

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2012-212233

APR - 4 2014

S.C. Supreme Court

THE STATE,

Respondent,

vs.

MIKE TYREL SALLEY,

Petitioner.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUE ON APPEAL.....1

STATEMENT OF THE CASE.....2

STATEMENT OF FACTS3

ARGUMENT13

 The Court of Appeals correctly affirmed the circuit court judge’s determination in regard to Salley’s competency to stand trial or enter a guilty plea because that determination was supported by expert testimony and evidence presented during the competency hearing establishing that Salley had a rational and factual understanding of the proceedings against him and a sufficient ability to consult with his attorney with a reasonable degree of rational understanding and because it was not against the preponderance of the evidence.13

CONCLUSION.....23

TABLE OF AUTHORITIES

South Carolina Cases:

<u>Brightman v. State</u> , 336 S.C. 348, 520 S.E.2d 614 (1999).	21
<u>Jeter v. State</u> , 308 S.C. 230, 417 S.E.2d 594 (1992).	15
<u>Reed v. Becka</u> , 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).	14
<u>Sims v. State</u> , 313 S.C. 420, 438 S.E.2d 253 (1993).	15
<u>State v. Amerson</u> , 311 S.C. 316, 428 S.E.2d 871 (1993).	14
<u>State v. Bell</u> , 293 S.C. 391, 360 S.E.2d 706 (1987).	19, 22
<u>State v. Colden</u> , 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).	16
<u>State v. Davis</u> , 309 S.C. 326, 422 S.E.2d 133 (1992).	21, 22
<u>State v. Elders</u> , 386 S.C. 474, 688 S.E.2d 857 (Ct. App. 2010).	14
<u>State v. Finklea</u> , 388 S.C. 379, 697 S.E.2d 543 (2010).	14
<u>State v. Kelly</u> , 331 S.C. 132, 502 S.E.2d 99 (1998).	15, 19
<u>State v. Lee</u> , 274 S.C. 372, 264 S.E.2d 418 (1980).	18
<u>State v. Nance</u> , 320 S.C. 501, 466 S.E.2d 349 (1996).	15, 18, 22
<u>State v. Reed</u> , 332 S.C. 35, 503 S.E.2d 747 (1998).	15
<u>State v. Sheldon</u> , 344 S.C. 340, 543 S.E.2d 585 (Ct. App. 2001).	14
<u>State v. Weik</u> , 356 S.C. 76, 587 S.E.2d 683 (2002).	18
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).	14

United States Supreme Court Cases:

<u>Atkins v. Virginia</u> , 536 U.S. 304 (2002).	22
<u>Drope v. Missouri</u> , 420 U.S. 162 (1975).	15
<u>Dusky v. United States</u> , 362 U.S. 402 (1960).	15, 16
<u>Godinez v. Moran</u> , 509 U.S. 389 (1993).	15

Pate v. Robinson, 383 U.S. 375 (1966).14

Other State Cases:

Castro v. State, 744 So. 2d 986 (Fla. 1999).19

Commonwealth v. Kostka, 370 Mass. 516, 350 N.E.2d 444 (Mass. 1976).20

Orndorff v. Commonwealth, 271 Va. 486, 628 S.E.2d 344 (Va. 2006).20

State v. Moncada, 161 N.H. 791, 20 A.3d 904 (N.H. 2011).20

STATEMENT OF ISSUE ON APPEAL

The Court of Appeals correctly affirmed the circuit court judge's determination in regard to Salley's competency to stand trial or enter a guilty plea because that determination was supported by expert testimony and evidence presented during the competency hearing establishing that Salley had a rational and factual understanding of the proceedings against him and a sufficient ability to consult with his attorney with a reasonable degree of rational understanding and because it was not against the preponderance of the evidence.

STATEMENT OF THE CASE

Petitioner Mike Tyrel Salley was arrested following an investigation into allegations that he sexually assaulted a ten-year-old girl. In May of 2009, Salley was indicted by the Aiken County grand jury for assault with the intent to commit first-degree criminal sexual conduct with a minor. On February 8, 2010, a competency hearing was conducted in the Aiken County court of general sessions before the Honorable R. Ferrell Cothran, Jr., circuit court judge. Following the hearing, Judge Cothran found that Salley had failed to meet his burden of establishing his incompetency and was competent to stand trial. On February 12, 2010, Salley entered a plea of guilty but mentally ill to the indicted offense in the Aiken County court of general sessions before Judge Cothran. As part of the plea negotiations, Salley and the solicitor agreed to a negotiated sentence of twenty-five years. Furthermore, the solicitor noted that Salley's guilty plea to the indicted offense resolved several other matters pending against Salley at the time of the plea. At the conclusion of the plea hearing, Judge Cothran accepted Salley's guilty plea and sentenced Salley to a term of imprisonment of twenty-five years. Thereafter, Salley timely filed and perfected an appeal.

