STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions

The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-002435

State of South Carolina, ...Respondent,

v.

Gregory Fielder, ...Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF THE CASE

Appellant was indicted at the August 2012 term of the Laurens County Grand Jury for exploitation of a vulnerable adult (2012-GS-30-1430) and breach of trust (2012-GS-30-1431). (R. pp. 248-51). Assistant Attorneys General David Fernandez and Johanna Valenzuela represented the State and Appellant proceeded pro se.

After the State called the case to trial, Appellant was found guilty of the charges as indicted. On November 5, 2015, the Honorable Frank R. Addy, Jr. sentenced Appellant to concurrent terms of two (2) years for exploitation of a vulnerable adult and ten (10) years suspended with five (5) years probation for breach of trust with fraudulent intent ($10,000 or more). (R. pp. 246-47; 252-53).

STATEMENT OF FACTS

Pre-Trial Hearing

The Honorable Eugene C. Griffith, Jr. addressed several matters prior to jury selection. Appellant stated he wanted a "continuance for medical reasons" and Judge Griffith replied the case had already been continued once for this reason. (R. pp. 9-14). Appellant stated he had an appointment with a neurosurgeon that afternoon but admitted he had not notified anyone about the appointment until that morning. (R. pp. 14-19). Judge Griffith stated Appellant should address this matter (as well as any pre-trial motions) with the trial judge that afternoon. (R. pp. 24-25).

Trial

The Honorable Frank R. Addy, Jr. presided over Appellant's trial. Appellant requested a continuance for medical reasons. (R. pp. 28-29). The trial judge found there was no doctor's note excusing Appellant from trial and noted he had reviewed prior transcripts, which indicated Appellant had been given adequate notice of the trial date. (R. pp. 29-31). The trial judge concluded Appellant was capable of proceeding to trial. (R. pp. 31-32; p. 37). The trial judge denied Appellant's numerous pre-trial motions. (R. pp. 36-42).

State's case

On February 1, 2011, Virginia Montgomery (hereinafter "Victim") signed a power of attorney designating Appellant. (R. p. 58; p. 77). On February 8, 2011, Appellant's name was on a withdrawal slip that withdrew $87,379.72 from one of Victim's bank accounts – leaving a zero balance. (R. pp. 56-58). On February 14, 2011, both Appellant's and Victim's names were

on a withdrawal slip that withdrew $50,000 from another of Victim's bank accounts – leaving a negative $147 balance. (R. pp. 60-62). On November 2, 2011, the title of Victim's car was transferred to Appellant. (R. p. 54). On December 16, 2011, the deed to Victim's house was transferred to Appellant (and his signature was the only one authorizing the transfer). (R. p. 58; pp. 164-65). On December 20, 2011, Victim died of breast cancer at the age of 86. (R. p. 53).

Raymond Johnson – who is both Victim's nephew and Appellant's cousin – would have inherited from her estate and is the estate's personal representative. (R. pp. 121-22; p. 125; p. 126; p. 143). Johnson testified Appellant assisted Victim because "[s]he needed help" and Appellant offered to do so. (R. pp. 123-24; p. 126; p. 127). Johnson testified he left Victim's medical decisions to Appellant and noted Appellant did not offer to help Victim in exchange for money. (R. p. 126; pp. 141-42). Johnson communicated with Appellant about Victim on the telephone but was unaware they had executed a power of attorney. (R. p. 125; pp. 127-28). Johnson had told Appellant "do not bother the money, the money was already token [sic] care of because the money was already in [the victim]'s name, my mother's name, and my name." (R. p. 128). Johnson explained one of Victim's bank accounts had been opened in 1989 and listed himself, his mother, and Victim as the account holders. (R. pp. 128-29). Johnson's understanding was Victim's possessions and funds would pass to his mother and him upon her death. (R. p. 130; p. 144). Johnson testified he had intended to give Appellant both Victim's house and car because he had looked after her. (R. pp. 139-40). When Johnson came to South Carolina after Victim died, Appellant told him that he had moved Victim's money. (R. pp. 130-31). Appellant said he would return $30,000 he used for bond money for his son but did not do

so. (R. pp. 132-33). Appellant eventually gave Johnson (1) $6000 in cash, (2) a cashier's check for $6000, (3) a cashier's check for $9000, and (4) a personal check for $2000. (R. pp. 134-35; p. 136). When Johnson tried to talk to Appellant about other financial issues, Johnson said "he was talking crazy," so he hired attorney James Bryan. (R. pp. 137-38).

