THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

Frank Addy, Circuit Court Judge

Case Nos. 2012-GS-30-1430
2012-GS-30-1431

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREGORY FIELDER,

Appellant.

INITIAL BRIEF OF APPELLANT

Darren S. Haley
Willie J. Peters
The Haley Law Firm, LLC
1007 Pendleton Street
Greenville, SC 29601
(864) 235-6638 (ph)
(864) 370-1201
Attorneys for Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

SOUTH CAROLINA RULES OF EVIDENCE

OTHER AUTHORITIES

STATEMENT OF THE ISSUES ON APPEAL

(1) Did the trial court abuse its discretion in failing to conduct an examination to determine if Appellant was fit to stand trial?

(2) Did the trial court err in admitting impermissible hearsay, and statements for which the probative value is substantially outweighed by the danger of unfair prejudice?

(3) Did the trial court abuse its discretion in refusing to sequester Raymond Johnson?

(4) Did the trial court abuse its discretion in refusing to sequester James Bryan?

(5) Did the trial court err in unreasonably restricting Appellant's ability to testify?

(6) Did the trial court abuse its discretion by improperly limiting the scope of Appellant's cross-examination?

(7) Did the trial court err in permitting Bryan to testify regarding matters to which he lacked personal knowledge?

STATEMENT OF THE CASE

This is an appeal from Laurens County General Sessions cases 2012-GS-30-1430, and 2012-GS-30-1430, wherein Gregory Fielder (hereinafter, "Appellant") was charged with Exploitation of a Vulnerable Adult, and Breach of Trust (Greater than $10,000.00), respectively. The victim in this matter is Virginia Montgomery (hereinafter, "Montgomery").

On February 1, 2011, Montgomery signed a durable power of attorney (hereinafter, "Power of Attorney"), naming Appellant as her attorney-in-fact. State's Exhibit 5. The Power of Attorney was recorded with the Laurens County Register of Deeds on February 2, 2011. Id. The Power of Attorney permits the attorney-in-fact to make conveyances to himself. Id.

Subsequent to the execution of the Power of Attorney, certain monies and property of Montgomery were transferred to Appellant. Montgomery died on or about December 20, 2011.

Raymond Johnson (hereinafter, "Johnson"), Montgomery's nephew, was appointed as the personal representative for Montgomery's estate. Johnson hired Attorney James Bryan (hereinafter, "Bryan") for representation in the probate of Montgomery's estate, and also for a civil action against Appellant regarding the monies and property that were transferred to Appellant.

In May of 2012, Bryan filed a police report against Appellant with Officer Leann Riggot (hereinafter, "Riggot"). Transcript p. 130, lines 11-14. Riggot arrested Appellant on charges of Exploitation of a Vulnerable Adult, and Breach of Trust (Greater than $10,000.00). Transcript p. 134, lines 23-25; Transcript p. 15, line 1.

A trial was held for this matter from November 2, 2015 through November 5, 2015. The Honorable Eugene C. Griffith, Jr. presided over the case during pre-trial matters. Due to a conflict, Judge Frank Addy subsequently took over as presiding judge for the jury trial. At the conclusion of the trial, the jury returned a verdict finding Appellant guilty on both charges. On November 13, 2016, Appellant, through counsel, served a Notice of Appeal on all parties.

ARGUMENT

I. THE TRIAL COURT ABUSED ITS DISCRETION BY NOT ORDERING AN EXAMINATION TO DETERMINE IF APPELLANT WAS FIT TO STAND TRIAL.

The trial court's decision not to order an examination to determine if Appellant was fit to stand trial was an abuse of discretion. "Due process of law prohibits the conviction of a person who is mentally incompetent." Jeter v. State, 308 S.C. 230, 232, 417 S.E.2d 594, 595 (1992); State v. Singleton, 322 S.C. 480, 482, 472 S.E.2d 640, 641 (Ct.App. 1996). "Whenever a judge ... has reason to believe that a person on trial before him, charged with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of

mental capacity, the judge shall: (1) Order examination of such person by two examiners designated by the Department of Mental Health or the Mental Retardation Department or both..." State v. Burgess, 356 S.C. 572, 590 S.E.2d 42 (Ct.App.2003). This court has identified three factors to be considered in determining whether further inquiry into a defendants' fitness to stand trial was warranted. Id. at 575. These factors are: (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation." In Alkebulanyahh v. Byars, the United States District Court of South Carolina provided further insight into the factors that are to be considered when determining whether investigation into a defendant's competence is necessary:

