

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge**

**Case No. 07-GS-04-1218, 07-GS-04-1219
Appellate Case No. 2011-198167**

STATE OF SOUTH CAROLINA,

Respondent,

v.

JAMES D. CHAPMAN,

Appellant

INITIAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUES ON APPEAL

1.

Did the trial judge err in qualifying a paramedic as an expert in head injuries and permitting the paramedic to testify as to his opinion that Appellant was not suffering from a head injury in light of the paramedic's lack of training and experience concerning the effects of head injuries?

RESPONDENT'S STATEMENT OF THE CASE

The Appellant, James Chapman, was indicted by the Greenville County Court of General Sessions for murder and possession of a firearm (2011- GS -23-7907). ROA __. The charges arose from the 2010 murder of Margaret Parker, the Appellant's mother.¹

On August 22, 2011, the matter was called to trial before the Honorable G. Edward Welmaker, presiding judge. The prosecution was handled by Thirteenth Judicial Circuit Assistant Solicitor L. Mark Moyer. Chapman was represented by Brian P. Johnson of the Greenville County Public Defenders Office. On August 23, 2011, the jury found Chapman guilty of murder. Tr. p. 437, l. 8-16. Chapman was sentenced to life in prison. Tr. p. 440.

A notice of appeal was timely served on August 23, 2011. Appellant's brief followed on July 25, 2012.

The State's Version of the Facts

On April 23, 2010, Chapman brutally beat Parker to death inside of her apartment. Tr. p. 146, lines 14-16. Parker, a sixty-five year old woman with a heart condition, was allowing Chapman, forty-one and unemployed at the time of the incident, to live with her while he looked for a job. Tr. p. 241, lines 19 - 23; p. 242, lines 2 - 19; p. 347, lines 3 - 7. According to Chapman, he had been living with Parker off and on for approximately nine months prior to the incident. Tr. p. 365, lines 17 - 20. The jury convicted Chapman after

¹ Respondent was assisted in the preparation and draft of the brief by Ronald A. Cooper, a rising third year law student at the University of Arizona James E. Rogers College of Law, Tucson, Arizona.

hearing the following evidence.

Around 10 p.m. on April 23, 2010, police officers from the Greenville Police Department responded to an emergency call for Parker's apartment at 414 N. Main Street, Apartment O in Greenville. Tr. p. 153, lines 4 - 5; p. 157, lines 9 - 11. Charlene Chapman, the Appellant's sister-in-law, made the 9-1-1 call. Tr. p. 152, lines 15-16. Officer Grubbs, the first officer to arrive at the apartment complex, testified that he waited for another officer to arrive and then went up to the apartment and knocked on the door. Chapman opened the door and immediately stated to Grubbs that he killed his mother. Tr. p. 158, line 3 - p. 159, line 18. Chapman had blood on his face, was sweating, and appeared to be in a state of excitement. Tr. p. 159, lines 21 - 25. Grubbs handcuffed Chapman and placed him on the floor in the hall outside of the apartment. Tr. p. 160, lines 17 - 19. Grubbs and other officers then proceeded to check the apartment for other people. Grubbs noticed that the apartment was in "total disarray, like there had been some type of big altercation inside." Tr. p. 162, lines 21 - 23. The officers discovered Parker lying face down on the floor, wearing a bra and pants, with a broken ceramic pieces near her bloody head. Parker did not have a pulse. Tr. p. 162, line 24 - p. 163, line 6.

Grubbs notified EMS and stepped back out in the hallway where Chapman was located. Tr. p. 164, line 7 - p. 165, line 1. Although the officers never attempted to solicit any information from Chapman at that point, he proceeded to spontaneously and voluntarily talk about killing Parker. Tr. p. 165, lines 13 - 25; p. 176, line 24 - p. 177, line 8. Grubbs and Officer Christopher Powell recorded what Chapman was saying in their notepads. Grubbs testified:

A. [Chapman] said I bashed her fucking head in, I fucking hit her in the face 25 to 30 times; boy, she's beat up, ain't she, and he continued, no I'm not sorry, I just looked [sic] my fucking momma, I beat that bitch to death, I beat her fucking face in, I beat that mother-fucking bitch's teeth in.

Tr. p. 168, lines 1 - 6. At this point, Grubbs asked Powell to step into the hallway so he could hear Chapman's voluntary utterances. According to Grubbs, Chapman continued talking about the killing.

A. [Chapman] said I killed my momma, I'm guilty, all that I care about is my dog in there, I wanted to kill her for years, that's the biggest shit you've ever seen, you be lucky I didn't hang her upside down and crucify her ass, I done it and I don't fucking regret it ... I wanted to kill her for 20 fucking years, I done it, I'm going to the man - I'm going to be the man in the family, I done killed the motherfucker, how much farther can I go, beat her goddamn brains-out.