Subsequently, in an unpublished opinion, the Court of Appeals unanimously affirmed Salley's conviction. State v. Salley, Op. No. 2012-UP-91 (S.C. Ct. App. filed Feb. 22, 2012). Salley petitioned the Court of Appeals for rehearing, and the petition was denied. Salley then filed a petition for a writ of certiorari in the Supreme Court, and the petition was granted on October 4, 2013.

STATEMENT OF FACTS

In August of 2008, Petitioner Mike Tyrel Salley was staying at the home of a family friend when he attempted to penetrate the anus of a ten-year-old girl (“Victim”) with his penis. (R. p. 81). Victim subsequently revealed the incident to her great aunt, and the great aunt reported the incident to law enforcement officers. (R. p. 81). Victim was then interviewed at a children’s advocacy center in Columbia, South Carolina, and recounted the painful circumstances of the attempted sexual assault perpetrated by Salley while also revealing that Salley molested her on at least five prior occasions between July and August of 2008. (R. p. 81). Following Victim’s revelations, law enforcement officers interviewed Salley about the incidents involving Victim, and Salley denied any wrongdoing. (R. p. 81). However, Salley later returned to the police department with his mother and admitted to sexually assaulting Victim along with another child in a separate and unrelated incident. (R. pp. 81-82). Following his admissions, Salley was arrested and indicted for numerous offenses, including one count of assault with the intent to commit first-degree criminal sexual conduct with a minor and two counts of committing a lewd act upon a minor child. (R. p. 4).

Prior to trial, the Honorable Doyet A. Early, III, circuit court judge, issued an order requiring Salley to be evaluated to determine if he was competent to stand trial. (R. pp. 7-8; p. 89). Based on that order, Dr. Phillip Cornelius, a behavior analyst who performed forensic consulting for the South Carolina Department of Disabilities and Special Needs, conducted a competency evaluation of Salley on January 15, 2009, with the assistance of a secondary examiner, Brian Hawkins. (R. pp. 5-8; p. 90). As a result of his evaluation, Dr. Cornelius concluded to a reasonable degree of medical certainty that Salley was competent to stand trial. (R. p. 8; pp. 90-93).

Thereafter, Salley retained the services of Dr. Donna Schwartz-Watts, a professor of clinical psychiatry and the director of forensic services at the University of South Carolina Medical School.¹ (R. p. 37; pp. 39-40; pp. 94-95). On October 27, 2009, Dr. Schwartz-Watts conducted a psychiatric evaluation of Salley. (R. pp. 39-40). As a result of her evaluation, Dr. Schwartz-Watts opined that Salley did “not have a factual or rational understanding of the proceedings nor the capacity to assist [defense counsel] in his defense due to his mental retardation.” (R. p. 95).

Subsequently, on February 8, 2010, Salley appeared in the Aiken County court of general sessions before the Honorable R. Ferrell Cothran, Jr., circuit court judge, for a hearing to determine if he was competent to stand trial. (R. p. 4). During the competency hearing, the State offered the testimony of Dr. Cornelius, and he was qualified as an expert in forensic psychological evaluations without objection. (R. pp. 5-8). Dr. Cornelius then testified about his most recent court-ordered competency evaluation of Salley and his earlier court-ordered evaluations of Salley in regard to Salley’s past criminal offenses. (R. pp. 7-9).

Regarding his earlier evaluations, Dr. Cornelius stated that he previously evaluated Salley on two occasions in 2004 and 2007 to determine if Salley was competent to stand trial in similar cases involving charges of criminal sexual conduct with a minor. (R. p. 9). During the 2004 evaluation performed when Salley was fourteen years old, Dr. Cornelius concluded that Salley did not understand the process, could not relate details of his charges to his attorney, and did not display self-protection actions. (R. pp. 97-99). As a result, Dr. Cornelius indicated that he found Salley not to be

¹ Notably, Schwartz-Watts had previously worked at the South Carolina Department of Mental Health conducting competency evaluations. (R. p. 37). However, when she was working with the Department of Mental Health, Dr. Schwartz-Watts was not permitted to render opinions on mentally-retarded defendants. (R. p. 39).

competent to stand trial in 2004. (R. pp. 12-13). However, during the 2007 evaluation performed when Salley was seventeen years old, Dr. Cornelius noted that Salley was able to retain and learn information, was capable of providing information to his attorney, and knew to consult his attorney if he did not know something during trial. (R. pp. 100-103). As a result of the 2007 evaluation, Dr. Cornelius indicated that he found Salley to have a factual and rational understanding of the court process and to be competent to stand trial. (R. p. 14; pp. 100-103).