> The issue over the Petitioner's competency claim "concerns the inferences that were to be drawn from the undisputed evidence and whether, in light of what was then known, the failure to make further inquiry into petitioner's competence to stand trial, denied him a fair trial." Drope v. Missouri, 420 U.S. 162, 174-75 (1975). To prevail on this type of procedural competency claim, Petitioner "must establish that the state trial court ignored facts raising a 'bona fide doubt' regarding the petitioner's competency to stand trial." Burket v. Angelone, 208 F.3d 172, 192 (4th Cir. 2000) (citing Pate v. Robinson, 383 U.S. 375, 384-86 (1966)). In analyzing this claim, "evidence of a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial are all relevant." Drope, 420 U.S. at 180.

Alkebulanyahh v. Byars, No. 6:13-cv-00918-TLW, at *12 (D.S.C., 2015) (fastcase).

Immediately after the call of the case, Judge Griffith noticed that Appellant appeared to not be alert. Judge Griffith asked Appellant, "[y]ou seem to be kind of drowsy, what is going on?" Transcript p. 8, lines 14-15. Appellant informed Judge Griffith that Appellant was under medical care. See Transcript p. 9, lines 12-14. Due to a conflict, Judge Griffith was not able to preside over the entire trial, and Judge Addy took over after pre-trial motions. Throughout the

initial conversation between Judge Griffith and Appellant, Appellant frequently indicated that he did not understand what was taking place. See Transcript p. 10, lines 17-21; Transcript p. 12, line 14; Transcript p. 19, lines 19-20. Judge Griffith informed Appellant that he believed Appellant was "fanning" his condition, and Judge Addy would evaluate Appellant. Transcript p. 14, lines 17-18.

After Judge Addy began presiding over the case, Appellant provided Judge Addy a physician's note from Fountain Inn Family Practice, indicating that Appellant was to be evaluated and referring Appellant to a neurosurgeon for radiating back pain from injuries that he sustained after he fell from his porch. Transcript p. 29, lines 21-25. Appellant also provided Judge Addy with a prescription bottle, dated October 19, 2015, for Alprazolam, for Appellant's anxiety. Transcript p. 29, line 25; Transcript p. 30, lines 1-4.

Appellant's indications that he did not comprehend what was taking place are evidence of irrational behavior. Furthermore, when Judge Griffith first observed Appellant on the first day of trial he stated that Appellant seemed "drowsy." Judge Griffith made this observation before Appellant had the opportunity to indicate that was feeling the effects of any medication. This indicates that Appellant's demeanor was abnormal. While there was no prior medical opinion regarding ability to stand trial, Appellant did provide a doctor's note indicating that Appellant was to be seen for back injuries. Appellant also provided the trial court with a prescription for Alprazolam. Common side effects for Alprazolam may include: drowsiness, feeling tired, slurred speech, lack of balance or coordination, memory problems, and feeling anxious early in the morning. http://www.drugs.com/alprazolam.html. Appellant's drowsiness and memory problems displayed at trial indicate that he may have been suffering from side effects of the medication. Therefore, the trial court had reason to believe that Appellant was not fit to stand

trial, and, under the *Burgess* test, the trial court should have ordered an examination to determine whether or not Appellant possessed the necessary capacity to stand trial. Judge Addy did not ask Appellant if he had been taking his medication as prescribed. Judge Addy did not ask Appellant if he had taken his medication earlier this morning. Also, Judge Addy did not ask whether or not Appellant was under the effects of his medication. In light of what was known at trial, the trial court's refusal to delve into Appellant's mental competency deprived Appellant of a fair trial. On November 2, 2015, during a pre-trial conference, the counsel for the State of South Carolina placed on the record a plea offer, whereby "[t]he State would allow Mr. Fielder to plead guilty of one count of breach of trust over $10,000.00. The State would in return dismiss the charge of exploitation of a vulnerable adult. The State would recommend probation and restitution to be determined by the Court." Transcript p. 33, lines 1-13. Appellant did not accept the offer, and the case proceeded to trial. If Appellant was not fit to stand trial, then it is likely that Appellant was not fit to make an informed decision regarding the State's plea offer. By refusing to order a mental capacity evaluation, Appellant was prejudiced by being deprived of one of the most fundamental rights guaranteed by the Constitution. The trial court's refusal to order an examination to determine if Appellant was fit to stand trial is reversible error.