Leann Riggot, a former investigator for the Laurens Police Department, was involved in this case. (R. pp. 49-50). Riggot was contacted by an attorney for Victim's family (Bryan) after they discovered her home and vehicle were in Appellant's name and "a large som [sic] of money [was] missing out of the bank." (R. p. 50). After reviewing bank records and deeds and speaking to Victim's doctor, Riggot "established that there had been some fraud and exploitation" and arrested Appellant for breach of trust and exploitation of a vulnerable adult. (R. pp. 50-51; pp. 54-55). Riggot determined Appellant had contacted an attorney's office about a power of attorney, a power of attorney had been executed, and Victim had indicated at that time that she did not want her house deeded to Appellant. (R. p. 55). Riggot determined total amount of fraud – including various bank accounts and the appraised value of Victim's home and vehicle – to be approximately $212,000. (R. p. 59).

Attorney James Bryan first met with Johnson about this matter in early 2012. (R. pp. 155-58). Bryan represents Victim's estate (with Johnson as personal representative) both in probate court and in a civil action filed against Appellant. (R. p. 159). Bryan noted Victim died intestate, so Johnson, his sister, and their cousin Carol would inherit her estate. (R. pp. 162-63). Bryan corroborated Johnson's testimony – by looking at bank records – that funds from Victim's accounts were used to pay (1) a $30,000 check to bond court and (2) cashier's checks to Johnson.

(R. pp. 160-61). Appellant told Bryan in the summer of 2012 that he would give an itemized accounting of the funds and would return the house's deed and car's title to the estate. Bryan never received the accounting, did not receive the signed deed to Victim's house until spring 2015, and noted the estate has had possession of (but not title or keys to) Victim's car since spring 2015. (R. pp. 166-67; p. 171; pp. 174-77). Bryan noted Appellant had been deposed on January 13, 2014 as part of the civil case related to Victim's estate. (R. p. 168). In this deposition, Appellant admitted the following: (1) that he had deeded Victim's house to himself (R. p. 169), (2) that he was holding the house in trust for the family and that the rightful owner of the house is Victim's family (R. pp. 169-70; p. 172), (3) that he would return the car to Victim's family if they asked him to do so (R. p. 173), and (4) that he used $12,000 of Victim's money to pay his son's bond. (R. pp. 179-80; p. 181). Bryan noted Appellant had not paid any money to Victim's estate between the January 2014 and the trial date. (R. p. 178). In sum, Bryan stated Appellant took $137,000 from Victim's bank accounts (and paid $23,000 to Johnson and $14,000 for Victim's funeral). (R. pp. 182-83).

Dr. Joanne Brownlee first saw Victim on March 23, 2009 – Victim had breast cancer and refused both treatment and hospice. (R. p. 146). Dr. Brownlee saw Victim again February 15, 2011 and sent her to the emergency room for a blood transfusion because she had extremely low hemoglobin. (R. pp. 147-49). Dr. Brownlee stated such a hemoglobin count could affect cognitive and mental ability. (R. p. 149). Dr. Brownlee saw Victim again April 25, 2011 and her hemoglobin was still extremely low. (R. p. 150). Dr. Brownlee noted Victim was under hospice care when she saw her on August 8, 2011 and September 28, 2011. (R. p. 150).

Chad Bowen, a hospice chaplain, interacted with Victim twice per month for 10 months. (R. pp. 117-18). Bowen would pre-arrange visits with Appellant, who he described as "her caregiver." (R. p. 118; p. 120). Bowen stated Victim's confusion increased in the last 4-6 weeks of her life. (R. p.119).

