Drive in the town of Andrews, South Carolina was set on fire. (App. 312-14). First responders were initially told the trailer was abandoned and no one lived in it. (App. 314, 318, 321). After the fire was extinguished, firefighters entered the home and found the body of a twelve year-old boy inside. (App. 321). The body was identified as David "Syience" Coombs. Coombs' cause of death was smoke inhalation. (App. 610). Coombs was Marissa Cohen's son. Cohen arrived at the scene of the fire shortly after first responders. Multiple first responders noted Cohen was acting unusually calm and seemed unaffected after learning of her child's death. (App. 326, 334-35, 341). Loretta Miller witnessed Cohen's behavior at the scene. Miller reported that when Cohen was informed that her son was killed she made a phone call to Collins. (App. 624). According to Miller, Cohen said "Randy, my baby's dead. My baby Syience dead on the floor." Miller heard Collins respond "You got to live with that." (App. 624, lines 13-14). Earlier that evening at approximately 8:30 PM, Coombs went to a birthday party at the local recreation center. Coombs and his friend, Ricky Nelson, left the party at approximately 12:30 AM. Coombs told Nelson he was going

home to check on his mother, get some clothes, and then he would sleep over at Nelson's house. (App. 306). Nelson waited for Coombs to arrive at his house but eventually fell asleep.

In February 2014, Cohen applied for a \$25,000 contents-only insurance policy on the trailer at 10 James Drive. (App. 353). Cohen filed a claim with the insurance company on April 7, 2014. (App. 356). The insurance company declined to pay the claim. (App. 359). Investigator Melvyn Garrett of the Georgetown County Sheriff's Office received an anonymous tip that Cohen and Collins were involved in setting the fire. (App. 139, 675-76). As a result of this tip, Garrett spoke with gas station attendant Charlene Scott. Scott reported that Cohen bought \$20 worth of kerosene the night before the fire. (App. 377-78). Earlier in the week of the fire, Cohen began moving furniture and other items out of the trailer into a storage unit. (App. 314, 371-72, 382). Cohen asked Benjamin "Mano" Brown and Everett Langley to help her move. After Brown had finished moving the items out of the trailer, Cohen told Brown she was going to burn down the trailer. (App. 382).

Garrett spoke with Collins for the first time on April 9, 2014. Collins allowed Garrett to write a statement on his behalf which Collins subsequently signed. (App. 677-79, 836). Collins denied any role in setting the fire and claimed he was with his nephew, James Miller¹, from 9:00 PM to 3:00 AM at Carnell's Club. (App. 678, 836). After his initial interview with Collins, Garrett executed search warrants for the phone records of Collins and Cohen. (App. 681-82).

Law enforcement discovered that Collins and Cohen exchanged a total of six phone calls in the hours before and after the fire. (App. 539-40). Three phone calls occurred before the fire in

¹ James Miller was eventually charged as a codefendant of Marissa Cohen and Collins. Prior to Collins' trial, Miller was killed. Devon Coombs, another son of Marissa Cohen and older brother of David "Syience" Coombs, plead guilty to killing Miller prior to the start of Collins' trial. (App. 187, 621).

the afternoon and evening of March 28, 2014. (App. 539). An additional three phone calls occurred between 2:30 AM and 3:30 AM on March 29, 2014. (App. 539-40).

Garrett and Agent Scott Hardee of SLED arranged for Collins to retrieve his phones from the Andrews town hall on June 4, 2014. Collins agreed to stay and talk with Hardee and Garrett about the fire. (App. 683). Collins was read his Miranda rights and he signed a form indicating he understood and waived his rights. (App. 544, 837). Collins gave a statement to Hardee and Garrett acknowledging his involvement with the fire. Collins initially denied any involvement with the fire, but gradually acknowledged he was with Miller when Miller set the fire. (State's Exhibit #3, App. 839-40). Collins said Cohen approached him about burning down her trailer and offered him \$5,000 for his help. Collins told Miller about the offer. Miller seemed interested in the offer because he needed some money. On the night of the fire, Collins and Miller went to the trailer together. According to Collins, Miller lit a piece of paper on fire and threw it through a window while Collins looked on. (State's Exhibit #3, App. 839-40). Collins denied lighting the match that started the fire, but admitted he was at the trailer with Miller. Garrett wrote a statement on Collins' behalf, which Collins reviewed and signed. (App. 839-40).