Regarding the most recent evaluation, Dr. Cornelius reviewed the court order, the related arrest warrants, a law enforcement packet, Salley's school records, prior psychological evaluations, prior diagnostic evaluations, and several prior forensic evaluations. (R. p. 8). Dr. Cornelius then met with Salley for approximately one hour on January 15, 2009. (R. p. 8; p. 10). During the meeting, he reviewed the roles of the parties and the court process with Salley. (R. p. 10). He then exposed Salley to a series of forced-choice and non-forced-choice questions, and Salley consistently provided correct answers, demonstrating an understanding of the questions and answers.² (R. p. 11; pp. 27-28). During the evaluation, Salley demonstrated that he understood the roles of the solicitor and defense counsel, understood the court process, understood the charges he was facing, knew not to speak with the solicitor without counsel present, and understood why he should not do so. (R. pp. 11-12; p. 15; p. 28). In his evaluation report, Dr. Cornelius indicated that Salley was able to identify a witness on the stand and knew to inform his attorney if a witness was lying. (R. pp. 89-93). He noted that Salley

² Dr. Cornelius noted that Salley was able to articulate his attorney's role, the solicitor's role, the court process, and whether or not he should talk to the solicitor alone **without any education** from the court-ordered evaluator during Salley's most recent interview. (R. p. 13). Dr. Cornelius further noted that the consistency of Salley's responses showed that he understood his responses and that there were no signs of perseveration in Salley's responses. (R. p. 27; p. 29).

knew to consult with his attorney if any issues arose, was capable of providing information to his attorney, and had a factual and rational understanding of the court process. (R. pp. 89-93). He further indicated that Salley was fairly independent in his daily life and possessed higher adaptive behavior skills than he sometimes practiced. (R. pp. 89-93).

Regarding Salley's level of mental disability, Dr. Cornelius noted that Salley was mentally-retarded and had an I.Q. ranging from 42 to 59, with the scores falling in the mild to moderate retardation range.³ (R. p. 12). However, Dr. Cornelius testified that Salley was capable of learning and retaining information and simply did so at a slower pace. (R. pp. 12-13; p. 26). He further noted that Salley was alert and oriented throughout all of the evaluations, and Salley's thought processes appeared to be logical and coherent during all of the evaluations. (R. p. 14; p. 91; p. 98; p. 102). Based on the results of his evaluation of Salley, Dr. Cornelius concluded that Salley had a factual and rational understanding of the proceedings and was competent to stand trial. (R. p. 8; p. 30; R. pp. 89-93). In particular, he noted that Salley understood to ask his defense counsel about anything he did not understand and that Salley "consistently" indicated that he would do so. (R. p. 14). Dr. Cornelius stated the only thing that Salley appeared to have trouble understanding was that the solicitor stood to benefit from a plea bargain.⁴ (R. p. 34). He also indicated that he met with Salley prior to the hearing, and the meeting reaffirmed his competency finding. (R. p. 10).

Following Dr. Cornelius' testimony, Dr. Schwartz-Watts was called by defense counsel to testify on Salley's behalf and was qualified as an expert in forensic

³ According to Salley's records, Salley was enrolled in a class for students with "mild mental disabilities" when he was attending school. (R. p. 91; p. 98; p. 102).

⁴ Notably, Dr. Cornelius concluded that Salley understood a plea bargain would benefit him. (R. p. 34).

evaluations. (R. p. 39; pp. 52-53). During her testimony, Dr. Schwartz-Watts stated that she interviewed Salley for approximately an hour and a half in October of 2009 and for twenty-five minutes prior to the hearing. (R. pp. 39-40). Based on her evaluation of Salley on those two occasions, she concluded that Salley had a factual understanding of the proceedings but was not rationally competent. (R. p. 41). In offering her opinion, she indicated that she did not believe Salley had the cognitive abilities to follow the trial, learn new information, remember that information, and then provide that information back to his attorney to assist in his defense.⁵ (R. pp. 41-42). Dr. Schwartz-Watts noted that Salley had difficulty determining whether a sentence stated in months was longer than a sentence stated in years, and she testified he did not have the ability to assist his attorney if evidence he was not familiar with was presented. (R. pp. 42-43). She further noted that Salley had difficulty correctly pronouncing defense counsel's name, had difficulty understanding more complex concepts, and could not correctly draw a clock or read.⁶ (R. p. 47; p. 50). She concluded that Salley had the ability to learn but not the ability to learn quickly enough for trial. (R. p. 51). Based on her evaluation, Dr. Schwartz-Watts opined that Salley was not competent to stand trial. (R. p. 46). In reaching this conclusion, she noted:

But, for example, I asked him today, if your lawyer wants you to take the stand and she tells you to tell the truth, what are you going to do. And he says he wouldn't tell the truth. So he's not able to assist her at some levels

⁵ Regarding Salley's understanding of the competency hearing itself, Dr. Schwartz-Watts opined: "I think at one level he would recognize that somebody is trying to help him, and that somebody has another opinion." (R. p. 44).