Cindy McCarty, a former hospice nurse, treated Victim 1-3 times per week for 10 months. (R. pp. 92-94). McCarty noted Victim was often "very confused" during this time and had some memory loss. (R. pp. 97-98). McCarty stated severely low hemoglobin "can cause confusion, forgetfulness." (R. pp. 99-100). McCarty said Appellant requested she call him before she went to visit Victim. (R. pp. 100-01). McCarty called Appellant the day before Victim died because she did not answer the door (and he had a key). Appellant met McCarty at Victim's house and they found her on the floor. (R. pp. 101-02).

Appellant's case

Pam Pulley is Appellant's sister and Victim was her first cousin. (R. pp. 205-06). Pulley stated Victim was strong-willed and did not want to have chemotherapy or surgery when she became sick. (R. p. 207; pp. 213-14). Pulley stated Appellant became Victim's caregiver and that they were very close. (R. p. 208; p. 209; p.210; p.212). Pulley stated Appellant is not a thief. (R. p. 211).

Katherine Fielder is Appellant's mother and married Victim's uncle. (R. pp. 215-17; p.218). Fielder stated Appellant cared for Victim from 1999-2011. (R. pp. 219-20). Fielder stated Victim had a good relationship with Appellant, that she was a priority in his life, and that she wanted Appellant to take care of her. (R. pp. 221-22; pp. 223-24).

Allie Massey is Appellant's sister and cousin to Victim and Johnson. (R. pp. 225-29). Massey stated Appellant and Victim had a relationship "[l]ike a mother and a son." (R. p. 228). Massey stated Victim would only let Appellant assist her and trusted him with her health and wealth. (R. pp. 229-30; pp. 231-32; pp. 233-34). Massey stated Victim did not want to go to a nursing home. (R. p.235). Massey stated Victim was not vulnerable or mistreated. (R. p. 236).

Michael Taylor was Victim's neighbor and spoke to her every day. (R. p. 237). When asked Victim if he could do anything for her, "she always said now [Appellant] will do it, [Appellant] will do it." (R. p. 238). Taylor stated Appellant checked on Victim "just about every day." (R. p. 239).

Appellant initially stated he would testify. (R. p. 240). After a bench conference, however, the trial judge announced there would be no more testimony in the case and excused the jury for the charge conference. (R. p. 243). The trial judge noted for the record that there had been multiple bench conferences and Appellant had said he needed additional time to organize a large box of materials. The trial judge noted Appellant had three years to do so and that Appellant had made frequent attempts to delay the trial. The trial judge found Appellant could testify but must do so at that point. Appellant had stated he needed more time to organize his materials and the trial judge returned him to his seat. The trial judge noted "throughout the course of these proceedings, [Appellant] has attempted to delay, to push things back and has come up with every excuse in the world to drag this matter out and the Court is not having any more of it." (R. pp. 243-45).

ARGUMENT

I. The issue of whether the trial judge abused his discretion in failing to conduct an examination to determine if Appellant was fit to stand trial is not preserved for appellate review.

Appellant argues "[t]he trial court's decision not to order an examination to determine if Appellant was fit to stand trial was an abuse of discretion." (Brief of Appellant, p.2). This argument is not preserved for appellate review.

"Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide us with a platform for meaningful appellate review." Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (quoting Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp., 368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006)). "It is well-settled that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial court to be preserved for appellate review." Staubes v. City of Folly Beach, 339 S.C. 406, 412, 529 S.E.2d 543, 546 (2000) (citation omitted). While Appellant argues the trial court erred in not ordering that he undergo a competency evaluation, no such evaluation was requested at trial. As the issue of whether an evaluation should be ordered was neither raised to the trial judge nor ruled upon, it is not preserved for review by this Court. Though Appellant argues his constitutional rights were violated because the trial judge did not order a competency evaluation, this Court has held "[c]onstitutional arguments are no exception to the preservation rules, and if not raised to the trial court, the issues are deemed waived on appeal." Herron at 465, 719 S.E.2d at 642 (citations omitted).