Prior to trial, a mental evaluation of Collins was ordered by the Honorable Benjamin Culbertson. Collins was evaluated at the Medical University of South Carolina by Dr. Abby Mulay and Dr. Emily Gottfried. Mulay concluded that Collins did not have a mental illness nor did he have an intellectual disability. (App. 68, 848-56). Both Mulay and Gottfried concluded Collins could assist his lawyer at trial and was competent to stand trial. (App. 68, 116, 848-56).

At trial, the State tendered Agent Brian Wright of SLED as an expert in fire origin and cause. Wright classified the fire as incendiary and determined it originated from accelerant that was poured on the floor of the trailer. (App. 497). The State also called a handwriting expert to

authenticate a letter dated November 11, 2014 from Cohen to her older son Devon. Cohen made the following statements regarding Collins in the letter: “I heard Randy has a bond. I wish that I had some backup and Randy did have a bond just to deal with him” and “Do you think that I’m going to get life? I hope not. I need a gun and meet up with Randy and Mano.” (App. 662, lines 2-4, lines 9-11).

The State also called Cohen’s cousin, Rose Collins as a witness. Rose testified that she traveled with her husband to Andrews the day after the fire and met with Collins at his house. When she arrived at Collins’ home, Collins approached her vehicle and said “We fucked – everything’s f’d up. It wasn’t supposed to go down like that, nephew. We, we f’d up.” (App. 416, lines 12-13). Collins declined to testify in his own defense. At the conclusion of trial, Collins was convicted of both counts.

ARGUMENT

The Court of Appeals erred by holding the trial judge erroneously found Collins' confession was voluntarily given when the issue of whether Collins' confession was improperly obtained through a promise of confidentiality by law enforcement was not preserved for appeal. Even if preserved, the Court of Appeals erred in reversing the trial court because there was evidence in the record to support the trial judge's ruling that Collins' confession was voluntarily given. Finally, the Court of Appeals erred in denying the State's motion to supplement the record on appeal with Collins' subsequent confession of guilt at his codefendant's trial because the subsequent confession eliminated any prejudice Collins could have suffered from the admission of his prior confession.

The Court of Appeals reversed Collins' convictions for first-degree arson and criminal conspiracy because the court determined the trial judge erred in finding Collins' confession was voluntarily given. The State respectfully submits the Court of Appeals decision was wrong for three reasons. First, whether Collins' confession was rendered involuntary by Agent Hardee's promise of confidentiality was not preserved for appeal because it was not raised to and ruled upon by the trial court during the Jackson v. Denno² hearing. Second, the trial court did not abuse its discretion in determining Collins' confession was voluntary, because there was evidence in the record to support the trial judge's ruling. Third, the Court of Appeals erred in denying the State's motion to supplement the record on appeal with Collins' subsequent sworn testimony at his codefendant's trial in which he acknowledged his guilt in the crimes for which he stood trial in this case, because Collins' subsequent confession eliminates any prejudice from the admission of his previous confession. Accordingly, pursuant to Rule 242 SCACR, the State asks this Court to issue a writ of certiorari to review the Court of Appeals' decision and hold the issue of whether Agent Hardee's statement rendered Collins' confession involuntary was not properly before the Court of Appeals, and even if it were, the trial judge did not abuse his discretion in admitting the confession because there was evidence in the record to support the

² Jackson v. Denno, 378 U.S. 368 (1964).

trial judge's ruling. Furthermore, the State asks this Court to hold Collins' subsequent confession of guilt in open court eliminates any possible prejudice from the trial judge's ruling and obviates the need for an appeal. This Court should affirm Collins' convictions and sentences.