II. THE TRIAL COURT ERRED IN ADMITTING IMPERMISSIBLE HEARSAY, AND STATEMENTS FOR WHICH THE PROBATIVE VALUE IS SUBSTANTIALLY OUTWEIGHED BY THE DANGER OF UNFAIR PREJUDICE.

The trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence. "Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801, SCRE. Among other protections, the Sixth Amendment assures: "[i]n all criminal prosecutions, the accused shall enjoy the right ... to be

confronted with the witnesses against him. This procedural protection applies in both federal and state prosecutions by virtue of the Fourteenth Amendment." State v. Brockmeyer, 406 S.C. 324, 751 S.E.2d 645 (S.C., 2013). "The right of confrontation is essential to a fair trial in that it promotes reliability in criminal trials and insures that convictions will not result from testimony of individuals who cannot be challenged at trial." California v. Green, 399 U.S. 149, 90 S.Ct. 1930, 26 L.Ed.2d 489 (1970). The primary interest secured by the Confrontation Clause is the right to cross-examination. State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001); see also State v. Graham, 314 S.C. 383, 444 S.E.2d 525 (1994) (observing that specifically included in defendant's Sixth Amendment right to confront a witness is the right to meaningfully cross-examine an adverse witness). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Rule 403, SCRE. "Unfair prejudice means an undue tendency to suggest [a] decision on an improper basis." State v. Gilchrist, 329 S.C. 621, 627, 496 S.E.2d 424, 427 (Ct.App.1998).

Johnson is a nephew of the deceased victim, and he was one of the State's witnesses at the jury trial. Johnson made several hearsay statements regarding the victim's alleged wishes for her estate. When Appellant asked Johnson on cross examination whether or not Montgomery gave Johnson her house, Johnson replied "[s]he was going to." Transcript p. 274, line 6. When Appellant asked how was she going to do that "[b]y her word she gave them to me. She gave them to me verbally." Transcript p. 274, lines 8-9. Johnson later testified regarding the victim's alleged wishes, "[s]he gave me all of her possessions verbally." Transcript p. 274, line 11. Johnson further testified, "[s]he said...Raymond, when I die, you can have everything, the car,

the house, the money, everything. That's what she said." Transcript p. 274, lines 13-15. These statements are hearsay, as they are offered in evidence to prove the truth of the matter asserted. They were offered to prove that Montgomery wanted Johnson to receive her entire estate. Not only are these statements impermissible hearsay, but they also violation Rule 403 of the South Carolina Rules of Evidence, as their probative value is substantially outweighed by the danger of unfair prejudice. Appellant had no opportunity to cross-examine Montgomery, and statements such as these run afoul the interests of justice, because there is a strong likelihood that these statements unfairly influenced the jury.

The trial judge also allowed impermissible hearsay during the State's direct examination of Riggot. When asked by the State's counsel if she spoke with the attorney who prepared the Power of Attorney, Riggot replied, "...I was advised that they did do the power of attorney and that Mr. Fielder had contacted them about doing the power of attorney. I was also advised that when they met that the victim did not want her house deeded to the subject." Transcript p. 135, lines 20-23. Again, this is impermissible hearsay, because the statements were offered to prove the truth of the matter asserted. These statements were exceedingly prejudicial, due to the potential impact that it had on the jury. Any probative value is greatly outweighed by the prejudicial effect, because Appellant had no opportunity to cross-examine the declarant. Furthermore, Riggot's statements make the actual identity of the declarant unclear. This could have easily led the jury to speculate regarding the source of the statements. Rigott would further testify that she believed transfer of Montgomery's house to Appellant was against Montgomery's interest, and that Montgomery explained to people that she did not want the conveyance to happen. See Transcript p. 169, lines 16-24. Lastly, during Appellant's recross-examination of Riggot, Riggot testified that the paralegal for the attorney who prepared the Power of Attorney

