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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON LEE GOINS

APPELLANT

APPELLATE CASE NO. 2014-000762

ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Constitutional Provisions

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in excluding testimony from Appellant's expert witness that Appellant's personality profile indicating he was submissive and indecisive coupled with Appellant's low intellectual functioning would render him easily misled where the only evidence presented in this burglary, conspiracy, and larceny case was that Appellant's co-defendant indicated the items taken belonged to the co-defendant and the home burglarized was the co-defendant's uncle's home, where the co-defendant had a right to go, in violation of Appellant's federal and state constitutional right to present a defense?

STATEMENT OF THE CASE

A York County grand jury indicted Appellant for burglary in the first degree, grand larceny (2014-GS-46-0433), and criminal conspiracy (2014-GS-46-0434). R. 5, lines 1-8; R. 676. The state, represented by Misti Shelton and E.B. Springs, called the case to trial before the Honorable Lee Alford and a jury on March 31, 2014. Christopher Wellborn represented Appellant. R. 1. The jury found Appellant guilty of criminal conspiracy and petty larceny, but was unable to reach a unanimous verdict on the burglary charge. R. 642, line 11 – R. 643, line 8; R. 672; R. 673; R. 674; R. 675. On April 4, 2014, Appellant entered a guilty plea to burglary in the second degree. R. 652.[1] On that date, Judge Alford sentenced Appellant to serve a sentence under the Youthful Offender Act (YOA) not to exceed six years' imprisonment for the burglary conviction, a sentence pursuant to the YOA not to exceed five years' imprisonment for the conspiracy conviction, and to thirty days' imprisonment for the petty larceny conviction. He ordered all sentences to run concurrently. R. 663, line 6 – R. 664, line 5; R. 676.

Appellant filed a timely notice of appeal from his convictions for criminal conspiracy and petty larceny. Appellant did not file a notice of appeal following his guilty plea to burglary in the second degree. This brief follows.

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[1] To support the guilty plea, the prosecutor provided the following factual basis: During the evening of September 6, 2012, Appellant "was present when Jordon Canupp pried open the front door of Darryl Smith's trailer." Additionally, Appellant "was present and was aware that they were going to break into the trailer, and once inside, [Appellant] was part of stealing items from inside and committed a burglary there." R. 659, line 22 – R. 660, line 7. When asked if he disagreed in any way with the facts recited by the prosecutor, Appellant responded, "No, sir." R. 660, lines 8-12.

STATEMENT OF THE FACTS

On September 6, 2012, Appellant was visiting with his new friend, Jordon Canupp. R. 422, line 24 – R. 423, line 25. Jordon lived with his girlfriend, Hannah Smith, in a trailer next door to Hannah's uncle, Darryl Smith. R. 142, line 17 – R. 143, line 1; R. 300, line 10 – R. 301, line 16. Appellant and Jordon were drinking alcohol and smoking marijuana. R. 425, lines 5 – 20; R. 428, lines 10 – 22. During their conversation, Jordon mentioned that he had some items next door at his uncle's house. Appellant and Jordon walked to the uncle's trailer. R. 431, lines 4 – 7. Upon arrival at the door, Jordon tried to enter, but realized the door was locked. R. 433, line 10 – R. 434, line 15. Jordon told Appellant to stay at the door while he walked around to enter through another door. R. 434, line 24 – R. 435, line 11. Appellant waited, and soon Jordon admitted Appellant into uncle's trailer. R. 435, lines 15 – 20. Jordon got two fishing rods and a gold necklace. R. 436, lines 8 – 21; R. 437, lines 15 – 21. Then, Appellant and Jordon left. Jordon took Appellant home. Appellant never saw Jordon or the items again. R. 438, lines 8 – 17; R. 439, lines 14-23; R. 440, lines 21 – 23; R. 447, lines 11 – 23; R. 448, lines 13 – 18; R. 666.