Tr. p. 168; lines 11 - 19. Powell also testified as to what he heard Chapman say while he was handcuffed in the apartment complex hallway.

Q. Would you read in to the record the comments that you heard the defendant making that night?

A. From a list of comments he made, he said she's dead as a doornail; she's dead, Goddamn, she's dead. After being asked by EMS for the victim's information he said I don't know she just needed to be killed; I looked [sic] her; I straggled her to death; there's a bunch of blood in there, ain't there boy, whee, whee; deader than a damn doornail. And I have a note beside this that states [Chapman] laughed and smiled after making that statement.

Tr. p. 178, lines 8 - 18. According to the responding officers, Chapman never complained of any of his injuries, he never appeared to be in any physical distress, and he did not

appear to be intoxicated. Tr. p. 160, lines 8 - 10; p. 168, line 22 - p. 169, line 2; p. 175, line 23 - p. 176, line 10.

Greenville County EMS paramedic, Brian Simmons, arrived at the apartment shortly after law enforcement personnel. Tr. p. 183, lines 1 - 2. Simmons first entered the apartment to check on Parker and he observed that there were a lot of broken objects and blood on the walls and the floor. Simmons noted that Parker was not breathing, there was no electrical activity in her heart, and she had no pulse. Parker was signal 9 which meant "DOA, or dead on arrival." Tr. p. 184, line 10 - p. 185, line 8. Simmons next went back into the hallway to work on his report and he overheard Chapman's verbally aggressive comments about killing his mother. Tr. p. 185, line 14 - p. 187, line 4. An officer asked Simmons to check on Chapman's injuries. Simmons testified that Chapman's wounds appeared minor and non-life threatening. Tr. p. 187, lines 10 - 21. Chapman never asked for any medical attention and he did not complain of his injuries. Tr. p. 188, lines 11 - 17. Lastly, Simmons testified that Chapman's injuries and behavior were inconsistent with someone who had suffered trauma induced from severe head injuries. Tr. p. 189, lines 5 - 11.

The officers decided to transport Chapman to the law enforcement center around 10:50 p.m. Tr. p. 227, line 24 - p. 228, line 3. Officer Allen Johnson arranged for Officer Zoila Lopez to transport Chapman. While escorting Chapman from the apartment complex, Johnson testified that Chapman stated, "I killed that fucking bitch, I killed that fucking whore." Tr. p. 229, lines 13 - 15. Chapman laughed after making these comments and appeared to be acting like the death of his mother was not a big deal. Tr. p. 229, lines

18 - 21. Chapman did not complain of his injuries and Johnson testified that he did not seem intoxicated. Tr. p. 229, line 25 - p. 230, line 17. Chapman continued with his verbal diatribe about killing Parker while at the law enforcement center. Tr. p. 236, lines 17 - 22. Lopez testified that Chapman did not appear to be in physical distress or intoxicated. Tr. p. 237, lines 1 - 7.

Sergeant Kelly Riggs placed Chapman in the interrogation room in preparation for Detective Audrey Lindler's questioning. Tr. p. 251, lines 4 - 7. Before the interrogation, Chapman's injuries were photographed. Chapman had an injury to the top of his head, a slight mark on his right ear, scratch marks on his right cheek, elbow, and left arm, and a cut on one of his fingers. Tr. p. 251, line 25 - p. 252, line 4; p. 254, lines 3 - 25. When Detective Lindler arrived, she advised Chapman of his Miranda rights and Chapman voluntarily agreed to give a statement about the incident. Tr. p. 255, line 2 - p. 259, line 25. Riggs testified that Chapman understood his rights, signed his name to the Miranda form, cooperated with law enforcement, and did not appear to have any mental deficiencies or to be under the influence of alcohol or drugs. Tr. p. 257, line 21 - p. 259, line 13.

Detective Lindler discovered the following information during her interrogation of Chapman on April 23, 2010. Chapman stated he went to Sharkey's Pub in Greenville prior to killing Parker where he ate and had some drinks. Chapman told Lindler he had two beers, but a receipt from that night shows that Chapman ordered five tequila shots and three Budweiser beers. Tr. p. 283, line 19 - p. 284, line 8. It is not clear from the evidence whether Chapman drank the alcohol himself or shared it with other bar patrons. Tr. p.

284, line 16 - p. 285, line 3. Lindler testified that Chapman did not seem intoxicated and that some people are able to absorb alcohol at much greater levels than other people. Tr. p. 285, lines 4 - 22. Lindler proceeded to probe Chapman for a motive and read into evidence the statement he made to her in the interrogation room.

Detective Lindler: Mr. Chapman, what happened tonight?