Regardless, this issue is without merit. "A South Carolina criminal defendant has the

constitutional right to represent himself under both the federal and state constitutions." State v. Barnes, 407 S.C. 27, 35, 753 S.E.2d 545, 550 (2014) (citing State v. Starnes, 388 S.C. 590, 600, 698 S.E.2d 604, 610 (2010)). "The test for competency to stand trial or continue trial is whether the defendant has the sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational, as well as factual, understanding of the proceedings against him." McLaughlin v. State, 352 S.C. 476, 481, 575 S.E.2d 841, 843 (2003). In determining whether further inquiry into a defendant's fitness to stand trial is warranted, the trial court should consider factors such as "evidence of his or her irrational behavior, his or her demeanor at trial, and any prior medical opinion on his or her competence to stand trial." State v. Burgess, 356 S.C. 572, 575, 590 S.E.2d 42, 44 (Ct. App. 2003). A trial judge's decision on a request for a competency evaluation is within the judge's discretion and will not be overturned absent a clear showing of an abuse of that discretion. State v. Locklair, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000).

Appellant failed to demonstrate the trial judge should have ordered a competency evaluation in this case. Appellant represented himself at trial and – as is obvious after a review of the record – was extremely familiar with the facts and evidence. While Appellant often disagreed with the trial judge's rulings on issues regarding rules and procedures, the record is devoid of any indication Appellant did not understand the proceedings against him. Appellant's argument that a competency evaluation should have been ordered based on his pre-trial interactions with Judge Griffith is unpersuasive. While Judge Griffith commented Appellant looked "drowsy" and Appellant stated he was receiving medical care, there is no evidence in the

record that Appellant was impaired in any way. (R. pp. 8-9). Further, though Appellant mentioned three times that he did not understand what was going on, he engaged with Judge Griffith about his concerns and it appears he simply did not understand why the case was proceeding even though he claimed to have a doctor's appointment that day. (R. p. 10; p.12; p.19). Appellant's argument that an evaluation should have been ordered based on his interactions with the trial judge is similarly unpersuasive. Appellant presented a doctor's note and prescription bottle to the trial judge but did not indicate either that he was suffering any psychiatric issues or that his purported medical ailments prevented him from understanding the proceedings. (R. pp. 29-30). The trial judge, in his interactions with Appellant prior to the commencement of trial, clearly believed Appellant's alleged medical issues (as well as the thirty-three motions filed by Appellant) were merely a delay tactic – and said so at the time. (R. p. 40). The trial judge noted Appellant was capable of proceeding to trial and "seem[ed] totally lucid." (R. p. 31). The record is devoid of any evidence Appellant did not understand the proceedings against him, was behaving irrationally, or exhibited a troubling demeanor at trial. See McLaughlin, 352 S.C. at 481, 575 S.E.2d at 843; Burgess, 356 S.C. at 575, 590 S.E.2d at 44. Appellant failed to show the trial judge abused his discretion in failing to sua sponte order a competency evaluation. See Locklair, 341 S.C. at 364, 535 S.E.2d at 426.

II. The issue of whether the trial judge erred in admitting hearsay is not preserved for appellate review.

Appellant argues "[t]he trial court abused its discretion by allowing impermissible hearsay, and statements that violate Rule 403 of the South Carolina Rules of Evidence." (Brief of Appellant, p.5). This argument is not preserved for appellate review.

Though Appellant argues State witnesses Riggot and Johnson provided hearsay and prejudicial testimony, Appellant did not object and make this argument at trial. As Appellant did not make objections to purported hearsay or prejudicial testimony and the trial judge was not afforded the opportunity to rule upon such objections, this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. 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(c), SCRE. "It is well settled that evidence is not hearsay unless offered to prove the truth of the matter asserted." State v. Vick, 384 S.C. 189, 199, 682 S.E.2d 275, 280 (Ct. App. 2009) (citations omitted). "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. Appellant alleges five separate instances of purported hearsay testimony from State witnesses Riggot or Johnson in the trial transcript. Each is noted infra.

A.

