STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2016-001830

THE STATE, ...RESPONDENT

v.

STANLEY DELANOR MOULTRIE,.....APPELLANT.

INITIAL BRIEF OF RESPONDENT

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RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly denied Appellant's motion for a mental health evaluation to determine his criminal responsibility at the time of the offense where Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate an intent to introduce evidence at trial that he lacked criminal responsibility.

2. Whether the trial court properly denied Appellant's motion for a mental health evaluation to determine his competency at the time of trial where the trial judge conducted a competency hearing which did not give him any reason to believe Appellant was not fit to stand trial.

STATEMENT OF THE CASE

Stanley Delanor Moultrie (Appellant) was indicted at the May 2015 term of the grand jury for Georgetown County for kidnapping (2015-GS-22-00458) and armed robbery (2015-GS-22-00459). He was represented by Stuart Axelrod and Jeffrey T. Lucas, III, Esquire, of Axelrod & Associates. Respondent (the State) was represented by Assistant Solicitor James Austin Thomas of the Fifteenth Circuit Solicitor's Office. On April 7, 2016, the State served Appellant with a notice of intention to seek a sentence of life without parole pursuant to section 17-25-45 of the South Carolina Code due to his two April 21, 1993, armed robbery convictions. On August 22-24, 2016, Appellant proceeded to trial by jury pursuant to which he was found guilty of armed robbery but was acquitted of kidnapping. He was sentenced by the Honorable D. Craig Brown to a term of life imprisonment without the possibility of parole. (Indictments & Sentencing Sheet; Tr.p.271-p.272). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent follows.

STATEMENT OF FACTS

As described by the solicitor in his opening statement, Appellant committed an armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. The Shoe Show was located in a strip mall along with a Walmart and a Cato, both of which had surveillance cameras. Those cameras showed the robber arriving forty-five minutes before opening, scoping out the parking lot, and then parking in a spot directly facing the Shoe Show until it opened at 9:30 a.m. The robber then moved his car behind the strip mall, walked past Cato, and entered the Shoe Show at 9:37 a.m. After entering the store, the robber talked to the single female store clerk about a particular shoe and asked if she had it in a larger size. When the clerk turned to go in the back to check for his size he grabbed her by the back of the neck, put a large knife to her side, walked her to the cash registers, got her to hand him all of the money, and then walked her to the back of the store where he exited and drove away at approximately 9:45 a.m. Review of the surveillance footage and the subsequent police investigation resulted in Appellant's arrest for the armed robbery. (Tr.p.112-p.115).

Pretrial Motion to Have Appellant Evaluated

On August 22, 2016, the morning the case was scheduled for trial, defense counsel made a motion to have Appellant evaluated. The trial court convened a hearing at which counsel explained he had started working for Axelrod and Associates in January of 2016 and that Appellant's case was the first one dropped on his desk. He said their office had received communications from Appellant's prior attorney, Leon Parrot, Esquire, expressing concerns about Appellant's mental status. He also said that in February of 2016, Appellant told him he had been raped by his P.E. teacher at the age of 13. Counsel explained Appellant later wrote him a letter detailing the long lasting effects of that sexual assault which led to shame, guilt, drinking, drug use, and anger, all of which Appellant claimed drove him to his regrettable behavior.

Counsel said a competency hearing was originally convened before the Honorable Benjamin H. Culbertson in May of 2016; however, Judge Culbertson determined there was not enough information to go forward and allowed counsel to withdraw his motion so he would have an opportunity to collect more information about Appellant's mental health. Counsel said he then requested medical records from the South Carolina Department of Corrections (SCDC) which had "very little when it came to mental health" except to note that some outpatient mental health services were done at area outpatient sites. He did not know where Appellant had been treated outside of SCDC. Counsel described a second letter he also received from Appellant which was very similar to the first and argued he believed the only appropriate way to go forward with trial was to have Appellant evaluated "both under McNaughten [sic][1] to determine if at the time these events occurred, if he understood the difference between moral and legal right and wrong, and then also, and under *State v. Blair*,[2] which is competency." Counsel said: "I get this - - this feeling in the pit of my stomach, something is not right. He has to be evaluated. I'm no doctor. I can't diagnose it." Counsel concluded by saying that in his personal opinion, "there is something wrong with [Appellant] and only a doctor will be able to diagnose that and pinpoint what that problem is." (Tr.p.8-p.14).