Chapman: I killed the bitch. I strangled her and beat her to death.

Detective Lindler: What happened for you to beat your mother to death?

Chapman: I don't know. I just fucking killed her. I beat her ass. It's been a long time coming.

Tr. p. 289, line 19 - p. 289, line 1. Chapman continued, occasionally laughing during his telling of the events.

Chapman: [Parker] might've smarted off to me but I killed the bitch. It was cold blooded murder that had been coming for years. It was well deserved. I strangled her and beat her ass.

Tr. p. 289, lines 11 - 13. Upon further questioning, Chapman stated that Parker fought back but he did not know what Parker hit him in the head with. Tr. p. 290, lines 3 - 7.

In his April 23, 2010 statement, Chapman also declared that after he killed Parker, he called his brother, Kelly Chapman, and admitted to him what he had done. Tr. p. 291, lines 13 - 16. It was Kelly's wife, Charlene who called 9-1-1. Chapman stated that after the call, he washed his face and changed his bloody shorts and shirt. Tr. p. 291, line 25 - p. 292, line 3. The extremely bloodied shirt [State Exhibit 17] was later recovered from

the apartment. Tr. p. 293, lines 5 - 23.² Lindler concluded her interview with Chapman around 1 a.m. the morning of April 24, 2010. Tr. p. 295, lines 5 - 11.

Sergeant Darwin Shaw of the forensic division spent two and a half hours in Parker's apartment collecting evidence and photographing the crime scene. Tr. p. 195, line 19 - p. 196, line 21. Inside the apartment Shaw found a bloodied towel and a clump of hair near an overturned recliner. Near Parker's body lay several broken pieces of ceramic, broken photographs, pictures, frames, and blood droplets. Tr. p. 202, lines 4 - 25. There was blood smeared across the carpet onto the kitchen's linoleum floor and blood on the walls and bookcase in the living room. Tr. p. 204, line 1 - p. 205, line 7. There was a track of blood leading from the living room to the bathroom. Tr. p. 210, lines 17 - 20. Shaw photographed blood spatter on many different wall locations and he discovered a pillow on the back of the recliner that was saturated in blood. Tr. p. 205, line 9 - p. 211, line 16. Blood was also found on a skillet, candle holder, Chapman's shirt, sandals, tennis shoes, and Chapman's shorts, which were draped across the bathroom tub. Tr. p. 213, line 13 - p. 216, line 5.

Dr. Michael Ward, a forensic pathologist, performed the autopsy on Parker. Tr. p. 312, line 13; p. 315, lines 2 - 4. Parker suffered multiple blunt force injuries to her head, neck, chest, and arms. Tr. p. 316, lines 13 - 16. Specifically, she had two black eyes, a laceration on her right ear, confluent bruising involving the entire left side of her face from the forehead to the neck, significant tearing of her left ear such that it was detached from

² The police arrived only minutes after Chapman finished cleaning up. Tr. p. 360, lines 14-20.

the skin, and significant bruising and tears on her hairline and the back of her scalp. Tr. p. 318, line 15 - p. 320, line 25. The injury to the back of Parker's scalp was consistent with blows from a hard object rather than a fist. Tr. p. 321, lines 15 - 22. The upper portion of the neck contains the hyoid bone, and Parker's hyoid bone had hemorrhage around it and it was also fractured. This injury, along with the bruising within the skin and hemorrhages within the white portion of her left eye, were consistent with manual strangulation. Tr. p. 325, line 22 - p. 326, line 6.

Dr. Ward was not able to conclude the maximum number of blows Parker sustained. However, he was able to determine that Parker had received a minimum of twenty-two separate blows to her body. Tr. p. 326, line 20 - p. 327, line 9. Parker's heart condition, which caused the vessels surrounding her heart to calcify, would have restricted the blood flow to her heart and severely limited her ability to respond to the attack. Tr. p. 327, line 23 - p. 328, line 16. Dr. Ward concluded that Parker died as a result of blunt force trauma of the head with manual strangulation as a contributing factor. Tr. p. 316, lines 6 - 8.

ARGUMENT

The trial judge did not abuse his discretion in qualifying paramedic, Brian Simmons, as an expert in head injuries as a paramedic allowing him to testify as to Appellant's lack of serious head injuries because Rule 702 does not require an expert to have formal, "scientific" expertise in their specific field to testify.