Error Preservation

Because the Court of Appeals' opinion focused heavily on the promise of confidentiality offered to Collins by Agent Hardee, it is instructive to review the arguments made by Collins at the Jackson v. Denno hearing as well as the arguments made by Collins on appeal. (App. 933-50). Before the Denno hearing began, the trial judge sought to clarify what issues needed to be addressed during the hearing. (App. 134-35). Counsel for Collins responded:

Mr. Wilson: -- there, there is an issue regarding Miranda³ in the beginning, in the middle, and at the end. So Miranda is an issue throughout the entire statement for the Defense.

The Court: Okay.

Mr. Wilson: As well as the duration of the video when the video is cut off and whether or not he was actually free to leave at some point in time during this particular interrogation, Judge.

(App. 135, lines 5-13). Although counsel asked Agent Hardee and Investigator Garrett about the promise of confidentiality on cross-examination, counsel did not argue to the trial judge that the promise rendered Collins' statement involuntary. (App. 204, 245). In fact, counsel did not mention Hardee's promise at all when arguing Collins' confession should be suppressed. (App. 278-90). Rather, counsel articulated four separate grounds for the trial judge to suppress Collins' statement: (1) Collins did not understand his Miranda rights in general; (2) Rule 106 SCRE precluded the admission of Collins' confession; (3) Rule 403, SCRE also precluded the admission of Collins' confession; and (4) the admission of Collins' confession violated his due

³ Miranda v. Arizona, 384 U.S. 436 (1966).

process rights under the 14th amendment to the United States Constitution. (App. 284). In a detailed ruling, the trial judge found Collins waived his Miranda rights, but Miranda rights were not required because Collins was not in custody when he gave his confession. (App. 292).

On appeal, Collins argued for the first time that the trial judge erred in admitting his confession because it was induced by deception as a result of Hardee's promise of confidentiality. (App. 877). Collins did not argue the trial judge erred by determining Collins waived his Miranda rights or that the trial judge erred in finding Miranda rights were not required in his Final Brief. Furthermore, Collins conceded at oral argument that the question of whether Miranda warnings were required was not before the Court of Appeals⁴. (Oral Argument at 37:00-38:35). Thus, one of the four grounds for suppression that trial counsel raised to the trial judge was explicitly waived on appeal. The remaining three grounds raised by trial counsel were not raised in Collins' brief or at oral argument. Therefore, the question of whether Collins' confession was rendered involuntary by Hardee's promise of confidentiality was not properly before the Court of Appeals and should not have been addressed on appeal⁵.

No Abuse of Discretion

In rendering its opinion reversing Collins' convictions, the Court of Appeals maintained: "We are not insensitive to the deferential standard of review we apply to the trial court's

⁴ In response to Collins' admission, the Court of Appeals correctly noted: "Well if the Miranda warnings weren't required then it doesn't matter whether they were negated or not." (Oral Argument 38:45-39:00).

⁵ The State acknowledges it did not raise error preservation in its brief, however the State explicitly raised the issue at oral argument. (Oral Argument at 24:00-26:15). Furthermore, this Court can affirm based on any ground appearing in the record. See Rule 220 (c) SCACR ("The appellate court may affirm any ruling, order, decision, or judgment upon any ground(s) appearing in the Record on Appeal.")

determination of the voluntariness of a statement⁶.” (App. 949). However, the Court of Appeals noted it was “still tasked with considering the totality of the circumstances surrounding the defendant’s giving of a confession in determining whether a confession was voluntarily given.” (App. 949). While an appellate court must consider the totality of the circumstances surrounding a confession, an appellate court must not “reevaluate the facts based on its own view of the preponderance of the evidence, but simply determine[s] 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). Here, the Court of Appeals substituted its own judgment of whether the totality of the circumstances supported a finding of voluntariness in a de novo fashion, rather than ruling on whether there was any evidence to support the trial judge’s finding that Collins’ confession was voluntary.