Riggot stated the following during direct examination: "I was advised that they did do the power of attorney and that [Appellant] had contacted them about doing the power of attorney. I was also advised that when they met that [Victim] did not want her house deeded to the subject." (R. p. 55).

B.

Riggot had the following exchange with the prosecutor on re-direct examination:

Q: And would it have been in your, during the course of your investigation against the interests of the now deceased [victim]?
A: Yes, I believe it was in it, not within her best interest, yes.
Q: And against her actual wishes that she had described?
A: Yes, sir.
Q: And that she actually explained to people?
A: Yes, sir.

(R. p. 89).

C.

Riggot had the following exchange with Appellant on re-cross examination:

Q: Who did she tell the wishes to?
A: A paralegal that works at Robert Whitesides office.
Q: She told her wishes to him –
A: To her.
Q: – or her?
A: That's what she told me, yes.
Q: And after she told her her wishes, what all did she wish for?
A: The only thing I can say is she told the paralegal at Whitesides office she did not wish the house to be deeded to [Appellant].
Q: And she worked at Attorney Whitesides office?
A: Yes, sir.

(R. pp. 90-91).

D.

Riggot had this further exchange with Appellant on re-cross examination:

Q: So you took somebody's declaration of wishes to be truth?
A: Yes.
Q: Based on what?
A: She told me.

(R. p. 91).

E.

Johnson had the following exchange with Appellant on cross-examination:

Q: Okay. Did she give you her house?
A: She was going to.
Q: How was she going to do that?
A: By her word she gave them to me. She gave them to me verbally.
Q: Okay. Did she give you her car?
A: She gave me all of her possessions verbally.
Q: How did she say that?
A: She said, she said, Raymond, when I die, you can have everything, the car, the house, the money, everything. That's what she said.

(R. p. 144).

F.

Appellant cannot demonstrate any of the foregoing testimony should have been excluded because "its probative value [was] substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE. Even assuming arguendo that some of this testimony included hearsay, its admission would amount to harmless error. See State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (finding improper admission of hearsay testimony to be harmless error where there was abundant evidence in the record from which the jury could have found the defendant guilty, notwithstanding the hearsay testimony); State v. Weston, 367 S.C. 279, 288, 625 S.E.2d 641, 646 (2006) ("The improper admission of hearsay is reversible error only when the admission causes prejudice."). The State presented overwhelming evidence that Appellant was guilty of the charges as indicted. In the last year of her life, Victim was elderly, in very poor health, and often confused. During this time period, Victim executed a power of attorney (in favor of Appellant) and Appellant withdrew more than $137,000 from Victim's accounts within

two weeks of the execution of that document. Appellant deeded Victim's car and house to himself within two months of her death. Appellant admitted in a deposition that he was holding Victim's house in trust and Victim's family were the rightful owners of this property. As the State presented abundant evidence Appellant was guilty of the exploitation of a vulnerable adult and breach of trust, any error that may have been present in alleged admission of hearsay statements was harmless. Accordingly, Appellant failed to demonstrate the trial judge erred in admitting inadmissible hearsay.

III. The trial judge did not abuse his discretion in declining to sequester James Bryan.

Appellant argues "[t]he trial court abused its discretion by refusing to sequester James Bryan" during trial. (Brief of Appellant, p.8). This argument is without merit.

On the second day of trial, the State moved "to sequester the witnesses for this case as we are now getting into substantive witnesses." (R. p. 44). The State argued, however, that Raymond Johnson and James Bryan should be allowed to remain because they were the victim and representative of the estate, respectively. (R. pp. 44-45). The trial judge explained to Appellant that he generally grants motions for sequestration. (R. pp. 45-46). Appellant objected to James Bryan being allowed to remain in the courtroom because he would be a testifying witness. (R. p. 46). The trial judge noted Appellant's objection but allowed Bryan to remain in the courtroom. (R. pp. 47-48).

Rule 615 of the South Carolina Rules of Evidence allows the trial judge to sequester witnesses. "[T]he decision to sequester witnesses is left to the sound discretion of the trial judge." State v. Singleton, 395 S.C. 6, 15, 716 S.E.2d 332, 337 (Ct. App. 2011) (quoting State v.