There is no question that James Chapman had a bloody injury to his head. This was established through the admission of photographs and the testimony of witnesses who came into contact with the Appellant and the description of the blood running down his face. The issue concerns whether the trial judge properly allowed Greenville County EMS paramedic Brian Simmons to testify that the conduct he observed of James Chapman, the Appellant, was consistent or inconsistent with a head injury (to the brain). Tr.p. 191-192. Particularly, EMS paramedic Simmons testified that Chapman's conduct "was inconsistent in the fact that the head injuries they typically run into are combative, either one side of the scale or the other. They're either combative or, more or less, comatose or unconscious." Tr.p. 191, l. 22-25. He described Chapman as sitting on the floor - the opposite of combative - while he was talking. EMS Paramedic Simmons described Chapman as not seeming incoherent or slinging around or fighting, although he was pulling on his restraints. "He obviously was alert, talking, knew the events that happened, was discussing them." Tr.p. 92, l. 1-7. ³ As stated below, upon objection, Judge Welmaker

³On cross-examination, the defense questioning clarified that Simmons was asserting that he was acting inconsistent with head injuries "not just because he was not combative, that he was not either combative or unconscious. Just acting as you or I." Tr.p. 192, l. 15-20. Simmons stated that Chapman seemed excited and "verbally aggressive." Simmons stated that based upon his training this was not "combative." He confirmed that Chapman was excited, talking and sweating

allowed Simmons to testify as to his expertise limited to what he has been trained under EMS. Tr.p. 191, l. 15-17.

Respondent submits that the trial judge did not abuse his discretion in admitting the limited testimony by the EMS paramedic concerning the extent and effect of the injury and whether it was consistent or inconsistent with a brain injury based upon his experience as a paramedic. The witness had taken and been certified as a paramedic with 5 years experience including a special class in traumatic brain injuries. In addition, in the 5 years, he had assessed as a regular part of his job patients for brain injury, although he did not encounter brain injury on a daily basis. Further, any error in the limited admission is harmless based upon the entire record.

A. Applicable Law and Standard of Review.

Rule 702 of the South Carolina Rules of Evidence (SCRE) controls. The Rule states “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.” Rule 702, SCRE. The qualification of a witness as an expert is a matter of discretion for the trial court. State v. Henry, 329 S.C. 266, 273, 495 S.E.2d 463, 466 (Ct. App. 1997). Absent a showing of abuse of discretion, a trial court’s determination that a witness was qualified to testify as an expert will not be disturbed on appeal. *Id.* There is no abuse of discretion as long as the witness has acquired, by study or practical experience, such knowledge of the subject matter of his testimony as would

when he spoke with him. Tr.p. 194, l. 1-10.

enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge. *Id.*

It is a recognized principle of law that before a witness can testify as an expert, the witness must first demonstrate "technical expertise, usually through education, experience, or training in the particular field in which the opinion is solicited." Hawkins v. Greenwood Dev. Corp., 328 S.C. 585, 600, 493 S.E.2d 875, 882 (Ct. App. 1997). Prior to the admission of expert testimony, the trial court must (1) determine the evidence to assist the jury in resolving factual questions; (2) determine the witness is qualified in the particular area; and (3) conclude that the testimony is reliable. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). However, Rule 702 "does not contain a set of mandatory qualifications that a witness must meet in order to be qualified as an expert." Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 556, 658 S.E.2d 80, 86 (2008). Rule 702 recognizes that there are a myriad of ways an individual can possess the requisite knowledge or skills in a field that their opinion in a technical, scientific, or specialized area can assist the jury in determining a fact or understanding the evidence. *Id.* Even if the issue is such that it would normally require the expert to possess some scientific knowledge or training, an individual with significant experience may still testify despite not pursuing a special study of the issue. Honea v. Prior, 295 S.C. 526, 531-32, 369 S.E.2d 846, 849 (Ct. App. 1988).

The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion." State v. Saltz, 346 S.C. 114, 121, 551 S.E.2d 240, 244 (2001); see also State v. Dunlap, 346

S.C. 312, 324, 550 S.E.2d 889, 896 (Ct.App.2001) (“The admission of evidence concerning past convictions for impeachment purposes remains within the trial judge's discretion, provided the judge conducts the analysis mandated by the evidence rules and case law.”).

“An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” State v. Jennings, 394 S.C. 473, 477–78, 716 S.E.2d 91, 93 (2011) (citation omitted). To warrant reversal, an error must result in prejudice to the appealing party. State v. Commander, 396 S.C. 254, 721 S.E.2d 413 (2011).

B. HOW THE ISSUE WAS RAISED BELOW

During the trial, the state called Greenville County EMS paramedic Brian Simmons. Simmons had worked in emergency medical service for around five years. He stated that his job was to respond to calls for patient care issues. As his training, he initially declared that he went through basic training of EMT, intermediate level of EMT and paramedic level. Tr.p. 181-182. He described being dispatched to the apartment on April 23, 2010 arriving at 2210. Tr.p. 182-183. He stated he saw Chapman there sitting in the hallway and handcuffed. Tr.p. 183, l. 9. He described being directed to the victim right prone on the floor. Tr.p. 183. She was motionless, apneic (not breathing) with a good deal of blood on her wearing pants, a bra, but no shirt. TR.p. 184. After applying a cardiac monitor and pulse check, he opined that she was dead on arrival. Tr.p. 184-185.