⁶ Salley had a well-documented speech impediment, and Dr. Schwartz-Watts readily acknowledged that fact. (R. pp. 46-47; p. 91; p. 98; p. 102). Additionally, although he had been unable to do so in 2004, Salley was able to read an analog clock during his evaluations in 2007 and 2008. (R. p. 92; p. 99; p. 102). Furthermore, later during the competency hearing, Dr. Schwartz-Watts admitted that literacy was not a test for determining competency. (R. p. 58).

because of some of his cognitive appearance. He does not fully understand what it takes to be competent to stand trial.⁷

(R. p. 42). However, Dr. Schwartz-Watts testified that Salley was very self-protective and knew not to speak to the solicitor alone. (R. p. 42; p. 49). She further testified that Salley would assist his attorney and did not want to go to prison. (R. p. 42). She noted that Salley understood the difference between guilty and not guilty, knew how many jurors were required to convict him, and refused to accept an incorrect statement that only five jurors were necessary for a conviction. (R. pp. 47-48). Additionally, she noted that Salley had some street smarts and was not easily led. (R. p. 49).

On cross-examination, Dr. Schwartz-Watts conceded that mental retardation did not always translate into a lack of competency and that the ability to read was not necessary for a competency finding. (R. p. 53; p. 58). She further testified that Salley understood the adversarial process, the roles of the attorneys, the role of the jury, the concepts of guilt and innocence, the availability of entering a plea, the charges against him, and the seriousness of those charges. (R. p. 60). She noted that he thought the judge was against him, but she conceded it was possible he believed that to be true because he had admitted to her that he was guilty. (R. p. 60). Based on her evaluation of Salley, she diagnosed him with pedophilia and acknowledged he repeatedly acted on those tendencies. (R. p. 62). She also noted that Salley readily admitted he was a pedophile. (R. p. 62). Furthermore, Dr. Schwartz-Watts acknowledged that Dr. Cornelius had performed the appropriate testing to evaluate Salley's competency level. (R. p. 54). She also conceded that Dr. Cornelius had the benefit of seeing and evaluating Salley over a greater period of time while simply stating that she had personally reached

⁷ Notably, Dr. Schwartz-Watts later testified during the competency hearing that Salley admitted his guilt to her. (R. p. 60). However, in her letter to defense counsel prior to the hearing, Dr. Schwartz-Watts had previously stated that Salley denied the charges. (R. p. 94).

a different opinion based on her shorter evaluation. (R. p. 55). In conclusion, Dr.

Schwartz-Watts opined:

Well, my opinion is he has a factual understanding of the proceedings. He has a capacity to assist in his defense, but because he doesn't have a rational understanding, that second prong, because he doesn't have a rational understanding of the proceedings, he's not able to assist his attorney. . . . He understands how everything is supposed to work, but when it comes to putting it into action and to processing it, his brain can't do that.

(R. pp. 62-63).

After reviewing the experts' reports and the testimony from the hearing, the circuit court judge determined that Salley was competent to stand trial and found that Salley had failed to establish his incompetency by a preponderance of the evidence. (R. pp. 67-69). In reaching that conclusion, the circuit court judge noted that he was presented with the testimony of an expert who had evaluated Salley over a period of years, had previously found him to be incompetent, and had then found him to be competent on two later occasions after Salley appeared to understand the process and appeared to be able to assist his defense counsel with a reasonable degree of rational understanding. (R. pp. 67-68). The circuit court judge further stated:

Dr. Schwartz-Watts' opinion, she basically had the same finding but she has some concerns that she didn't – she did not think he was competent because she did not think that he had the ability to process the information quick enough on cross-examination, that withstood cross-examination. And I don't think that's the test in this state. And I certainly think that being able to assist his attorney, and Dr. Cornelius found that he would be able to recognize if someone was not telling the truth and advise his attorney to that effect. In the end that he even told Dr. Schwartz-Watts that he were to lie, even if his attorney told him to tell the truth, if he thought it would benefit him. So I think he has that understanding of the proceedings. And the defense has to present evidence that he in fact does not have the ability and is not competent to stand trial. I think that that evidence must be by the preponderance of the evidence. And I certainly don't find by the preponderance of the evidence that they have met their burden and I think he is competent to stand trial.

(R. pp. 68-69).

In response to the circuit court judge's ruling, defense counsel asserted that Dr. Schwartz-Watts' concerns extended beyond Salley's ability to withstand cross-examination and were based on her opinion that Salley did not have sufficient present ability to assist his defense counsel with a reasonable degree of rational understanding during trial due to the fact that she concluded he "would not be able to think fast enough or to process information fast enough to be able to rationally assist his attorney and to discuss the information with his attorney." (R. pp. 70-72). Defense counsel further argued that the evidence she introduced of Salley's incompetency was "compelling," which she contended satisfied the defense's burden of proof and shifted the burden of proving competency to the State. (R. pp. 73-74).