On September 7, 2012, Darryl Smith arrived home during the early morning hours. Noticing nothing amiss, he went to bed. R. 106, lines 10-18; R. 107, lines 14-18. When he woke up several hours later, he noticed the screen on his window "had been messed with." R. 106, lines 18-23. He then noticed the lock on his door, the very door he had used hours earlier, was broken. R. 106, line 24 – R. 107, line 2. The police responded to Smith's call. R. 107, lines 19-20; R. 160, lines 15-22. Smith claimed

earrings, necklaces, fishing rods, and prescription medicine were stolen. R. 109, line 23 – R. 110, line 5.

Although a police officer took a report and collected a smoked cigarette butt from inside the residence, the officer did not call for the forensics team to examine the scene and did not take photographs with the camera he had in his car.[2] R. 160, line 25 – R. 162, line 8. The responding officer did not recall seeing any signs of forced entry. R. 162, lines 9-10. His report included no information about pry marks on windows, damage of any kind, or the presence of blood. R. 166, line 12 – R. 170, line 24.

Approximately one week later, Smith noticed a blood smear on his door – the one with the broken lock. He called the police again. R. 109, lines 6-22. A different officer arrived and took a swab from what the officer described as a droplet of what may have been blood. R. 179, line 15 – R. 182, line 3; R. 183, line 23 – R. 184, line 25. Between ten and fourteen days after the initial report, a detective was assigned to the case; however, his investigation was very limited too. R. 200, lines 21-24; R. 201, lines 2-7; R. 204, line 19 – R. 206, line 4. Although he went to Smith's trailer, he conducted no investigation because Smith was not home. The investigator's only contact with Smith was one telephone call prior to trial. R. 217, lines 8-15; R. 218, line 22 – R. 219, line 7;

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[2] In closing argument, the prosecutor said the first officer who arrived, Deputy Doty, "did not care enough about this case." After noting that Smith lived in a very humble home, the prosecutor stated that "Doty just flat out did not do his job." According to the prosecutor, Doty "did not care enough about Mr. Smith enough about this home being broken into to do those things.... He did not do his job for this man." She noted his failure to take photographs, failure to write in his report whether he "actually observed the evidence of the break-in," and his failure to request the scene be processed for fingerprints. R. 581, line 1 – R. 582, line 2. The prosecutor begged the jury not to punish Smith "because Deputy Doty did not do his job" and to "not deny him his justice because of Deputy Doty." She argued Smith "deserved better on September 7th. He deserves better today than to hold that against this case." R. 582, lines 3-14.

R. 225, lines 15-17; R. 234, line 12 – R. 237, line 4. Further, the only evidence collected – the cigarette butt and swabs – were never tested. R. 206, line 5 – R. 208, line 11; TR. 226, line 10 – R. 229, line 5.

Almost a year later, Appellant became a suspect in the crime. Appellant was arrested and interrogated by the police. R. 208, line 12 – R. 209, line 6; R. 214, lines 12-15. Appellant immediately gave a statement explaining that he was with Jordon and believed Jordon was retrieving his items from his uncle's house. R. 212, line 1 – R. 213, line 19; R. 666.

ARGUMENT

In violation of Appellant's federal and state constitutional right to present a defense, the trial judge erred in excluding testimony from Appellant's expert witness that Appellant's personality profile indicating he was submissive and indecisive coupled with Appellant's low intellectual functioning would render him easily misled where the only evidence presented in this burglary, conspiracy, and larceny case was that Appellant's co-defendant indicated the items taken belonged to the co-defendant and the home burglarized was the co-defendant's uncle's home, where the co-defendant had a right to go.

Relevant facts

Pre-trial motion

During pre-trial proceedings, the prosecution moved "to preclude any mention of mental testing or evaluation of the defendant." The prosecutor's argument at the time was that the tests and the results were "irrelevant and inadmissible." R. 9, lines 11-17. Appellant explained the evidence went "to the heart of [the] defense." R. 9, line 18 – R. 10, line 2. Without any evidence before him, Judge Alford held the evidence was "presumably inadmissible," but agreed to allow Appellant to proffer the testimony. R. 10, lines 3-5.