At that point Simmons stated he returned to the hallway and began working on his report in the presence of Chapman. Tr.p. 185. He stated he was within 5 feet of him. He

described Chapman as “very excited, very talkative, verbally aggressive, sometimes.” Tr.p. 185, l. 23-24. Simmons heard Chapman make comments about what had happened and Simmons made notes about it :

He stated I killed my mom, I kicked her in the fucking head about 25 to 30 times; I beat that Goddam bitch to death; I beat her dead , son; I beat her damn face in, son; I beat that motherfucking bitch’s fucking teeth in. And I also have a note in here that he laughed at times when he made these statements and says that he repeated these and similar statements for the duration of his time on the floor.”

Tr.p. 186, l. 22- p. 187, l. 4.

EMS paramedic Simmons testified that he was asked to take a look at Chapman by an officer. He stated that the officer stood Chapman up and Simmons described the “his wounds appeared minor.” Tr.p. 189, l. 17-18. He described them as “they appeared superficial, non-life threatening , nothing that would later his behavior or his well-being, ” although he did not spend a great deal of time looking at the wounds because there was not a lot to assess. Tr.p. 187, l. 20- p. 188, l. 1. When he approached Chapman, he told him to “get the fuck away from me.” Simmons testified that Chapman never asked for medical attention and that he did not apply any medication or treatment. He confirmed that Chapman did not complain of his injuries. Tr.p. 188, l. 1-17.

EMS paramedic Simmons stated that head wounds can bleed a lot because there were capillaries, like the ear, with a lot of small veins. He stated that there was a lot of blood with a minimal injury and “just because there’s a lot of blood from a head wound . . . isn’t necessarily indicative of the seriousness...” Tr.p. 188, l. 23-25. He confirmed that he had seen head injuries that are severe enough to cause trauma. He responded that the

defendant was “very much inconsistent.” Tr.p. 189, l. 7. The following occurred:

Q. Tell us about that?

A. The typical closed head injury or something that’s going on with your brain would be, would be more combative - -

Mr. Johnson : Your Honor, I don’t think he’s testifying as an expert, hasn’t been qualified. . .

THE COURT: Lay a foundation. I sustain the objection.

Tr.p. 189, l. 8-18.

At that point, EMS paramedic Simmons testified that he went to school for EMT basic in California , took his intermediate at Upstate EMS Council and again at Upstate EMS Council for paramedic. He stated that for paramedic it was 1000 hours classroom and clinical time. Tr.p. 189-190. He stated that he took a whole separate certification class on Traumatic Brain Injuries (TBI’s). He stated that the class was a brief class- not a whole semester, but he received a certification card for it. Tr.p. 190. He stated that in his five years as a paramedic, he had every once in a while seen people with head trauma and treated them as a regular part of the job. Tr.p. 190, l.1-18.

The prosecution then moved to have Simmons qualified as an expert in brain injuries. Tr.p. 190, l. 19-21. The defense voir dired Simmons on his experience regarding head injuries and Simmons responded that he encountered them on his job as a regular part of the job but that he did not do it every daily and not enough to establish a pattern. Tr.p. 191, l. 2-9. The defense objected to the qualification, stating that “it does not look like he has the experience. Judge Welmaker stated:” I’ll allow him to testify as to his expertise

limited to that or what he's been trained under EMS. Tr.p. 191, l. 15-17.

At that point, Simmons then testified concerning his experience and the Appellant's conduct:

Q. . . consistent with your training and experience how this defendant's conduct was consistent or inconsistent with someone suffering from a closed head injury?

A. He was inconsistent in the fact that the head injuries that we typically run in to are combative, either one side of the scale or the other. They're either combative or , more or less, comatose or unconscious. He was sitting in the floor , the opposite of combative. I mean, he, just was, more or less, sitting there while he was talking. He wasn't – didn't seem incoherent, slinging around, fighting. He did appear to have - - be pulling on his restraints. He , obviously, was alert, talking, knew the events that had happened, was discussing them.

Tr.p. 191, l. 18- p. 192, l. 7. ⁴

⁴ During the defense closing the injuries to the head were referenced:

But one of the things that can be a legal provocation for a manslaughter charge is the battery. My client testified that he was hit in the head by an object. You saw the injuries. You will see pictures of these injuries. There is no doubt he was injured. Now I know there is some argument as to how injured he was but I don't know. I think somebody with blood running all over his face with a wound on top of his head is injured. I don't know. Scratches on his arms and stuff. . . . He's hurt. He's injured . He's got blood on his head. I mean it just is what it is. He's injured and there's proof of that. You're gonna have the pictures. You have his testimony. I think that totally believable. I think that's something you can take to the bank.