Here, there was evidence in the record to support the trial judge’s ruling that Collins’ confession was voluntarily given. First and foremost, Collins testified he was not threatened by either of the officers, and the officers only promised him they would speak to the solicitor on his behalf. (App. 269-70). Perhaps more significant is what Collins did not say. Collins never mentioned Hardee’s promise of confidentiality at any point in his testimony, nor did he testify that Hardee’s statement had any bearing on his confession. (App. 252-70). Even if Collins’ testimony alone wasn’t sufficient to support the trial judge’s ruling of voluntariness, the testimony of Hardee and Garrett amply support the trial judge’s ruling as well. Garrett and Hardee each testified Collins was free to leave at any time, he was given multiple bathroom and cigarette breaks, he was provided a soda, and he was allowed to leave at the end of the interview. (App. 149-52, 233, 237-39). This evidence was not contradicted by Collins. (App. 252-70).

⁶ The Court of Appeals correctly held the standard of review was an abuse of discretion. Multiple questions were posed by the Court of Appeals at oral argument regarding what the correct standard of review was. Counsel for Collins conceded the correct standard of review was an abuse of discretion and not an error of law. (Oral Argument at 5:00-7:15).

Ultimately, the question the Court of Appeals was called upon to answer on appeal was whether the trial judge erred by holding Collins' will was not overborne and his capacity for self-determination was not critically impaired. See Saltz, 346 S.C. at 136, 551 S.E.2d at 252 ("If a suspect's will is overborne and his capacity for self-determination critically impaired, use of the resulting confession offends due process."). In this case, the trial judge observed Collins' demeanor during his testimony and was able to assess his credibility after both seeing and hearing his live testimony, which put the trial judge in a superior position to evaluate the voluntariness of Collins' statement. See State v. McClure, 312 S.C. 369, 371-72, 440 S.E.2d 404, 405-06 (Ct. App. 1994) ("The question of the voluntariness of McClure's confession came down to a question of credibility. The trial judge resolved the question in favor of the officers. We have no quarrel with that, finding, as we do, no abuse of discretion.") The trial judge appropriately assessed Collins' demeanor and credibility in the following exchange with trial counsel:

The Court: I, I, I, I don't think that argument holds water, Mr. Wilson, because again today [Collins] says that's really what happened. [Collins] may view himself as having nothing to do with it by virtue of the fact that he was present aiding and abetting, but even today he says "what I said was true. James [Miller] did it. James went and threw the lighted thing in the window. James started the fire."

Mr. Wilson: What he was saying actually, Judge, and again, it's because he does not have good language skills, which is why I wanted to go back and question him again.

The Court: I want to question that. I watched him on three hours of tape. He seemed to have excellent language skills, pretty good manipulative skills, which are consistent with what two forensic psychologists had to say about his, his evaluation.

Mr. Wilson: Judge—

The Court: And he always seems to, I agree with [Assistant Solicitor] Richardson, that he, he only forgets those things that may be harmful to him. You know, he seems to have great recall, three hours of, of interrogation, and he was able to carry on conversations as clearly as you and I could.

....

The Court: Will you agree that the question here is whether or not there was coercion.

Mr. Wilson: It's not the only—

The Court: And I asked him if there was coercion.

Mr. Wilson: It's, its's not the only question, but the reason I put him up, Your Honor, was because I knew what he'd already told me about his experience there with the officer. It was important that the Court knows that obviously he felt as if he was overwhelmed with this information.

The Court: I asked him if he was threatened or anything. He said no.

(App. 279, lines 9-25 – App. 280, lines 1-4, lines 11-22). The preceding exchange highlights how the trial judge was able to observe Collins' demeanor in person and use his observations of Collins' demeanor to evaluate his credibility. The trial judge appropriately focused on the self-serving nature of Collins' statement and how Collins' instinct for self-preservation never wavered. The preceding exchange also highlights how there was evidence in the record to support the trial judge's finding of voluntariness. Therefore, the trial judge did not abuse his discretion.