Following defense counsel's argument, the circuit court judge found that the burden of proving incompetency did not shift in South Carolina and, instead, remained solely on the defense. (R. p. 75). The circuit court judge then reiterated that Salley had failed to meet the burden of proof, clarifying that he based his competency determination on Dr. Cornelius' expert testimony in regard to Salley's understanding of the proceedings and ability to assist defense counsel, Salley's appropriate responses during the evaluation that went beyond "parrot-type responses," and the fact that Dr. Cornelius had previously found Sally not to be competent when Salley's evaluation results suggested that he was not competent. (R. pp. 75-77). For those reasons and based on the evidence and testimony that had been presented during the hearing, the circuit court judge concluded that Salley had the necessary understanding to proceed to trial and was capable of rationally assisting defense counsel during trial. (R. pp. 76-77).

Subsequently, on February 12, 2010, Salley appeared in the Aiken County court of general sessions and indicated that he wished to enter a negotiated plea of guilty but mentally ill to the charge of assault with the intent to commit first-degree criminal sexual conduct with a minor. (R. p. 77). During the ensuing plea hearing, defense counsel stated that she explained Salley's pending charges, Salley's constitutional rights, and the potential punishment for the charges to Salley and that she personally believed he understood that information. (R. pp. 77-78). She further confirmed that Salley responded appropriately to her during their conversations and interactions. (R. p. 78). Following defense counsel's remarks, Salley directly informed the circuit court judge that he wished to plead guilty. (R. p. 78). He then confirmed that he had enough time to speak with defense counsel, had no complaints regarding defense counsel, had not been promised anything or threatened into pleading guilty, was pleading guilty freely and voluntarily, was not under the influence of any drugs, understood his rights, and wished to give up those rights. (R. pp. 78-80). Thereafter, the solicitor's recounted the facts of Salley's crime, and Salley admitted that the factual summation was an accurate statement of what had occurred and that he was guilty of sexually assaulting Victim. (R. pp. 81-82; p. 83). Salley further stated that he wanted the circuit court judge to accept his guilty plea and was aware that he would receive a twenty-five-year sentence if it was accepted. (R. p. 83). The circuit court judge then accepted Salley's guilty plea and sentenced him to a twenty-five-year term of incarceration. (R. p. 83; p. 87).

Subsequent to the guilty plea hearing, Salley filed an appeal with the Court of Appeals, arguing that the circuit court judge allegedly erred in finding him to be competent to stand trial. (App'x p. 2). However, the Court of Appeals disagreed with Salley's contention and unanimously affirmed the circuit court judge's competency

determination based on controlling South Carolina precedent regarding competency determinations and the appropriate appellate standard for reviewing such determinations. (App'x pp. 1-2).

ARGUMENT

The Court of Appeals correctly affirmed the circuit court judge's determination in regard to Salley's competency to stand trial or enter a guilty plea because that determination was supported by expert testimony and evidence presented during the competency hearing establishing that Salley had a rational and factual understanding of the proceedings against him and a sufficient ability to consult with his attorney with a reasonable degree of rational understanding and because it was not against the preponderance of the evidence.

Salley contends that the Court of Appeals erred in affirming the circuit court judge's determination that Salley was competent to stand trial or enter a guilty plea. In support of that contention, Salley maintains that the Court of Appeals overlooked the fact that he allegedly presented credible and compelling testimony establishing his incompetence and that the circuit court judge allegedly based his competency determination on an erroneous interpretation of the testimony presented during the hearing. Contrary to Salley's contentions, the circuit court judge properly evaluated the evidence and testimony presented during the competency hearing, including the conflicting opinion testimony of the court-ordered evaluator and Salley's retained expert, before concluding that Salley had failed to meet his burden of proving his incompetence by a preponderance of the evidence. In reaching that conclusion, the circuit court judge found that the opinion of the court-ordered evaluator, who had a longer history with Salley and who had previously found Salley to be incompetent in the past, warranted the conclusion that Salley was competent to stand trial or enter a guilty plea, and his competency determination was fully supported by the evidence and testimony presented during the hearing. Therefore, as the circuit court judge's ruling had evidentiary support and was not against the preponderance of the evidence, there was no basis to disturb the circuit court judge's competency finding on appeal. The Court of Appeals properly

affirmed the circuit court judge's competency determination. Salley's conviction should be affirmed.

STANDARD OF REVIEW

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the circuit court judge's ruling is supported by any evidence. Id. at 6, 545 S.E.2d at 829. On appeal, "the [circuit] court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs when the circuit court judge's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993))).

ANALYSIS

In order to stand trial or plead guilty, a criminal defendant must be competent. State v. Finklea, 388 S.C. 379, 383, 697 S.E.2d 543, 546 (2010); see Pate v. Robinson, 383 U.S. 375, 378 (1966) (recognizing that the conviction of an incompetent person violates due process). As a result, "a person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to trial."