Tr.p. 403, l. 23- 19.

During the state's closing argument, the prosecutor stated:

As for his supposed head wound, you can look at the photographs and you heard what the EMS worker said. It was not that serious. Head wounds bleed very severely. Head wounds bleed a lot. He'd be struck on head, sure. Not enough to affect his ability to understand what was going on ...

Tr.p. 418, l. 17-22, cited in *Initial Brief of Appellant*, p. 8.

C. Discussion

The Appellant maintains that Simmons lacked the required knowledge, skill, experience, training, or education necessary to qualify him to testify as an expert in head injuries. According to Simmons, people suffering from head injuries are typically either combative or unconscious. Tr. p. 191, lines 22 - 25. Simmons testified that Chapman's conduct was inconsistent with someone suffering from a head injury because Chapman was neither combative nor unconscious, but rather calm, talkative, and alert. Tr. p. 192, lines 1 - 7. Based on the following, Appellant's argument fails and, as a result, the trial court committed no error in qualifying Simmons to testify as an expert limited to his EMS training.

"[A]n expert is not limited to any class of persons acting professionally." Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997) (citing Botelho v. Bycura, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct. App. 1984)); see also, McGee v. Bruce Hosp. System, 321 S.C. 340, 468 S.E.2d 633 (1996) (allowing a physician to testify as an expert on the standard of care used by a surgeon when describing the placement of a catheter despite not being a surgeon); Daniels v. Benard, 270 S.C. 51, 240 S.E.2d 518 (1978) (authorizing a chiropractor to testify as a medical expert to the extent of his knowledge and experience in a personal injury action); Honea v. Prior, 295 S.C. 526, 531-32, 369 S.E.2d 846, 849 (Ct. App. 1988) (authorizing a social worker to testify about victim's mental health condition based upon her experience). "Defects in an expert witness' education and experience go to the weight, rather than the admissibility, of the expert's testimony." Gooding, 326 S.C. at 253, 487 S.E.2d at 598.

Here, the solicitor only sought to have Simmons qualified as an expert witness in head (brain) injuries limited to his experience and training as a paramedic, not as an expert in the entire field of brain trauma. *See* Tr. p. 191, lines 18 - 21. Simmons's training and experience qualified him to testify as an expert in this limited capacity. *See id.* (holding that a paramedic did not need to be an anesthesiologist to testify as an expert in the field of intubation). Simmons received his EMT basic from a school in California, and then he went back to school to receive his EMT intermediate and paramedic from Upstate EMS Council. Tr. p. 189, lines 21 - 23. To receive his paramedic, Simmons had to undergo 1,000 hours of classroom and clinical time. Simmons took a separate class on traumatic brain injuries (TBIs) and received a separate certification card on traumatic brain injuries. Tr. p. 189, line 25 - p. 190, line 9. In addition, Simmons had worked as a paramedic for five years and testified that it was a regular part of his job to encounter and treat people with head injuries. Tr. p. 190, lines 10 - 18; p. 191, lines 5 - 6. Although he did not have daily experience with brain injuries, his 5 years of experience revealed that it was a regular part of the job that he faced and had to assess.

In short, Simmons possessed the required knowledge to testify as an expert about head injuries and the appearance of such an injury for the paramedic to determine based upon both his training and experience. Although the witness did not have daily contact with brain trauma, his experience reveals that he regularly required to assess the existence of brain injury. Tr.p. 191. Simmons was actively working as a paramedic with both school and firsthand training and experience on dealing with people with head injuries. Moreover, he received certification on traumatic brain injuries (TBIs). Simmons was

qualified in this limited area because of his significant 5 years experience dealing with head injuries as a regular part of his job. *See Honea*, 295 S.C. at 531-32, 369 S.E.2d at 849.

The Appellant suggests that to be qualified to testify as to the symptoms individuals suffering brain trauma possess, it would require that they encounter it on a daily basis. This is too high of a standard. Simmons assessed it as a regular part of his job for five years -he just did not encounter it on a daily basis. Further, it is undisputed that Simmons took the available class for traumatic brain injuries, although it is not a semester long class. The Appellant does not explain how the claimed brevity of the class disqualified Simmons from the testimony. He ignores that he completed the entire class. The fact that a pattern for encounter brain injury speaks for itself. He could not state that it occurred on a daily basis, but acknowledged that it was a regular part of the job. The trial judge did not abuse his discretion in limited his expertise to what he had been trained for as an EMS.