told her that Montgomery did not want the interest her house to be conveyed to Appellant. Transcript p. 170, lines 13-25; Transcript p. 171, lines 1-3 and 18-22. Similar to Riggot's previous statements, these statements are impermissible hearsay, because the statements were offered to prove the truth of the matter asserted, and the probative value is outweighed by the prejudicial effect. As a pro se defendant, Appellant is not well-versed in the rules of evidence. Appellant did not object to these statements. However, in the interests of justice, the trial court should not have allowed these impermissible statements. Appellant was prejudiced by these statements, due the extremely high probability that said statements had a tremendous influence on the jury. Therefore, the trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence.

III. THE TRIAL COURT ABUSED ITS DISCRETION BY REFUSING TO SEQUESTER JAMES BRYAN.

The trial court abused its discretion by refusing to sequester James Bryan. At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion. Rule 615, SCRE. "The purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial..." State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (S.C. App., 2010). "The trial court's ruling on a motion to sequester a witness will not be disturbed on appeal absent an abuse of discretion and prejudice to an appellant." State v. Carmack, 388 S.C. 190, 694 S.E.2d 224 (S.C. App., 2010). Over Appellant's objection, the trial court decided not to sequester James Bryan (hereinafter, "Bryan"). Transcript p. 124, lines 4-5. Bryan was the attorney for Johnson, the personal representative of Montgomery's estate. Unlike in Carmack, the trial court in this matter abused its discretion by refusing to sequester Bryan, and Appellant was improperly prejudiced as a result. Since Bryan was never sequestered, he was

privy to testimony from all previous witnesses, including testimony relating to the Montgomery's mental competency. Bryan used the testimony from previous witness to form his own opinion of the victim's competency. Furthermore, Bryan improperly gave testimony that was gathered from testimony from previous witnesses. When questioned regarding Montgomery's competency Bryan testified, "[a]ccording to the hospice lady she was confused in February of 2011 when they started it." Transcript p. 419, lines 16-17. The "hospice lady" that Bryan had referred to is Cindy McCarty (hereinafter, "McCarty"), a nurse who testified prior to Bryan. During her testimony, McCarty testified that Montgomery was confused at times. Transcript p. 177, lines 7-8. When Appellant questioned Bryan regarding whether he was judging the victim's competency, Bryan stated: "[y]es, based on testimony given in this case and people that I have talked to, not on my independent knowledge." Transcript p. 418, lines 9-10. Furthermore, Bryan testified, "I have no expertise myself to make a determination, and I explained to you it was from discussion hearing the hospice person, hearing Dr. Brownlee talk, I have discussed this with Dr. Brownlee prior to this hearing too." Transcript p. 420, lines 8-12. See Transcript. P. 449, lines 9-23. Bryan's testimony regarding the victim's mental competency was prejudicial to Appellant, as he based his entire understanding of the victim's mental competency on the testimony of and conversations with other witnesses. Bryan took advantage of his opportunity to draw from other witnesses' testimony to bolster his own. As Bryan clearly indicated, he was in no position to give expert opinions regarding the victim's mental competency. However, that did not stop Bryan from bolstering his own testimony with testimony from previous witnesses. Therefore, the trial court abused its discretion by refusing to sequester Bryan.

IV. THE TRIAL COURT ABUSED ITS DISCRETION IN REFUSING TO SEQUESTER RAYMOND JOHNSON.

The trial court abused its discretion by refusing to sequester Raymond Johnson. "At the request of a party the court may order witnesses excluded so that they cannot hear the testimony of other witnesses, and it may make the order of its own motion." Rule 615, SCRE. Witness sequestration is "designed to discourage and expose fabrication, inaccuracy, and collusion." Opus 3 Ltd. v. Heritage Park, Inc., 91 F.3d 625, 628 (4th Cir. 1996). "The purpose of the exclusion rule is... to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial...."United States v. Leggett, 326 F.2d 613, 613 (4th Cir. 1964).

Johnson was privy to testimony from several witnesses that testified about, among other things, the bank records, the victim's mental competency, and the police investigation against Appellant. Appellant was prejudiced by Johnson not being sequestered, because hearing the testimony of other witnesses afforded Johnson an opportunity for comparison and influence. In the interests of justice, the trial court should have sequestered Johnson. In failing to sequester Johnson, the trial court abused its discretion.