Fulton, 333 S.C. 359, 375, 509 S.E.2d 819, 827 (Ct. App. 1998)). "Whether a witness should be exempted from a sequestration order is within the trial court's discretion." Id. (citation omitted).

The trial judge did not abuse his discretion in declining to sequester Bryan. The trial judge explained his rationale for allowing Bryan to remain in the courtroom:

> He's an attorney and a witness, but he's appearing in the representative capacity on behalf of the Decedent's estate. And in my view of it, that gives him essentially, as a representative of the alleged victim, that gives him the same right to stay as if we had an actual living victim present.

(R. p. 47). As Bryan was the attorney representing the estate of the deceased – whom Appellant was on trial for having exploited and defrauded – it was within the trial judge's discretion to exempt him from the sequestration order. Appellant's main contention appears to be that Bryan's testimony incorporated elements from previous witnesses' testimony. This Court has held, however, that "[t]he mere opportunity for the State's witnesses to compare testimony is insufficient to compel sequestration." State v. Carmack, 388 S.C. 190, 197, 694 S.E.2d 224, 227 (Ct. App. 2010) (citation omitted). Though Bryan would also testify as a State witness, Appellant was able to thoroughly cross-examine Bryan if he perceived Bryan's testimony parroted testimony of another State witnesses. See id. at 198, 694 S.E.2d at 227-28 (holding "the threat that exposure to other testimony would taint subsequent testimony was alleviated by affording [the defendant] the opportunity to impeach any witnesses who altered their accounts"). As such, he cannot demonstrate he was prejudiced because the trial judge exempted Bryan from the sequestration order. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

IV. The issue of whether the trial judge abused his discretion in refusing to sequester Raymond Johnson is not preserved for appellate review.

Appellant argues "[t]he trial court abused its discretion by refusing to sequester Raymond Johnson." (Brief of Appellant, p.10). This argument is not preserved for appellate review.

As noted supra, the State moved to sequester the witnesses – excepting Johnson and Bryan. (R. pp. 44-45). While Appellant objected to Bryan's sequestration, he did not object to Johnson being sequestered during trial. (R. p. 46). As such, the trial judge was not afforded the opportunity to rule upon the issue and this argument is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. As discussed supra, the decision to sequester witnesses (or exempt them from sequestration) is in the discretion of the trial judge. See Singleton, 395 S.C. at 15, 716 S.E.2d at 337. Appellant has failed to demonstrate the trial judge abused his discretion in exempting Johnson from sequestration. Appellant was on trial for exploiting the deceased victim in this case (who was vulnerable, suffering from advanced breast cancer, and elderly) and fraudulently transferring property to himself for his own use. Johnson was one of three beneficiaries of the deceased victim's estate. As such, Johnson was clearly a victim in this case and there was no abuse of discretion in exempting him from the sequestration order – even if he was also to be a testifying witness. Appellant cannot demonstrate he was prejudiced by the trial judge's decision, as he was able to thoroughly cross-examine Johnson about any perceived similarities to testimony from prior witnesses. See Carmack, 388 S.C. at 198, 694 S.E.2d at 227-28. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

V. The issue of whether the trial judge unreasonably restricted Appellant's right to testify is not preserved for appellate review.

Appellant argues "[t]he trial court erred in unreasonably restricting Appellant's right to testify on his own behalf." (Brief of Appellant, p.10). This argument is not preserved for appellate review.

Though Appellant argues the trial judge committed error because he restricted Appellant's right to testify, Appellant did not object and make this argument at trial. As Appellant did not make an objection, the trial judge was not afforded the opportunity to rule upon it, and this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. At the close of the defense case, the trial judge noted Appellant had said in a bench conference that he wanted to testify. (R. p. 240). Appellant stated he needed five minutes to get ready and there was a recess. (R. pp. 240-41). When court reconvened, Appellant said he was "a little bit disorganized" and the trial judge directed him to take the witness stand. (R. p. 242). Appellant asked to speak to the trial judge and there was a bench conference. (R. pp. 242-43). At the conclusion of the bench conference, the trial judge told the jury that "we've received all the testimony that we're going to have in this particular case" and excused them so the parties could have a charge conference. (R. p. 243). The trial judge then noted the substance of the bench conference for the record. The trial judge stated Appellant had brought a large box of materials to the witness stand and said he needed additional time to organize these materials. (R. p. 243). The trial judge stated he advised Appellant that he had "at least three years to get it organized" and asked if Appellant would testify. (R. p. 243).