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[1] "South Carolina has chosen as its insanity defense what is commonly known as the *M'Naghten* test, or the "right and wrong test." *State v. Wilson*, 306 S.C. 498, 505, 413 S.E.2d 19, 23 (1992). "The first famous legal test for insanity came in 1843, in the *M'Naghten* case. Englishman Daniel M'Naghten shot and killed the secretary of the British Prime Minister, believing that the Prime Minister was conspiring against him. The court acquitted M'Naghten 'by reason of insanity,' and he was placed in a mental institution for the rest of his life. However, the case caused a public uproar, and Queen Victoria ordered the court to develop a stricter test for insanity. The '*M'Naghten* rule' was a standard to be applied by the jury, after hearing medical testimony from prosecution and defense experts. The rule created a presumption of sanity, unless the defense proved 'at the time of committing the act, the accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if he did know it, that he did not know what he was doing was wrong.'" Emanuel Francone, Insanity Defense, CORNELL LAW SCHOOL LEGAL INFORMATION INSTITUTE, July, 2016, *https://www.law.cornell.edu/wex/insanity_defense* (last visited Nov. 1, 2017). South Carolina has codified the "*M'Naghten* rule" as its insanity defense. S.C. Code Ann. § 17-24-10(A).

[2] 275 S.C. 529, 273 S.E.2d 536 (1981).

The solicitor responded by noting the burden was on the moving party to establish a lack of mental capacity and argued that under *State v. Burgess*[3] and *State v. Colden*,[4] Appellant had failed to do so. He further noted that Appellant had been through the criminal justice system many times on serious charges and there had been no issue with competency in those cases. The solicitor then offered a witness in regard to Appellant's competency. (Tr.p.15-p.17). The State called Lieutenant Joann Clarey of the Georgetown County Detention Center to the stand. She explained her job was to classify inmates at intake so she could place them in housing units based on things like gang affiliations, mental illness, medical problems, and the nature of the crime. Clarey said she had a lot of contact with inmates in general and that after Appellant came to the jail she had a lot of opportunity to observe and interact with him. She testified she had no issues with Appellant and that he did not exhibit any bizarre or irrational behavior while at the jail. Clarey said she had no problems communicating with Appellant during his stay and he did not appear to have any problems communicating with her. She said that to her knowledge, Appellant was not treated for any mental issues at the detention center. (Tr.p.17-p.21).

The trial court then placed Appellant under oath and asked him a series of questions. He testified he graduated from high school and had been married since 2001. When asked if he had ever received outpatient mental health treatment before his time in SCDC, Appellant said he had tried to seek help when he was in the military. He said he served for a period of time in the army, achieving the rank of specialist before being discharged in 1998. Appellant said he tried to get help and talked to his Major about his problems but was told he would not be allowed to reenlist in his current condition until he sought further help. He then confirmed he was the author of the letters previously referenced by counsel. Appellant testified he was prescribed

[3] 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003).

[4] 372 S.C. 428, 641 S.E.2d 912 (Ct. App. 2007).

Wellbutrin and Effexor when he served time in SCDC, and that prior to his sentencing he was given Valium, Visataril, and Seroquel for anxiety while he was in the Lexington County Detention Center. Counsel handed up documents indicating Appellant was given Wellbutrin while at SCDC. The trial court next asked Appellant about prior exposure to the criminal system and Appellant said he had been convicted and incarcerated on two prior occasions. He testified he understood the lawyers for the State were there to prosecute and that his lawyer was there to defend. Appellant testified he met with counsel two or three times since January, for about fifteen to twenty minutes at each meeting. Appellant did not initially understand the burden of proof and said he believed his attorney had to prove his innocence. (Tr.p.22-p.30).

Next, the trial court questioned counsel in regard to the grounds for his motion for an evaluation. Counsel said Appellant speaks very well and was easy to communicate with. He said Appellant appeared to understand their discussions and was generally able to assist in discussing the case. Counsel said there had not been any issues or concerns with Appellant's ability to understand their discussions or assist in the defense of his case. (Tr.p.30-p.32). Counsel then steered the discussion towards criminal responsibility, arguing competence was "not as much an issue as whether or not he understands what [w]as happening at the time was right or wrong." The trial court questioned what efforts counsel's firm had made to get medical records from outpatient treatment facilities used by SCDC, or from the military. Ultimately, counsel stated:

> I just know that my opinion of Stanley's mental status, that directly impacts him, and I believe that is order for the judicial system to operate properly and follow his rights as the Defendant that he needs to be evaluated. This is not made in an attempt to postpone trial. If this case has to hit the next trial roster, so be it. We will be prepared to do it. We'll be prepared on that day. However, I cannot in good conscious [sic] ethically move forward without having [Appellant] evaluated. Thank you.