When Appellant took exception to the judge's determination, Judge Alford expressed his view that mental evaluations were admissible only if a defendant were asserting a guilty but mentally ill defense or challenging competency. R. 10, lines 14-19. Trial counsel explained that the expert would testify that he developed a psychological profile of Appellant based upon a battery of tests. R. 10, line 20 – R. 11, line 2. Prior to trial counsel explaining the results of the testing, Judge Alford declared, "That's probably

not coming in," but he agreed to allow a proffer. According to Judge Alford, "That isn't coming in because somebody can come in and say he has something about his personality that required him to do this. You know that's not coming in." R. 11, lines 3-9. When the prosecutor remarked that "[t]esting and the results of any testing showing him to be not particularly smart would not come in at any opening statement, Your Honor. That would be highly improper for proffer," the judge responded, "True." Tr. 11, lines 12-17.

Opening Statement

During opening statements, trial counsel told the jury that Appellant "is easily duped." This drew an immediate objection from the prosecutor. R. 90, lines 4-8. The judge sustained the objection. R. 90, lines 9-13. When trial counsel told the jury that the evidence would show Appellant "is true trusting," the prosecutor objected again. R. 90, lines 14-19. The judge sent the jury out. R. 90, lines 22-24. The prosecutor argued trial counsel was placing the results of the mental examination before the jury and requested severe sanctions:

> We talked about this pre-trial. He has put before the jury the results of that mental examination and that was strictly off limits. He has defied the Court's order. I ask you to lock him up. Lock up [trial counsel]. He has committed contempt of court and has gone into the results of that mental evaluation against your orders pre-trial. He has put it all before the jury.

R. 91, lines 3-11.

Judge Alford ruled that because a determination had not been made on the admissibility of the mental evaluation and the expert testimony, trial counsel could not mention anything about Appellant's personality traits. R. 91, line 23 – R. 92, line 21. Trial counsel responded that he was not addressing any mental evaluation and had other witnesses beside the expert who would talk about Appellant's trusting nature. R. 93,

lines 12-24. The judge told trial counsel he could not paint a "mental picture" during opening statements. R. 93, line 25 – R. 96, line 2. Prior to re-admitting the jury, Judge Alford promised trial counsel he would "be in trouble" if he mentioned anything about "psychological profiling and mental state" again. R. 101, lines 6-13.

Defense's Case-In-Chief

Prior to the presentation of the defense's case, the prosecutor moved "to preclude any inadmissible character witness" who would describe Appellant as "naïve or easily led." R. 291, line 19 – R. 292, line 21. Trial counsel argued that one character trait "integral to a crime of conspiracy to commit burglary and burglary and burglary and grand larceny would be honesty." Thus, trial counsel argued he should be permitted to present character evidence as to Appellant's honesty. R. 293, lines 7-23. At the prosecutor's instigation, Judge Alford ruled that evidence of Appellant's character was limited to "his good character." However, he also ruled that Appellant could not produce evidence "to say that he has been a good person all his life or something like that." Appellant was forced to limit his character evidence to his "reputation for truth and honesty, his character, his reputation of character for truth and honesty in the community." R. 294, line 16 – R. 295, line 9.

The prosecutor then remarked that "honesty has nothing to do with being gullible or naïve," and the trial judge agreed. R. 296, line 15 – R. 297, line 3. However, when the judge said the testimony would be limited to the character traits of honesty and truthfulness, the prosecutor sought to draw a distinction between truthfulness and honesty. According to the prosecutor, truthfulness was "not a pertinent character trait,"

but "honesty" was a pertinent character trait in light of the accusations of stealing. R. 297, lines 4-12. Judge Alford appeared to agree with this reasoning. R. 297, line 13.

Proffer of expert testimony

After presenting two defense witnesses, trial counsel sought to introduce the testimony of his expert, Dr. Reuben Ridgeway. Judge Alford allowed trial counsel to proffer the testimony. The state stipulated that Dr. Ridgeway was an expert in clinical psychology and the judge found him qualified to testify as such. R. 322, lines 11-14. Dr. Ridgeway then described the battery of tests he had performed to evaluate Appellant, including his finding that Appellant's reading comprehension was at a 6.8 grade level despite his chronological age of nineteen. R. 329, lines 3-7.