The trial judge noted Appellant had consistently sought to delay this case and he believed this request for additional time was "nothing more than an excuse for delay." (R. pp. 243-44). The trial judge stated he told Appellant

> that if he wanted to testify he was free to do that, but he had to do it now. I was not going to afford him another break to organize his materials and I was not going to further countenance any further delay. I explained to him at the stand that if he did not take the witness stand as he expressly stated he wanted to do at some point 15 minutes ago, I explained that the Court would consider him having rested. He said he could not take the stand, because his materials were not organized at which point, I dismissed him, asked him to return to his seat, gather his materials.

(R. p. 244). The trial judge noted "throughout the course of these proceedings, [Appellant] has attempted to delay, to push things back and has come up with every excuse in the world to drag this matter out and the Court is not having any more of it." (R. pp. 244-45).

"Every criminal defendant is privileged to testify in his own defense, or to refuse to do so." State v. Rivera, 402 S.C. 225, 241, 741 S.E.2d 694, 702 (2013) (quoting Rock v. Arkansas, 483 U.S. 44, 53, 107 S. Ct. 2704, 2410 (1987)). "However, the right to present testimony is not without limitation." Id. at 242, 741 S.E.2d at 703. "The right may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process." Id. (citation omitted). The trial judge did not err in this case because he did not restrict Appellant's right to testify on his own behalf. Appellant was afforded the right to testify and simply chose not to exercise it. Having one's materials organized in a specific manner is not a prerequisite to taking the witness stand. The trial judge informed Appellant he could testify at that time but that he could not delay the trial any further. Appellant was not prevented from taking the witness stand in his own defense. The trial judge clearly articulated a legitimate interest in the criminal trial process and

did not deny or restrict Appellant's ability to testify in his own defense at trial. See id.

VI. The trial judge did not abuse his discretion and improperly limit the scope of Appellant's cross-examination of Bryan.

Appellant argues "[t]he trial court abused its discretion by improperly limiting Appellant's cross-examination of [James] Bryan." (Brief of Appellant, p.12). This argument is without merit.

During Bryan's cross-examination, the State made numerous objections that questions had already been asked and answered. These objections were sustained. (R. p. 191; p. 192 p. 193; pp. 194-95; pp. 196-97; p. 198; p. 200; p. 201). After another sustained objection to a question that had been asked and answered, the trial judge gave Appellant the following warning:

> All right. Now, here's the thing, we have been down this road so many times and the Court is trying to be extremely patient with you, [Appellant]. You have one last opportunity to ask a question which would address a matter that has been so far unexplored. The next asked and answered objection that is getting sustained your cross is over with with [sic] this witness. So fair warning from the Court. The next question that you ask and they make an objection asked and answer, the cross-examination is over. This cannot go on indefinitely, sir. Ask your next question, please.

(R. pp. 202-03). Appellant asked a few more questions, the State made an objection to a question having been asked and answered, the trial judge sustained the objection and said "[a]sked and answered. Thank you very much, [Appellant]. Have a seat, please, sir. Mr. Bryan, you may step down, sir." (R. p. 204). Appellant stated his "cross-examination was terminated before I completed it" and the trial judge replied the "cross-examination was exhaustive and I think you've covered every potential base that you could possibly think of and then some." (R. p. 204).