(Tr.p.32-p39). The trial judge then reviewed the two letters written to counsel from Appellant and questioned Appellant in regard to whether he understood the charges against him and possible sentences. Counsel acknowledged Appellant understood the elements of the charge but argued they still did not know his mental state at the time the crimes were committed and asked the judge to order the evaluation. The solicitor argued Appellant had not put forth any evidence to suggest a problem with M'Naghten criminal responsibility. (Tr.p.39-p.43).

After hearing the testimony and arguments from both parties, the trial court issued a ruling from the bench denying counsel's request for a mental evaluation. The court noted the defense bears the burden of proving by a preponderance of the evidence that a defendant is entitled to an evaluation and found Appellant presented no evidence other than the SCDC document showing a referral to outpatient mental health treatment in support of his request. The court further noted that during the colloquy Appellant responded appropriately to every question and exhibited an appropriate demeanor. The judge also noted there was no evidence Appellant had not been able to communicate effectively and intelligently with counsel, and commented on the quality of the letters Appellant had written to counsel from jail. The trial court found Appellant understood the role of the prosecutor and the defense in the case and had exhibited no irrational behavior during the proceeding. Relying on the decisions of this Court in Burgess and Colden and the similarities between those cases and this case, the trial court again recited the evidence indicating Appellant was both competent and sane. The court then commented on the lack of medical testimony concerning prior mental health treatment and denied Appellant's request for a mental evaluation for either competency or criminal responsibility. (Tr.p.44-p.47).

Trial

After the trial court denied Appellant's request for a mental evaluation, the case was called for trial. Following jury qualification and jury selection, the trial court addressed additional pretrial motions before the jury was sworn. (Tr.p.73-p.104). The trial judge gave brief preliminary instructions and the parties made opening statements. (Tr.p.104-p.117).

As noted in more detail above, the solicitor opened by giving a brief description of Appellant's armed robbery of the Shoe Show store in Georgetown on the morning of January 20, 2015. (Tr.p.112-p.115). Next, Appellant opened by focusing on the presumption of innocence, the State's burden of proof, and his belief that the State would not be able to meet that burden. (Tr.p.115-p.117).

The State then presented its case in chief, first calling the victim, Joyce Messinger, to the stand. She described the armed robbery in detail and identified the audio recording of her 911 call which was then admitted into evidence. She also identified a series of photographs of the store and those photos were admitted into evidence. Finally, Messinger described identifying Appellant from a photographic lineup shown to her by the police. She testified she was one hundred percent sure of the identification, that she was able to recognize Appellant in "the blink of an eye," and that nobody suggested or influenced her pick. Messinger then made an in-court identification of Appellant as the man who committed the armed robbery. (Tr.p.117-p.128). Appellant cross-examined Messinger about minor inconsistencies in her various statements to the police but on redirect she explained she was simply asked different questions so that her answers were a little different. (Tr.p.128-p.135).

Next, the State called Walmart Asset Protection Associate Ronald Walker and Cato District Manager Amy Milligan to the stand to describe the video surveillance systems at their

respective establishments. They identified video recordings and still-shot images from those recordings from January 20, 2015, which showed a suspect entering and leaving the Shoe Show at the time of the armed robbery and the vehicle that suspect used before and after the incident. The videos and photographs were admitted into evidence. (Tr.p.135-p.147).

The State then called Sergeant Jason Ward of the Georgetown Police Department to describe the police investigation following the armed robbery, which included talking to the victim, processing the crime, and taking photographs. Ward also described how the police watched the surveillance videos and provided still photographs of the vehicle to the Charleston Police Department, which ultimately led them to determine a probable license plate for the armed robber's car and track it to Appellant. He explained the police were then able to obtain a search warrant for Appellant's residence and described the items discovered which linked Appellant to the crime. (Tr.p.147-p.174; p.182-p.187). Detective Daniel English of the Charleston Police Department explained how he was given the still photos from the surveillance video and was able to review hundreds of photos taken by an automatic license plate reader (ALPR) camera on January 20, 2015, to find a car that appeared to match the one used by the armed robber. (Tr.p.174-p.182).