While attempting to elicit testimony regarding Appellant's performance on the Wechsler Adult Intelligence Scale and the relationship of cognitive skills to the ability to understand threatening situations, the judge interjected: "I don't know where you are going with that. I am going to cut you off from that. That's nonsense. Nothing like that is going to be admissible into evidence and you know it as well as I do." R. 329, line 13 – R. 330, line 25. Finally, Dr. Ridgeway testified that Appellant's "overall intellect was at the delineating point between borderline intelligence and below average overall." R. 332, lines 19-25. His full scale IQ score was 80. R. 333, line 23 – R. 334, line 1.

Additionally, Dr. Ridgeway administered personality tests to Appellant. However, Judge Alford interrupted the proffer yet again:

> Counsel, I am going to interrupt you a minute. I regret doing this in a sense. All that sounds interesting, and I have heard it a thousand times before. My question to you is how in the world does it relate to a criminal trial. We have plenty of people in prison with 70 IQ, 75 IQ and some type of learning issues. How does that affect this trial is what I want to know?

R. 336, lines 16 – 24. Trial counsel argued the testimony was relevant because evidence would show that Appellant "did not have any idea what was going to happen regarding this burglary or break-in." R. 337, lines 11 – 14. The trial judge then questioned how Appellant's gullibility was relevant to his guilt or innocence if he were present for the burglary. R. 338, lines 16 – 21. Trial counsel explained the testimony was relevant because other evidence would reveal that Appellant had no clue there was going to be a burglary. R. 338, line 22 – R. 339, line 6. Although the judge agreed that Appellant could testify to whatever he thought, the judge refused to permit the testimony "to be corroborated by somebody they did some testing that says he is not the sharpest person." R. 339, lines 7 – 14.

Trial counsel argued for admissibility of the expert testimony:

> If this witness has tested him and those tests yielded a result that [Appellant] is, in fact, the kind of psychological profile that would be gullible, easily duped, more likely to be in a circumstance where someone could take advantage of him and put him in that situation, it is absolutely relevant because the issue in this case, the sole issue in this case, is whether [Appellant] knew that a burglary was going to take place and conspired to get involved in it.

R. 340, lines 12 – 21. Trial counsel further pressed that Appellant had a right to present a defense that he did not know what was going on and that his inability to perceive the situation was affected by his low intelligence and psychological profile. R. 341, lines 12 – 18.

When the proffer continued, Dr. Ridgeway explained that the personality testing revealed Appellant was shy and had low self-esteem. Additionally, Appellant had difficulty making decisions and was submissive. R. 342, lines 10-21. Further, Dr. Ridgeway explained that the combination of his personality traits and intellectual

functioning revealed Appellant to be a person who was a follower and more susceptible to be in conned. R. 343, lines 1 – 7. At this, the judge immediately interrupted and stated there was no evidence of being conned in the case. R. 343, lines 8 – 9. The judge further stated that whether Appellant was a follower or a leader was not relevant to the case. R. 343, lines 9 – 19. When trial counsel attempted a hypothetical, Judge Alford interrupted, stating, "Give him the real facts and scenario." The judge then proceeded to interrogate Dr. Ridgeway with the judge's view of the facts. R. 347, lines 9 – R. 354, line 4.

Judge Alford concluded that the facts really did not matter: "There is nothing about him that makes him any different than any other person within 80 IQ who tests that maybe he is easily led. You can say that about probably the majority of the defendants they get convicted of a crime. It makes him no different than them." He added that there was nothing "about this witness's testimony that will be helpful to the jury in understanding whether he was a participant in this burglary are not or conspiracy." R. 354, lines 5 – 16.