"The trial judge retains discretion to impose reasonable limits on the scope of cross-examination." State v. Mizzell, 349 S.C. 326, 331, 563 S.E.2d 315, 317 (2002) (citations omitted). "[A] trial judge may impose reasonable limits on cross-examination based upon concerns about, among other things, harassment, prejudice, confusion of the issues, witness safety, or interrogation that is repetitive or only marginally relevant." State v. Johnson, 338 S.C. 114, 124, 525 S.E.2d 519, 524 (2000) (citing State v. Jenkins, 322 S.C. 360, 474 S.E.2d 812 (Ct. App. 1996)).

Appellant failed to demonstrate the trial judge improperly limited his cross-examination of Bryan at trial. Upon reviewing the record, it is clear the trial judge did not abuse his discretion in imposing limits upon Appellant's cross-examination. Appellant was pro se at trial and the trial judge clearly afforded him some consideration in how he examined and cross-examined witnesses. In Appellant's cross-examination of Bryan, however, the trial judge sustained numerous objections to questions that had been asked and answered. (R. p. 191; p. 192; p. 193; pp. 194-95; pp. 196-97; p. 198; p. 200; p. 201). It was well within the trial judge's discretion to – after warning Appellant to refrain from addressing matters that had already been explored – limit his repetitive questioning of Bryan. See Johnson, 338 S.C. at 124, 525 S.E.2d at 524. The trial judge did not prohibit Appellant from cross-examining Bryan. Rather, the trial judge imposed a reasonable limit on the scope of Appellant's cross-examination of this particular witness. See Mizzell, 349 S.C. at 331, 563 S.E.2d at 317. Accordingly, Appellant has failed to demonstrate the trial judge abused his discretion in this matter.

VII. The issue of whether the trial judge erred in permitting Bryan to testify regarding matters to which he lacked personal knowledge is not preserved for appellate review.

Appellant argues "[t]he trial court erred by permitting Bryan to testify regarding matters outside of his personal knowledge." (Brief of Appellant, p.13). This argument is not preserved for appellate review.

Though Appellant argues the trial judge erred in allowing Bryan to testify about matters of which he lacked personal knowledge, Appellant did not object and make this argument at trial. As Appellant did not make an objection, the trial judge was not afforded the opportunity to rule upon it, and this issue is not preserved for review by this Court. See Staubes, 339 S.C. at 412, 529 S.E.2d at 546.

Regardless, this issue is without merit. While Appellant argues Bryan testified to matters outside of his personal knowledge, Appellant has mischaracterized this testimony. Bryan stated he questioned the victim's competency at the time she signed the power of attorney but noted he had "talked to some people concerning a [sic] competency." (R. p. 184). Bryan stated he was making judgments about the victim's competency "based upon testimony given in this case and people that I have talked to" but these comments were in response to Appellant's question about whether the victim was competent. (R. pp. 185-86). Bryan stated the victim had low hemoglobin levels (which can cause confusion) but this statement was made in response to Appellant's question "[w]hat specifically did Dr. Brownlee say that caused you to judge she was incompetent?" (R. pp. 188-89). Bryan again stated low hemoglobin could make a person confused but this was in response to Appellant's question "in your judgment of competency,

other than physical characteristics, is there anything else to be considered?" (R. p. 199). Bryan repeatedly stated whether he was testifying based upon personal knowledge or not. Bryan was merely attempting to respond to Appellant's questions. "A party cannot complain of an error which his own conduct created." State v. Curtis, 356 S.C. 622, 632, 591 S.E.2d 600, 605 (2004) (citation omitted); see also State v. Page, 378 S.C. 476, 482, 663 S.E.2d 357, 360 (Ct. App. 2008) ("It is firmly established that otherwise inadmissible evidence may be properly admitted when opposing counsel opens the door to that evidence."). While Appellant challenges the admissibility of these particular portions of Bryan's testimony, the testimony Appellant complains of was given in response to particular questions he asked. Appellant cannot complain about the substance of Bryan's answers when his questions elicited those very answers. Accordingly, Appellant has failed to demonstrate Bryan's testimony was improper.

CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

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December 30, 2016

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LAURENS COUNTY
Court of General Sessions
The Honorable Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2015-002435

THE STATE,

Respondent,

v.

Gregory Fielder,

Appellant.

CERTIFCATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent 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."

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