Next, over Appellant's objection, the State called Renada Lewis, the custodian of records for Verizon Wireless to the stand. She explained what general information about mobile phone account holders is kept by Verizon in the regular course of business and then identified and authenticated particular records covering January of 2015 for the mobile phone number on Appellant's account. (Tr.p.195-p.201). Finally, the State called Detective Seven Clothier of the Myrtle Beach Policed Department to the stand. He explained he participated in the execution of the search warrant at Appellant's residence and that he learned Appellant's cell phone number at

that time. Clothier then described getting mobile phone records from Verizon for Appellant's number and how he was able to use a software program called CellHawk to plot the location of the cell towers used by Appellant's mobile phone on January 20, 2015, before and after the armed robbery. (Tr.p.201-p.214).

After the State rested, Appellant made a motion for a directed verdict and that motion was denied. (Tr.p.214-p.218). Appellant was then questioned about his right to testify and elected not to take the stand. (Tr.p.218-p.222). Following a brief charge conference, the parties made closing arguments. (Tr.p.224-p.246). The trial judge then charged the jury on the presumption of innocence, the State's burden of proof, reasonable doubt, the roles of the judge and jury, credibility of witnesses, direct evidence, circumstantial evidence, the defendant's right not to testify, identification evidence, criminal intent, and the elements of the crimes. (Tr.p.246-p.260).

At the end of trial, after asking to watch the video surveillance recordings, the jury found Appellant guilty of armed robbery but was acquitted of kidnapping. He was sentenced by Judge Brown to a term of life imprisonment without the possibility of parole. As a special condition of Appellant's sentence the trial court ordered: "Mental Health Treatment as deemed necessary." (Indictments & Sentencing Sheet; Tr.p.266-p.272). Appellant renewed all prior motions, specifically the pretrial motion for a competency evaluation, and the trial court noted its prior rulings remained the same. (Tr.p.272-p.274).

ARGUMENT

I.

The trial court properly denied Appellant's motion for a mental health evaluation to determine his criminal responsibility at the time of the offense because Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate an intent to introduce evidence at trial that he lacked criminal responsibility.

Appellant argues the trial court erred in refusing to grant his motion for a mental health evaluation to determine his criminal responsibility at the time of the offense, contending he had presented sufficient evidence to warrant the evaluation so that counsel could determine whether a valid guilty but mentally ill (GBMI) or insanity defense might exist. He argues that by failing to order the requisite evaluation, the trial judge prevented him from pursuing both of these potential defenses at trial. (Brief of Appellant, p.7-p.8). The State disagrees and submits Appellant's argument is entirely without merit.

Contrary to Appellant's contentions, the trial judge committed no error in refusing to grant his motion for a mental health evaluation to determine his criminal responsibility at the time of the offense because Appellant did not offer sufficient evidence to support his request. Furthermore, the trial court had no basis for exercising its inherent discretionary authority to order an evaluation where Appellant did not interpose insanity as a defense and did not otherwise indicate any intent to introduce evidence at trial that he lacked criminal responsibility at the time of the crimes. A criminal defendant is not entitled to a mental evaluation to determine criminal responsibility simply to help him decide whether to pursue a GBMI or insanity defense. Rather, criminal defendants are presumed sane and the defendant has the burden of proving the defense of insanity by a preponderance of the evidence. A trial court's refusal to order a mental evaluation to determine criminal responsibility is in the discretion of the trial judge and nothing

prevented Appellant from seeking a mental evaluation on his own. Here, the trial judge acted well within his discretion in refusing the request given the paucity of evidence Appellant suffered from a mental disease or defect that would impact his criminal responsibility for the crime. Appellant's conviction and sentence should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012); *State v. Wilson*, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). The appellate court is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Gordon*, 414 S.C. 94, 98, 777 S.E.2d 376, 378 (2015). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but instead simply determines whether the trial judge's ruling is supported by *any evidence*. *Wilson*, 345 S.C. at 6, 545 S.E.2d at 829 (emphasis added). The trial court has the inherent, discretionary authority to order a compulsory mental examination to determine a defendant's mental condition where insanity is interposed as a defense, when a defendant indicates an intent to introduce evidence at trial that he lacked criminal responsibility, or where the court believes the defendant's mental competency would be an issue at trial. *Monahan v. State*, 365 S.C. 130, 133, 616 S.E.2d 422, 424 (2005); *State v. Locklair*, 341 S.C. 353, 535 S.E.2d 420 (2000). Thus, an order for a compulsory mental examination is subject to appellate review under an abuse of discretion standard. Similarly, when requested by the defendant the ordering of a mental examination to determine criminal responsibility is in the discretion of the trial judge and the refusal to grant such an examination will not be disturbed absent a clear showing of an abuse of discretion. *See State v. Bradshaw*, 269 S.C. 642, 643-44, 239 S.E.2d 652, 653 (1977) (utilizing an abuse of discretion standard where Bradshaw's motion for a mental examination was based

upon his allegation that he did not recall anything of the incident for which he was on trial); *See also State v. Colden*, 372 S.C. 428, 440-42, 641 S.E.2d 912, 920 (Ct. App. 2007) (concluding, after a review of the record and circumstances, the trial court did not abuse its discretion in denying Colden's pretrial motion for a competency and criminal responsibility evaluation).