Drope v. Missouri, 420 U.S. 162, 171 (1975). The purpose of such a competency requirement is to ensure that the accused has the capacity to both understand the proceedings against him and to assist his defense counsel. State v. Kelly, 331 S.C. 132, 148, 502 S.E.2d 99, 108 (1998); see Godinez v. Moran, 509 U.S. 389, 403 (1993) (“Requiring that a criminal defendant be competent has a modest aim: It seeks to ensure that he has the capacity to understand the proceedings and to assist counsel.”).

Significantly, the standard for evaluating competency is the same regardless of whether an accused ultimately chooses to proceed to trial or to enter a guilty plea. Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595-596 (1992); see Godinez, 509 U.S. at 398 (“[W]e reject the notion that competence to plead guilty or to waive the right to counsel must be measured by a standard that is higher than (or even different from) the Dusky standard.”). Pursuant to the applicable standard, a circuit court judge must find that an accused “has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding” and “has a rational and as well as factual understanding of the proceedings against him” in order to properly conclude that the accused is competent to stand trial or enter a guilty plea. Dusky v. United States, 362 U.S. 402, 402 (1960); see Sims v. State, 313 S.C. 420, 422-423, 438 S.E.2d 253, 254 (1993). Importantly, the burden of establishing incompetency rests solely upon the accused, and the accused must prove his incompetency by a preponderance of the evidence in order to be found to lack the requisite competency to face trial or enter a plea. State v. Nance, 320 S.C. 501, 504, 466 S.E.2d 349, 351 (1996).

In an appeal from a competency determination, a circuit judge’s decision will not be overturned if it has evidentiary support and is not against the preponderance of the evidence. State v. Reed, 332 S.C. 35, 40, 503 S.E.2d 747, 749 (1998). Moreover, a

circuit court judge's competency determination should be afforded great deference on appeal due to the circuit court judge's superior position to evaluate the accused's faculties directly. State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007); see Dusky, 362 U.S. at 403 (recognizing that there are inherent difficulties in attempting to retrospectively determine competency).

In the case sub judice, the Court of Appeals committed no error in affirming the circuit court judge's competency determination because the circuit court judge properly considered the evidence and testimony presented to him during the competency hearing before finding that Salley had failed to meet his burden of proving that he was incompetent to stand trial or enter a guilty plea. Critically, expert testimony and evidence was presented during the hearing that established that Salley had a factual and rational understanding of the proceedings against him and had a sufficient ability to assist defense counsel with a reasonable degree of rational understanding. Based on that evidence and testimony, the circuit court judge was able to conclude that Salley's incompetence had not been established by a preponderance of the evidence, and his conclusion was fully supported by the evidence.

Looking to the evidence presented during the competency hearing, the circuit court judge was presented on one hand with the testimony of Dr. Cornelius, an independent court-ordered forensic evaluator from the South Carolina Department of Disabilities and Special Needs who had met with Salley on multiple occasions over a period of several years. Dr. Cornelius offered his expert opinion that Salley was competent to proceed to trial and based that opinion on his evaluations of Salley along with the consistent responses that Salley provided to his questions, which were of both a forced-choice and non-forced-choice nature. Significantly, the strength of Dr. Cornelius'

opinion was bolstered by his prior history with Salley, which was a fact readily conceded by Salley's expert, and Dr. Cornelius' previous conclusion that Salley was incompetent to stand trial in 2004 strongly showed that he had no reluctance, bias, or hidden motive to declare Salley to be competent if Salley, in fact, was not. Furthermore, in conducting his evaluation of Salley, Dr. Cornelius followed all of the appropriate and accepted protocol, and Salley's own expert openly acknowledged that there was no error in the method by which Dr. Cornelius evaluated Salley.

On the other hand, the circuit court judge was presented with the testimony of Dr. Schwartz-Watts, an expert retained by Salley. Dr. Schwartz-Watts indicated that she reached a different conclusion to Dr. Cornelius and opined that Salley was not competent to stand trial after meeting with Salley only in connection to his most recent charges. In support of that conclusion, Dr. Schwartz-Watts testified during the hearing that Salley had a factual understanding of the proceedings, would assist his attorney, understood the charges against him, and was very self-protective while opining that he did not have a rational understanding of the proceedings because he allegedly did not have a sufficient capacity to learn quickly enough to be able to effectively assist his attorney during trial. Notably though, that conclusion was **not** consistent with the conclusion that Dr. Schwartz-Watts provided to defense counsel prior to the hearing.⁸

Thus, in Salley's case, the circuit court judge was presented with two conflicting opinions regarding Salley's competency. Based on Dr. Cornelius's expert testimony, the