Rule 702 does not mandate a set of qualifications that are required to be qualified as an expert and it recognizes the that there are a variety of ways in which an individual can garner the knowledge necessary to qualify as an expert witness. *Fields*, 376 S.C. at 556, 658 S.E.2d at 86. Appellant's trial counsel was free to cross-examine Simmons on his experience, but "any defects in the amount or quality of his experience go to the weight of his testimony and not to its admissibility." *Hawkins*, 328 S.C. at 599, 493 S.E.2d at 883. The fact that Appellant believes Simmons has less training and education than is necessary to qualify him as an expert is relevant to his credibility as a witness and affects

the weight, not the admissibility, of his testimony. *See Gooding*, 326 S.C. at 253, 487 S.E.2d at 598. Appellant's position should be summarily rejected and his appeal dismissed.

Furthermore, the actual issue raised at trial by the defense did not concern the extent of any brain injury that the Appellant possess as a result of his struggle with his mother, but the extent of whether the Appellant was intoxicated at the time of the crime. The State's questioning of EMS paramedic Simmons was anticipatory of potential defense claims. Chapman appeared similar to other witnesses who testified at trial. Officer Grubbs described Chapman, upon his arrival, as having blood on his face, sweating, and appeared to be in a state of excitement. Tr.p. 159, l. 21-25. Although Officer Grubbs looked briefly at the injury, he saw scratches or cuts on the top of his head, but that Chapman did not complain about the injuries. Tr.p. 160, l. 8-10. He stated that Chapman did not appear to be in any physical distress. Tr.p. 168-167. He appeared to be in an "adrenaline rush, sweating and speaking rapidly. Tr.p. 170, l. 9-18. Officer Christopher Powell described that he did not see any indication of intoxication. Tr.p. 175-176, 179-180. Greenville Police Department Sgt. Allen Johnson testified that he came into contact with Chapman at the apartment and transported him down the elevator and found his demeanor to be slightly excited and acting like it was not a big deal, but did not appear impaired by any injury and did not ask for any treatment or complain of injuries. Tr.p. 230-231. Greenville Police officer Zoila Lopez transported the Appellant from the apartment to the law enforcement center. Tr.p. 233. She stated that he had a clam demeanor while making comments about the crime and did not complain of injuries or appear intoxicated. Tr.p. 236-237. She stated

that he had blood on the top of his head. Tr.p. 239-240.

Greenville Police Sgt. Kelly Riggs described seeing Chapman at the Greenville Law Enforcement Center . She recalled that he had injuries to his head (notable because blood was actually coming down the side of his face), scratches on his arm and a cut on his hand. Tr.p. 251. The injuries were documented in a photograph - States Exhibits 25-34. Tr.p. 253-254.

During the interview of the Appellant, Sgt. Griggs noted that Chapman appeared to understand his rights and his mental state was rational without any appearance or mannerisms to suggest impairments. Tr.p. 257-258. She stated he was cooperative and cordial. Tr.p. 259. She stated his demeanor during the interview was very calm, relaxed, very deliberative and "kind of a sense of defiance on his response." Tr.p. 260, l. 17-25. She stated that after the interview, Chapman fell asleep (but did not pass out). Tr.p. 266-267. She stated that when he was booked, she described the injuries to the booking agent and explained that EMS had looked at him and cleared him. She stated that Chapman stated that he was all right and that he just needed a shower and to wash up. Tr.p. 268.

Greenville Investigator Audrey Lindler testified that she came into contact with Chapman at the interview room. Tr.p. 280. She stated that he never complain or asked for medical treatment. Tr.p. 281-82. He stated that he did not act like he was suffering any mental defects nor that he was under the influence of alcohol. Tr.p. 283. However, Chapman did advise her that he had two beers at Sharkey's Pub. Tr.p. 283-284. She learned that he had ordered 5 tequila hots and three Budweisers and was sitting with 5 or 6

other people. Tr.p. 283-284.⁵ She stated that she did notice the injuries on Chapman, but confirmed that she did not think he appeared intoxicated. Tr.p. 297.

Officer Michael Austin testified that he saw Chapman in his cell at 9:00 on the floor sleeping when he woke him up to read the warrant. Tr.p. 307. He described Chapman as cordial. He stated that he did not appear injured to him. Tr.p. 309-310.