Law / Analysis

Criminal responsibility and competency to stand trial are separate mental health issues. *Monahan*, 365 S.C. at 133, 616 S.E.2d at 423. The test for criminal responsibility relates to the time of the alleged offense, while competency to stand trial relates to the time the defendant is before the court for trial. *Id.* "It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong." S.C. Code Ann. § 17-24-10(A). "The defendant has the burden of proving the defense of insanity by a preponderance of the evidence." S.C. Code Ann. § 17-24-10(B). Indeed, a criminal defendant is presumed to be sane; the State does not have to prove sanity. *Smith v. State*, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989). However, when a defendant offers evidence of insanity, the State no longer enjoys the presumption, but must present evidence to the jury from which the jury could find the defendant sane. *Id.* If the contention of insanity is suggested, the State may present evidence of sanity in its case-in-chief rather than waiting to do so during its case in reply. *Id.*

By comparison, "A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental

disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law." S.C. Code Ann. § 17-24-20(A). "To return a verdict of 'guilty but mentally ill' the burden of proof is upon the State to prove beyond a reasonable doubt to the trier of fact that the defendant committed the crime, and the burden of proof is upon the defendant to prove by a preponderance of evidence that when he committed the crime he was mentally ill as defined in subsection (A)." S.C. Code Ann. § 17-24-20(B). "If a verdict is returned of 'guilty but mentally ill' the defendant must be sentenced by the trial judge as provided by law for a defendant found guilty." S.C. Code Ann. § 17-24-70. "If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence." S.C. Code Ann. §17-24-70(A). "A verdict of GBMI [Guilty But Mentally-Ill] does not absolve a defendant of guilt. A defendant found GBMI must be sentenced as provided by law for a defendant found guilty." *State v. Hornsby*, 326 S.C. 121, 127, 484 S.E.2d 869, 872 (1997), *citing State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992). ". . . Under the GBMI statute, *a defendant found GBMI is entitled to immediate treatment and evaluation.*" *Hornsby*, 326 S.C. at 127, S.E2d at 872, *citing* S.C. Code Ann. § 17-24-70 (Supp. 1995) (emphasis added). The GBMI statute simply recognizes the continuum in the law regarding mental illness and provides a guide for a jury when considering whether a defendant is not guilty; not guilty by reason of insanity (incapable of determining right from wrong); guilty but mentally ill (incapable of conforming his conduct to the requirements of the law but capable of distinguishing right from wrong); or guilty (suffers no mental illness)." *Hornsby*, 326 S.C. at 126-27, 484 S.E.2d at 872.

Here, the trial judge properly denied Appellant's motion for a mental health evaluation to determine criminal responsibility because Appellant did not offer sufficient evidence to support his request, did not interpose insanity as a defense, and did not otherwise indicate any intent to introduce evidence at trial that he lacked criminal responsibility. Additionally, in regard to a defense of GBMI, any error in the trial judge's refusal to order an evaluation was entirely harmless because when Appellant was sentenced, the trial court verbally ordered that he ". . . receive any kind of mental health treatment that the Department of Corrections deems necessary." (Tr.p.272).

Although counsel argued the long lasting effects of Appellant suffering a sexual assault at the age of thirteen led to shame, guilt, drinking, drug use, and anger, all of which drove Appellant to his regrettable behavior (Tr.p.), counsel never actually argued Appellant was not criminally responsible for that behavior. Counsel noted the existence of SCDC records showing some outpatient mental health services were done at area outpatient sites, but he did not know where Appellant had been treated outside of SCDC and had no records regarding that treatment. (Tr.p.8-p.11). Counsel also never connected that earlier treatment to Appellant's mental state at the time of the crimes. Instead, counsel simply relied on "this feeling in the pit of my stomach" that "something is not right" to ask that Appellant be evaluated. (Tr.p.13). Similarly, Appellant testified he had tried to seek help when he was in the military and was not allowed to reenlist after his 1998 discharge until he sought further help, and he described medications he was given both in SCDC and the Lexington County Detention Center; however, he gave not testimony about his mental state or medications he was taking or should have been taking at the time of the crimes. (Tr.p.22-p.28). Finally, the evidence discussed below showing Appellant was competent at the time of trial weighs heavily against any suggestion he would not have been