V. THE TRIAL COURT ERRED IN UNREASONABLY RESTRICTING APPELLANT'S RIGHT TO TESTIFY ON HIS BEHALF.

The trial court erred in unreasonably restricting Appellant's right to testify on his own behalf. The right of a criminally accused to testify or not to testify is fundamental. Rock v. Arkansas, 483 U.S. 44, 52 (1987) ("[F]undamental to a personal defense . . . is an accused's right to present his own version of the events *in his own words.*" (emphasis added)). The right of an accused to testify at a criminal trial is rooted in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. Id. at 49-53. Restrictions of a

defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve. Id. at 55-56. "In applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify." Id. at 56. Here, the Appellant indicated to the trial court that he wanted to testify on his behalf, but that he needed some time to organize his documents. Transcript p. 630, lines 11-15. The trial court gave Appellant only five minutes to prepare himself. Transcript p. 630, lines 20-22. Subsequently, the jury excused for a brief break. Upon the return, Judge Addy confirmed with Appellant that he wanted to testify. Appellant was willing to testify, but was still getting his documentation in order. Transcript p. 632, line 3. Judge Addy then informed Appellant that he only had five more seconds to get prepared. Transcript p. 632, lines 17-20. Thereafter, Appellant asked to speak with Judge Addy, and a bench conference was held. Transcript p. 632, lines 21-25; Transcript p. 633, line 1. After the bench conference, Judge Addy informed the jury that there would be no further testimony in the case Transcript p. 633, line 2-7. By making this decision, the trial judge erroneously gave greater weight to expedience in the brief delay that would result than he gave defendant's constitutional right to testify. The trial court's unreasonable restriction on Appellant's right to testify resulted in the deprivation of the fundamental rights guaranteed by the Fifth, Sixth, and Fourteen Amendments. The imposed restriction was grossly disproportionate to the ends of justice, as it prevented Appellant from presenting the jury with his side of the story. The right of a criminal defendant to testify on his own behalf should be given greater weight than the judge's desire to move the trial along. The Appellant did not waive his right to testify; it was stripped from him by the trial court's unreasonable restriction. This prejudiced Appellant by depriving him of perhaps the most fundamental right of a defendant in a criminal trial. Thus, the trial court

committed reversible error by unreasonably restricting Appellant's right to testify on his own behalf.

VI. THE TRIAL COURT ABUSED ITS DISCRETION BY IMPROPERLY LIMITING APPELLANT'S CROSS-EXAMINATION OF BRYAN.

The trial court abused its discretion by improperly limiting Appellant's cross-examination of Bryan. "The primary interest secured by the Confrontation Clause of the Sixth Amendment is the right to cross-examination." State v. Shuler, 344 S.C. 604, 545 S.E.2d 805 (2001). "On cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness." State v. Mizzell, 349 S.C. 326, 563 S.E.2d 315 (2002). "The appropriate question under a Confrontation Clause analysis is whether there has been any interference with the defendant's opportunity for effective cross-examination at trial." Kentucky v. Stincer, 482 U.S. 730, 107 S.Ct. 2658, 96 L.Ed.2d 631 (1987). As previously stated, Appellant was pro se at trial. While Appellant was cross-examining Bryan, the trial judge informed Appellant that the next time opposing counsel's asked-and-answered objection is sustained Appellant's cross-examination would be over. Transcript p. 499, lines 16-25; Transcript p. 500, line 1. Shortly thereafter, counsel for the State objected to one of Appellant's questions. Consequently, Appellant's cross-examination of Bryan was terminated before he could finish. Transcript p. 500, lines 8-12. Bryan is an attorney who represents Johnson in a civil suit against Appellant. Before Appellant's cross-examination was terminated, Appellant was attempting to show bias on the part of Bryan. See Transcript p. 493, lines 11-13. The termination of Appellant cross-examination prejudiced Appellant by preventing Appellant from conducting a comprehensive line of questioning. Furthermore, Bryan was the State's last witness, and Appellant would have no further opportunities to exercise his fundamental right to cross-examine witnesses against

him. Therefore, the trial court abused its discretion by improperly limiting Appellant's cross-examination.