At the conclusion of the proffer, the prosecutor argued the evidence was inadmissible because it would confuse the jury and it was a diminished capacity defense, which is not recognized in South Carolina. R. 365, line 24 – R. 367, lines 7. The judge ruled that the witness would not be permitted to testify that Appellant was more likely to believe someone because of his intellectual functioning and personality profile. The judge opined that such was "not a theory of defense." R. 368, lines 4 – R. 369, line 22. The judge also stated that trial counsel was attempting to "back door" a diminished capacity defense despite trial counsel's insistence that the evidence was not to prove that Appellant lacked the capacity to commit the crime, but was being offered to illustrate

why Appellant would believe Jordon's claims of ownership of the items and familial ties to the owner of the trailer. R. 371, lines 10 – R. 379, line 17.[3] Judge Alford said he was bothered that there would be "two different versions or theories presented to the jury, two different theories" and Appellant's "expert" would "come[] down on the side that the defendant really didn't understand what was going on, and therefore, his version is more believable." R. 379, lines 18-24.

Judge Alford returned to his opinion that Appellant's expert testimony was an attempt to present a diminished capacity defense. He concluded that Appellant was trying to use Dr. Ridgeway's testimony to say that Appellant "was less able to discern the reasonableness of whether the co-defendant had the right to go in the mobile home, or had the ability to go in the mobile home, and had things in there that belonged to him and he could go in and get them." The conclusion to be drawn from that evidence was that Appellant did not have the specific intent that was a required element of each of the three offenses based upon his diminished capacity. The judge also concluded that the expert would bolster the defense's theory of the case, which was an opposing theory of the case as presented by the state. R. 390, line 9 – R. 398, line 2; R. 462, line 18 – R. 465, line 16. Although Judge Alford refused to allow the expert to testify regarding personality testing and Appellant's "propensities and what he might or might not be mislead [*sic*] to do," he would allow the expert to testify regarding Appellant's intellectual functioning. R. 398,

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[3] Judge Alford took umbrage with trial counsel's use of the term "duped" to describe how Appellant was tricked by Jordon. Judge Alford stated that Appellant believing the items belonged to Jordon and that the home was Jordon's uncle's home was "not being duped." He agreed that Appellant "might have been mislead [*sic*]," but he refused to allow trial counsel to describe Appellant as duped. R. 376, line 5-18; R. 381, lines 13-14 ("I told you I don't want to hear duped anymore.").

line 3 – R. 400, line 13; R. 465, line 17 – R. 466, line 17. However, trial counsel did not call Dr. Ridgeway to testify regarding intellectual functioning. R. 467, line 7; R. 539, lines 9-10.

Appellant's testimony

Appellant worked with his father and lived at home with his parents at the time of the alleged burglary. R. 421, lines 16-21. On the night of September 6, 2012, Appellant was visiting with Jordon Canupp at Jordon's home. R. 422, line 24 – R. 423, line 25. Appellant and Jordon drank tequila, smoked marijuana, and discussed going fishing and the next day. R. 427, lines 5 – 20; R. 428, lines 10 – 22. At some point in the evening, Appellant and Jordon went to the trailer next door where Appellant believed Jordon's uncle lived and where Jordon had some property. R. 431, lines 4 – 7.

Appellant believed he and Jordon arrived at the front door only to realize it was locked. R. 433, line 10 – R. 434, line 15. Jordon instructed Appellant to stay at the door while Jordon walked around to gain entry through another door. R. 434, line 24 – R. 435, line 11. Eventually Jordon opened the door from the inside. R. 435, lines 15 – 20. When Appellant entered, Jordon grabbed some fishing poles and a gold necklace. R. 436, lines 8 – 21; R. 437, lines 15 – 21. Jordon then took Appellant home. Appellant never saw Jordon or the items again. R. 438, lines 8 – 17; R. 439, lines 14-23; R. 440, lines 21 – 23; R. 447, lines 11 – 23; R. 448, lines 13 – 18. While at the trailer Appellant never saw "screens being cut, screens being pried open, door jams being broken, [or] cabinets being rummaged through." R. 457, lines 10 – 17.

Appellant first learned that Jordon had burglarized the home when Appellant was arrested for the burglary in June 2013, almost a year later. R. 441, lines 12 – 25.

Appellant gave a statement to police when he was arrested. Appellant affirmed the statement during his testimony before the jury. R. 442, line 1 – R. 446, line 25.