⁸ Specifically, during the competency hearing, Dr. Schwartz-Watts testified: "[M]y opinion is he has a factual understanding of the proceedings. He has a capacity to assist in his defense, but because he doesn't have a rational understanding, that second prong, because he doesn't have a rational understanding of the proceedings, he's not able to assist his attorney." (R. pp. 62-63). However, in her report provided to defense counsel prior to the competency hearing, Dr. Schwartz-Watts opined: "It is my opinion to a reasonable degree of medical certainty that Mr. Salley does not have a factual or rational understanding of the proceedings nor the capacity to assist you in his defense due to his mental retardation." (R. p. 95).

circuit court judge had compelling and credible evidence from which he could conclude Salley was competent to stand trial or enter a guilty plea. Conversely, based on Dr. Schwartz-Watts' testimony, the circuit court judge had evidence from which he could conclude by a preponderance of the evidence that Salley was not competent to stand trial or enter a plea if he found Dr. Schwartz-Watts' opinion to be entitled to greater weight than Dr. Cornelius' opinion. However, Dr. Schwartz-Watts' testimony during the hearing contradicted her own earlier conclusions in Salley's case in several key respects, and Dr. Schwartz-Watts readily confirmed to the circuit court judge that Dr. Cornelius had followed all of the proper protocol in conducting his competency evaluation of Salley and had the advantage of evaluating Salley over a greater period of time. Cf. Nance, 320 S.C. at 506, 466 S.E.2d at 352 ("Although Dr. Dewitt testified that [Nance] was not competent to stand trial, the record reveals that Dr. Dewitt reached that determination only after two meetings with [Nance]. Drs. Sheth and McKee, on the other hand, had the opportunity to observe [Nance] for close to a month while he was an inpatient at the Hall Institute."). Under those circumstances, the circuit court judge did not abuse his discretion in reaching a conclusion consistent with Dr. Cornelius' opinion and inconsistent with the opinion of Dr. Schwartz-Watts, and the circuit court judge's conclusion was not against a preponderance of the evidence. See State v. Lee, 274 S.C. 372, 375, 264 S.E.2d 418, 419 (1980) ("We cannot say that [the trial judge's] finding that the defendant was capable of standing trial was without evidentiary support or against the preponderance of the evidence and, accordingly, we find no error on the part of the judge in ordering the defendant to trial."); see also State v. Weik, 356 S.C. 76, 80-81, 587 S.E.2d 683, 685 (2002) (finding the trial judge's competency determination was

supported by the evidence even though there was a disagreement between the State's experts and Weik's experts over whether Weik was competent to stand trial).

In challenging the conclusions of both the Court of Appeals and the circuit court judge on appeal, Salley appears to contend that the circuit court judge erred in finding that he failed to meet his burden of establishing his incompetency by a preponderance of the evidence because his retained expert offered her opinion that he was not competent to stand trial. However, the circuit court judge was not required to accept any one expert's position as conclusive and, instead, was permitted to and required to consider all the evidence and testimony presented to him. See State v. Bell, 293 S.C. 391, 396, 360 S.E.2d 706, 709 (1987) ("A defendant's claim that a psychologist's testimony was incomplete or wrong does not preclude a finding that the defendant is competent to stand trial where the psychologist was subject to cross-examination by defense counsel."); see also Kelly, 331 S.C. at 149, 502 S.E.2d at 108 (citing to 22A C.J.S. Criminal Law § 554 which stated the trial judge is the sole judge of the credibility and weight to be assigned to witnesses' testimony and is entitled to evaluate conflicting testimony). After considering the testimony of **both** experts and reviewing the evidence, the circuit court judge found Salley's showing of incompetency to be insufficient to establish that he was not competent to stand trial or enter a guilty plea. Because that finding was supported by expert testimony and evidence presented during the competency hearing and was not against the preponderance of the evidence, the Court of Appeals properly affirmed that finding on appeal. Cf. Castro v. State, 744 So. 2d 986, 989 (Fla. 1999) ("[A]lthough there was conflicting testimony regarding Castro's competency, it was the function of the circuit court to resolve this dispute. After considering all of the testimony, the circuit court concluded that Castro was competent. There has been no showing that the circuit

court abused its discretion in coming to this conclusion.” (citations omitted)); Commonwealth v. Kostka, 370 Mass. 516, 523, 350 N.E.2d 444, 449 (Mass. 1976) (affirming the trial judge’s competency finding even though conflicting testimony was presented in regards to Kostka’s competency to stand trial); State v. Moncada, 161 N.H. 791, 798, 20 A.3d 904, 910 (N.H. 2011) (affirming the trial judge’s competency finding where the trial judge accepted the testimony of one expert on the issue of competency over the conflicting testimony of a retained defense expert); Orndorff v. Commonwealth, 271 Va. 486, 501, 628 S.E.2d 344, 352 (Va. 2006) (“Although there was conflicting testimony regarding the issue of Orndorff’s competency, the circuit court chose to rely on the testimony of Dr. Wolber and Dr. Sheneman. Based on this evidentiary support for the circuit court’s finding, we will not disturb that finding on appeal.”).