When the defense case began the emphasis was not on potential brain injury, but a claim of intoxication. At trial, the Appellant testified that he arrived at Sharkey's Pub at 6 PM and stayed until 9 PM. Tr.p. 352-353. He claimed the receipt stated he had three Budweisers and five tequilas. Tr.p. 353.⁶ He stated that when he left to go home he felt like a ton of bricks. Tr.p. 354. He stated he did not pay the bill. Tr.p. 354. Chapman described the altercation with his mother claiming that she claimed he was drunk as the genesis of the fight. Tr.p. 357-358. He stated that she hit him with something and his "lights went out" and then he got up and she hit him again he had "blood in his eyes" and could not see her, but started pushing and swinging at her, fighting like dogs for 10 minutes. Tr.p. 359. Also Tr.p. 376-77. He stated he then realized that he had killed her. Tr.p. 359. He then called his brother and then he went into the bathroom to clean up and saw that he was bleeding. Tr.p. 359-360. He claimed that he was suicidal when the police arrived and started saying stupid things hoping the police would shot him. H stated that he felt mentally broke at the time. He claimed that he was intoxicated at the time Tr.p. 361, 1.

⁵In the defense case, the receipt from April 23, 2010 at 6:39 PM from Sharkey's Pub was introduced. Tr.p. 338. Defense Exhibit 2.

⁶He denied sharing any of the drinks with others that night during his cross-examination. Tr.p. 370-371.

6-8. When he could to the law enforcement center, he claimed he was on the verge of a nervous breakdown and emotionally tapped out. Tr.p. 362. He felt he could not even talk and was thirsty because the tequila had dried him out. Tr.p. 362.

Respondent submit that the limited admission of evidence from the paramedic that Chapman did not possess symptoms of a brain injury was not an abuse of discretion. Further, any effect of the admission was harmless error because Chapman has failed to show - in any manner - how the evidence prejudiced him. The existence of the injury was presented to the jury through the photographs and witness testimony. His assertion that the blow to the head supported provocation was presented through argument and the Appellant's own testimony. Any alleged error in the admission is non-prejudicial and harmless. A new trial is not warranted.

CONCLUSION

For all the foregoing reasons, the judgment of conviction must be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

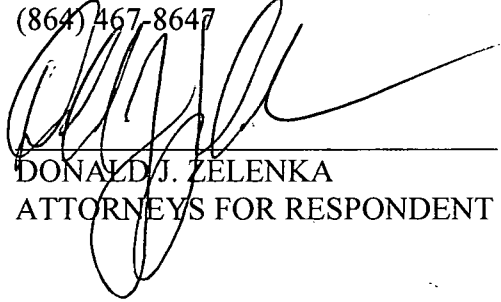
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By:



DONALD J. ZELENKA
ATTORNEYS FOR RESPONDENT

October 10, 2012.

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

**Appeal from Greenville County
G. Edward Welmaker, Circuit Court Judge**

**Case No. 07-GS-04-1218, 07-GS-04-1219
Appellate Case No. 2011-198167**

STATE OF SOUTH CAROLINA,

Respondent,

v.

JAMES D. CHAPMAN,

Appellant

**DESIGNATION OF MATTER
TO BE INCLUDED IN RECORD ON APPEAL**

The Respondents propose the following additions to be included in the Record on Appeal:

1. Transcript of Trial .
 - A. Tr.p. 141-222.
 - B. Tr.p. 226-302.
 - C. Tr.p. 305-329.
 - D. Tr.p. 335-391.
 - E. Tr.p. 399-422

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

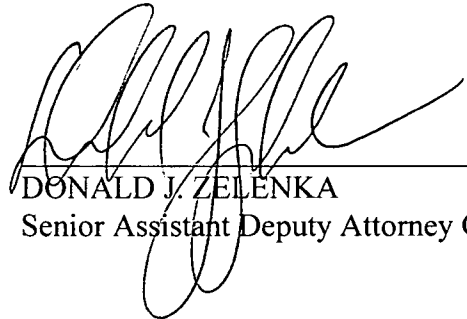


DONALD J. ZELENKA
ATTORNEY FOR RESPONDENT

October 10, 2012

CERTIFICATE OF SERVICE

I, **Donald J. Zelenka**, hereby certify that I have served the *Initial Brief of Respondent* in the foregoing action by depositing copy in the InterAgency mail to Susan B. Hackett, Appellate Defender, Division of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, SC 29201 this 10th day of October, 2012.



DONALD J. ZELENKA
Senior Assistant Deputy Attorney General



ALAN WILSON
ATTORNEY GENERAL

October 10, 2012

Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: State v. James Dean Chapman
Appellate Case No. 2011-198167

Dear Ms. Kitchings:

Enclosed please find the **Initial Brief of Respondent and Designation of Matter** in the above-referenced case for filing. By copy of this letter, I am serving opposing counsel with same.

Sincerely,

Lonetta B. Brawley
Legal Assistant to Donald J. Zelenka
Senior Assistant Deputy Attorney General

/lbb
Enclosure

cc: Susan B. Hackett, Esquire
W. Walter Wilkins, III, Solicitor
Sandi Wofford, Victims Assistance

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OCT 15 2012

SC Court of Appeals