The trial court's reasoning should be persuasive for this Court. The trial judge correctly noted that Collins' attempts to cast blame on his co-defendant, James Miller, indicated his will was not overborne. See State v. Pendergrass, 270 S.C. 1, 8, 239 S.E.2d 750, 753 (1977) (“The voluntariness of the waiver can be discerned from the fact that the statement which followed it was self-serving and was an attempt on appellant's part to cast blame on his co-defendant.”). In determining whether Collins' statement was voluntary, it does not matter that Collins admitted his guilt by establishing his role in a conspiracy to burn down Marissa Cohen's trailer. The relevant consideration for this Court is that in Collins' mind he was not admitting his guilt. The

fact that James Miller, and not Collins, lit the match that started the fire was very significant to Collins. Indeed, Collins emphasized this fact several times in his recorded interview and written statement. (State's Exhibit #3⁷, App. 839-40). In fact, the very first words of Collins' written statement are "I did not do it." (App. 839). Therefore Collins' will could not have been overborne by the officer's tactics because his instinct for self-preservation and deflection of blame remained intact for the entirety of his interview.

No Prejudice to Appellant

Pursuant to Rule 212(b), SCACR, on February 25, 2020, the State moved for the leave of the Court of Appeals to supplement the record on appeal to include Collins' testimony from the trial of his co-defendant Marissa Cohen on January 8, 2020. On April 29, 2020, the Court of Appeals denied the State's motion in a written order. (App. 1016). The Court of Appeals erred in denying the State's motion because Collins' subsequent admission of guilt under oath eliminated any possible prejudice to Collins even if the trial court erred in its determination that Collins' confession was voluntary. Collins' subsequent admission also precludes Collins from obtaining any meaningful relief and effectively obviates the need for his appeal.

While represented by counsel, Collins admitted under oath and in open court that he engaged in a criminal conspiracy with Marissa Cohen and James Miller to burn down Cohen's trailer in exchange for \$5,000 of insurance proceeds. (App. 980-83). Collins further admitted he suggested that kerosene be used to start the fire and that he traveled with Miller to the trailer on March 29, 2014 and witnessed Miller light a piece of paper on fire and throw it through a window of the trailer. (App. 980-83). In light of this admission, Collins is effectively worse off than he was prior to his trial because the State can now use his subsequent confession against

⁷ State's Exhibit #3 is the video recording of Collins' interview. This interview is in the possession of the Court of Appeals.

him in a future trial. Collins will be hard pressed to argue against the admission of a confession given under oath while represented by counsel. Collins will also struggle to explain his subsequent confession to a future jury if the Court of Appeal's reversal of his convictions stands.

In two previous decisions, this Court addressed situations where a defendant admitted their guilt in court and then sought appellate review of their convictions. In State v. Sroka, this Court held that Sroka's convictions should be upheld because he admitted prior to sentencing that he participated in the robbery for which he stood trial. see State v. Sroka, 267 S.C. 664, 665, 230 S.E.2d 816, 817 (1976). ("We affirm because the guilt of the appellant is conclusively shown by the record and any alleged error could not have been prejudicial. Any doubt about the correctness of this conclusion is eliminated by the admission of Appellant in open court, after conviction and during the pre-sentence inquiry by the trial judge that he had participated in the robbery with a sawed-off shotgun"). Here, in a similar fashion to Sroka, Collins admitted his guilt while under oath in a subsequent proceeding. In Whetsell v. State, this Court held that when multiple defendants admitted their guilt in a plea hearing and at a post-conviction relief hearing, any review of trial errors was unnecessary and trial counsel was not ineffective for failing to challenge the admission of evidence that would have been used against them. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) ("Review of a trial error is unnecessary where a defendant admits in open court after his conviction that he is guilty."). Similarly, Collins' subsequent admission of guilt makes any appellate review of potential errors by the trial judge unnecessary. Therefore, in light of this Court's prior decisions in Whetsell and Sroka and Collins' sworn admission of guilt, Collins did not suffer any prejudice from the trial judge's decision to admit his confession to law enforcement, nor can he achieve any meaningful relief if this Court upholds the Court of Appeals reversal of his convictions.

CONCLUSION

For all the foregoing reasons, the State respectfully requests this Court issue a writ of certiorari to review the decision of the Court of Appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

SCOTT MATTHEWS
Assistant Attorney General

JIMMY A. RICHARDSON
Solicitor, Fifteenth Judicial Circuit

BY: 
Scott Matthews
S.C. Bar No. 101464
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

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