Additionally, Salley contends that the decision of the Court of Appeals and the circuit court judge’s competency determination were both erroneous because the circuit court judge allegedly based his ruling on a misinterpretation of the testimony of Dr. Schwartz-Watts. In support of that contention, Salley maintains that the circuit court judge mistakenly believed that Dr. Schwartz-Watts found Salley not to be competent based on his alleged inability to process information quickly enough during cross-examination. However, that portion of Dr. Schwartz-Watts’ testimony was not the sole basis for the circuit court judge’s competency determination in Salley’s case. In fact, defense counsel raised that precise contention to the circuit court judge during the competency hearing after the circuit court judge initially ruled on the issue, and the circuit court judge clarified the basis of his conclusion that Salley had failed to meet his burden of establishing his incompetency by a preponderance of the evidence. In so clarifying, the circuit court judge explained that his competency determination was based

on Dr. Cornelius' expert opinion on Salley's present understanding of the proceedings, knowledge of what he should do during trial, and ability to assist his defense. The circuit court judge further indicated that he felt Dr. Cornelius' earlier evaluations of Salley strengthened Dr. Cornelius' most recent opinion for purposes of his evaluation of the testimony and evidence. Based on that evidence and testimony and not on a misunderstanding of the testimony of Salley's retained expert, the circuit court judge concluded that Salley had a rational and factual understanding of the proceedings and the capacity to rationally assist his defense counsel.⁹ Accordingly, the circuit court judge's competency determination was not based on an erroneous interpretation of the evidence, and the Court of Appeals did not err in affirming the circuit court judge's competency determination. Cf. State v. Davis, 309 S.C. 326, 338, 422 S.E.2d 133, 141 (1992) (affirming the circuit court judge's determination that Davis, who was mentally retarded, was competent to stand trial where the circuit court judge considered the testimony of conflicting experts before making his competency finding), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999).

In conclusion, the circuit court judge in Salley's case did not abuse his discretion in determining that Salley had not met his burden of establishing incompetency and was competent to stand trial after evaluating the conflicting testimony of Dr. Cornelius and Dr. Schwartz-Watts. Critically, his ruling was supported by the testimony and evidence presented during the hearing and was strengthened by Salley's appropriate behavior and

⁹ Tellingly, in his Brief of Petitioner, Salley only cited to the initial portion of the circuit court judge's competency determination while omitting any reference to the circuit court judge's ruling issued in response to defense counsel's claim that he had misinterpreted Salley's expert's testimony. (Pet. Br. p. 5; pp. 12-13).

responses during the subsequent guilty plea hearing.¹⁰ See Nance, 320 S.C. at 506, 466 S.E.2d at 352 (“Admittedly, the trial court was confronted with conflicting opinions regarding [Nance’s] competency. However, we find that there is ample evidentiary support for the trial court’s determination that [Nance] was competent, and we find that determination not to be against the preponderance of the evidence.”); Bell, 293 S.C. at 396, 360 S.E.2d at 709 (“The trial judge’s findings of competency were based on the expert testimony, defense counsel’s testimony, and the trial judge’s own observations of appellant’s behavior. The very nature of the inquiry as to a defendant’s competency to stand trial demands that a court not be bound strictly by the view of experts.”). As the circuit court judge’s ruling was supported by the evidence and not against a preponderance of the evidence, there was no proper basis to reverse his ruling on appeal. See Davis, 309 S.C. at 338, 422 S.E.2d at 141 (“We find that the trial judge’s determination that Davis was competent to stand trial has evidentiary support. Accordingly, we find that the trial judge did not err in finding that Davis was competent to stand trial.” (citations omitted)); see, e.g., Atkins v. Virginia, 536 U.S. 304, 306 (2002) (“Those mentally retarded persons who meet the law’s requirements for criminal responsibility should be tried and punished when they commit crimes.”). For the foregoing reasons, the Court of Appeals correctly affirmed the circuit court judge’s competency determination. Salley’s conviction should be affirmed.

¹⁰ Notably, defense counsel confirmed to the circuit court judge during the guilty plea hearing that Salley had responded appropriately to her when she was speaking with him and that she believed he understood the things she had explained to him. (R. pp. 77-78).

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the decision of the Court of Appeals and the judgment and conviction of the trial court should be affirmed.

Respectfully submitted,

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April 4, 2014

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari to the Court of Appeals
Appeal from Aiken County
Honorable R. Ferrell Cothran, Jr., Circuit Court Judge
Appellate Case No. 2012-212233

THE STATE,

Respondent,

vs.

MIKE TYREL SALLEY,

Petitioner.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Brief of Respondent on Petitioner by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Kathrine H. Hudgins, Esquire
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I further certify that all parties required by Rule to be served have been served.
This 4th day of April, 2014.


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