State's closing argument

During closing argument, the prosecutor capitalized on the judge's exclusion of the defendant's expert witness. The prosecutor asked the jury:

> Where is the evidence [trial counsel] promise to you in opening statement about his poor naïve, gullible client, this boy that was taken in by the snake, where was that evidence? No one testified that [appellant] was gullible a naïve and easily manipulated. … [N]o one testified that he was this easily led astray person that was going to be taken in by the snake. You didn't hear that, and that was promised the opening statement.

R. 562, line 16 – R. 563, line 1.

Jury's deliberations

The jury struggled to reach a verdict in the case. After deliberating for approximately two hours, the jury requested additional instruction on burglary in the first degree. R. 622, line 3 – R. 623, line 7; R. 670. After another hour of deliberation, the jury requested additional instructions on criminal conspiracy. R. 626, line 11 – R. 627, line 8; R. 671. The jury informed the judge that the jury had come to an agreement on one charge but was having difficulty deciding the other two charges. Thus, the jury wanted to know what the time frame or process would be if the jury could not arrive at a unanimous decision. The judge responded in writing by telling the jurors to "continue to deliberate and see if [they could] reach a unanimous verdict on the other two charges. There is no time frame for deliberation but if [they] believe[d] no progress [was] being made, [the jury could] let the Court know by note." R. 632, lines 3 – 9; R. 674. Sometime later, the jury sent another note indicating the jury could not arrive at a verdict on two charges. R. 632, lines 9 – 17; R. 672. The judge provided additional instructions

to the jury. R. 632, line 21 – R. 636, lines 7. After almost six hours of deliberation, the jury indicated they had reached a verdict on two charges, but requested additional instruction on burglary in the first degree. R. 636, line 16 – R. 637, lines 6; R. 673. An hour later, the jury indicated they were hung on the charge of first-degree burglary but had reached unanimous verdicts on the other two charges. R. 641, line 20 – 644, line 20; R. 675.

Discussion

The United States Constitution guarantees a criminal defendant the right to present a complete defense through the Due Process Clause of the Fourteenth Amendment and the Sixth Amendment. Crane v. Kentucky, 476 U.S. 683, 690 (1986); State v. Schmidt, 288 S.C. 301, 303, 342 S.E.2d 401, 402 (1986) (holding the Sixth Amendment "constitutionalizes" the right to present a defense in a criminal trial). "[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" Crane, 476 U.S. 683, 690 (quoting California v. Trombetta, 467 U.S. 479, 485 (1984)). South Carolina's Constitution provides similarly: "Any person charged with an offense shall enjoy the right ... to be fully heard in his defense...." S.C. Const. art. I, § 14; see also S.C. Code Ann. § 17-23-60 ("Every person accused shall, at his trial, be allowed ... to produce witnesses and proofs in his favor....").

"Few rights are more fundamental than that of an accused to present witnesses in his own defense." Taylor v. Illinois, 484 U.S. 400, 408 (1988) (citing Chambers v. Mississippi, 410 U.S. 284, 302 (1973)). "'The need to develop all relevant facts in the adversary system is both fundamental and comprehensive. The ends of criminal justice would be defeated if judgments were to be founded on a partial or speculative presentation of the facts.'" Id. at

408-409 (quoting United States v. Nixon, 418 U.S. 683, 709 (1974)). "'The right to offer the testimony of witnesses ... is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies.'" Id. at 409 (quoting Washington v. Texas, 388 U.S. 14, 19 (1967)). Without question or hesitation, the United States Supreme Court declared "'[t]his right is a fundamental element of due process of law.'" Id. Undermining the "ostensible integrity of the investigation" is one method by which a defendant may present a defense. See Kyles v. Whitley, 514 U.S. 419, 448 (1995).

"Evidence is relevant if it tends to establish or to make more or less probable some matter in issue upon which it directly or indirectly bears." Schmidt, 288 S.C. at 303, 342 S.E.2d at 403 (citing Assoc. Mgmt. v. E.D. Sauls Constr.Co., 279 S.C. 219, 305 S.E.2d 236 (1983)); see also Rule 401, SCRE (defining relevant evidence). Further, "[e]vidence which assists a jury at arriving at the truth of an issue is relevant and admissible unless otherwise incompetent." Id. (citing Toole v. Salter, 249 S.C. 354, 154 S.E.2d 434 (1967)); see also Rule 402, SCRE ("All relevant evidence is admissible, except as otherwise provided .... Evidence which is not relevant is not admissible.").