VII. THE TRIAL COURT ERRED BY PERMITTING BRYAN TO TESTIFY REGARDING MATTERS OUTSIDE OF HIS PERSONAL KNOWLEDGE.

The trial court erred by permitting Bryan to testify regarding matters outside of his personal knowledge. "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." Rule 602, SCRE. "If the witness is not testifying as an expert, the witness'[s] testimony in the form of opinions or inferences is limited to those opinions or inferences which (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of the witness'[s] testimony or the determination of a fact in issue, and (c) do not require special knowledge, skill, experience or training." See Rule 702, SCRE; Fowler v. Nationwide Mut. Fire Ins. Co., 410 S.C. 403, 764 S.E.2d 249 (S.C. App., 2014). In Watson v. Ford Motor Co., the South Carolina Supreme Court reviewed the differences between expert testimony and lay testimony:

> Expert testimony differs from lay testimony in that an expert is permitted to state an opinion based on facts not within his firsthand knowledge or may base his opinion on information made available before the hearing so long as it is the type of information that is reasonably relied upon in the field to make opinions. On the other hand, a lay witness may only testify as to matters within his personal knowledge and may not offer opinion testimony which requires special knowledge, skill, experience, or training.

Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (S.C., 2010).

Since Bryan was never qualified as an expert witness regarding mental competency, or the effects of breast cancer on a person's mental competency, Bryan testified as a lay witness. As a lay witness, Bryan was explicitly prohibited from giving testimony regarding any matters of

which he lacked personal knowledge. As previously stated, Bryan used the testimony from previous witnesses to bolster his own testimony. He simply restated for the jury testimony that he gleaned from individuals who examined Montgomery. When testifying regarding Montgomery's competency, Bryan stated, in pertinent part, "I question whether or not she was competent at the time." Transcript p. 416, lines 17-18. When asked whether Bryan had any independent knowledge about Montgomery's competency, Bryan replied "I have talked to some people concerning a competency and I was here when the testimony of the hospice people and Dr. Brownlee was given about her competency in February of 2011." Transcript p. 416, lines 22-25. The "Dr. Brownlee" that Bryan had referred to is Dr. Joanne Brownlee (hereinafter, "Brownlee"). Brownlee testified that Montgomery had a very low hemoglobin level, and low hemoglobin can affect cognitive and mental ability. See Transcript p. 285, lines 2, 6-15; See Transcript p. 286, lines1-4. Bryan would later testify "[s]he had very serious low hemoglobin which can cause confusion and had hemoglobin problems at the phrase, you are asking what Dr. Brownlee said. One thing Dr. Brownlee said was she was surprised she could even walk into the officer, her hemoglobin was so low." Transcript p. 421, lines 2-4. Lastly, Bryan testified "[a]nd the competency would be the mind, the part they talked about the...low hemoglobin making a person confused and everything, that...would be the mental capacity there." Transcript p. 486, lines 14-17. No evidence was introduced to support a finding that Bryan had personal knowledge of Montgomery's mental competency. To the contrary, Bryan's own testimony confirmed that his testimony regarding Montgomery's mental competency was not derived from his own personal knowledge. See Transcript p. 418, lines 9-11. In the interests of justice, the trial court should have refrained Bryan from restating expert testimony, and testifying regarding matters of which Bryan had no personal knowledge. Appellant was prejudiced by Bryan's

testimony, because it amounted to improper expert testimony from an unqualified witness. Furthermore, there is a high probability that hearing such testimony from a lay witness caused confusion amongst the jury. Therefore, the trial judge erred in not refraining Bryan from testifying regarding matters for which he lacked personal knowledge.

CONCLUSION

For the aforementioned reasons, Appellant requests that this matter be reversed and remanded to the lower court.

Respectfully submitted,

Darren S. Haley (S.C. Bar No.: 14564)
Willie J. Peters (S.C. Bar No.: 100974)
The Haley Law Firm, LLC
1007 Pendleton Street
Greenville, SC 29601
(864) 235-6634 (Ph) (864) 370-1201 (Fax)
darren@darrenhaley.com
Attorneys for Appellant

Greenville, South Carolina
May 9, 2016