In State v. Page, 406 S.C. 272, 287, 750 S.E.2d 623, 631 (Ct. App. 2013), this Court held the trial judge abused his discretion by finding the proffered testimony offered by the defendant was not relevant. Page sought to introduce a text message and testimony by a witness that the alleged victim had admitted to the witness that she had lied to the police. Id. at 288, 750 S.E.2d at 632. On the other hand, this Court affirmed a trial judge's preclusion of evidence that was irrelevant and unfairly prejudicial. State v. Lyles, 379 S.C. 328, 344, 665 S.E.2d 201, 209 (Ct. App. 2008). Lyles sought to

introduce evidence of prior drug sale solicitations at the apartment where the shooting occurred and the presence of drugs next to the deceased. Lyles claimed the proffered testimony established that drugs were being sold from the deceased's apartment and bolstered the credibility of Lyles by supporting his claim that he went to the apartment merely to purchase drugs. Id. at 336, 665 S.E.2d at 205. This Court held the evidence was properly excluded because there existed no probative link between the proffered testimony and the pending charges. The proffered testimony established that drugs were offered for sale outside of the apartment several months prior to the shooting by an unknown individual. Id. at 340, 665 S.E.2d at 207.

The trial judge erred in refusing to permit Appellant to permit the expert testimony of Dr. Ridgeway because it was relevant to Appellant's defense. Dr. Ridgeway's expert testimony concerning Appellant's personality profile coupled with Appellant's low intellectual functioning explained how an individual who appeared normal could be misled by someone in the way that Appellant was. Certain red flags surrounding the events of the night of September 6, 2012 would have alerted a person of ordinary intelligence and of an assertive personality type that perhaps Jordon did not have permission to enter the trailer next door. For example, entering a completely dark house and not turning on any lights would alert many individuals that something was amiss. However, according to Dr. Ridgeway, Appellant was not a person of ordinary intelligence or of an assertive personality. Rather, Appellant suffered from low intellectual functioning and was easily manipulated by others due to his low intelligence and his submissive personality. In light of the jury's struggles with the verdict and the

prosecutor capitalizing on the judge's erroneous exclusion of the expert evidence during closing argument, the judge's error was not harmless beyond a reasonable doubt.

CONCLUSION

Appellant respectfully requests this Court reverse his convictions for conspiracy and petty larceny and remand for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of April, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from York County

Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON L. GOINS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Brandon L. Goins states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. She has reviewed the record of appellant's trial before Judge Lee S. Alford, which was held on March 31 – April 2, 2014 and the guilty plea held on April 4, 2014, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Brandon L. Goins.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of April, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County
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THE STATE,

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BRANDON L. GOINS,

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DESIGNATION OF MATTER TO BE INCLUDED IN RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:

(1) Entire trial transcript (3 volumes);
(2) Guilty plea transcript (1 volume);
(3) State's Exhibit #1 (statement and advice of rights form);
(4) Court's Exhibit #1 (jury note);
(5) Court's Exhibit #2 (jury note);
(6) Court's Exhibit #3 (jury note);
(7) Court's Exhibit #4 (jury note);
(8) Court's Exhibit #6 (jury note);
Court's Exhibit #7 (jury note);
(9) Court's Exhibit #9 (jury note);
(10) Court's Exhibit #10 (jury note);
(11) True-billed Indictments; and
(12) Sentence sheets.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 2nd, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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Division of Appellate Defense
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(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant 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."

April 2, 2015

Susan B. Hackett

Susan B. Hackett
Appellate Defender

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from York County
Lee S. Alford, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

BRANDON L. GOINS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Brandon L. Goins, #359465 at Turbeville Correctional Institution, this 2nd day of April, 2015.

Susan B. Hackett
Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 2nd day of April, 2015.

_____(L.S.)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.