criminally responsible at the time of the crimes. As recognized by the trial judge, the lack of medical testimony concerning prior mental health treatment supported the decision to deny Appellant's request. (Tr.p.44-p.47). That decision was not an abuse of discretion. Furthermore, at least in regard to GBMI, any possible error was harmless.

Appellate courts will generally not set aside a judgment based on insubstantial errors not affecting the result. *State v. Sherard*, 303 S.C. 172, 176, 399 S.E.2d 595, 597 (1991). After an error is found, the appellate court must then review the other evidence considered at trial besides the erroneously admitted evidence. *State v. Baccus*, 367 S.C. 41, 55, 625 S.E.2d 216, 223 (2006). Error is harmless beyond a reasonable doubt if it does not contribute to the verdict. *State v. Fletcher*, 379 S.C. 17, 25, 664 S.E.2d 480, 484 (2008). Prior to the imposition of the sentence the trial judge asked if the Appellant had anything to say. The Appellant stated that, after talking with his counsel, "I just - - I just need help, I need help." (Tr.p.272). The trial judge then told Appellant he was ordering on the sentence sheet that Appellant: ". . . receive any kind of mental health treatment that the Department of Corrections deems necessary. That's all I can do." (Tr.p.272).

In order to receive mental health treatment or identify the Appellant for services appropriate to his conditions or needs, the Appellant be screened by a trained mental health examiner in SCDC. Based upon any identified needs, SCDC would then be under judicial order to provide the appropriate treatment. In ordering screening and treatment the trial judge effectively complied with the GBMI statute and ordered immediate evaluation and treatment upon SCDC taking custody, exactly as dictated by S.C. Code § 17-24-70. Thus, in regard to GBMI, any possible error in failing to order a mental evaluation was harmless. For all of the reasons discussed above. Appellant's conviction and sentence should be affirmed.

II.

The trial court properly denied Appellant's motion for a mental health evaluation to determine his competency at the time of trial because the trial judge conducted a competency hearing which did not give him any reason to believe Appellant was not fit to stand trial.

Appellant argues the trial judge erred in denying his motion for a mental health evaluation to determine his competency to stand trial. Relying primarily on this Court's opinion in *State v. Singleton*, 322 S.C. 480, 472 S.E.2d 640 (Ct. App. 1996), he contends it was "incumbent on the trial judge to order the competency evaluation so that a medical professional could determine whether [Appellant] understood the proceedings against him and whether he could assist in his own defense as a result of lack of mental capacity." (Brief of Appellant, p.10). The State disagrees and submits Appellant's argument should be denied on several grounds.

Initially, the State notes Appellant does not challenge the trial court's competency determination. Rather, he challenges the decision not to order a competency evaluation. Because the trial court made a finding that Appellant was competent to stand trial and that finding has not been challenged, it is the law of the case. *Caprood v. State*, 338 S.C. 103, 112, 525 S.E.2d 514, 518 (2000); *State v. Fripp*, 396 S.C. 434, 441, 721 S.E.2d 465, 4698 (Ct. App. 2012). Consequently, any challenge to the failure to order a mental evaluation to determine competency is now moot. *See Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001) ("An appellate court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy."); *Byrd v. Irmo High School*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon an existing controversy. This is true when some event occurs making it impossible for the reviewing Court to grant effectual relief."). Since Appellant was found competent pursuant to the trial court's ruling, it is impossible for this Court to grant effectual

relief, and his appeal on this ground should be dismissed as moot. Even if this Court determines the claim is not moot, it is nevertheless without merit because the trial judge conducted a competency hearing which gave him reason to believe Appellant was fit to stand trial.

Standard of Review

In criminal cases, an appellate court sits to review only errors of law, and it is bound by the trial court's factual findings unless they are clearly erroneous. *State v. Wilson,* 345 S.C. 1, 6, 545 S.E.2d 827, 829 (2001). The appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence but, instead, simply determines whether the trial judge's ruling is supported by *any evidence*. *Id.* at 6, 545 S.E.2d at 829 (emphasis added).

Law / Analysis

The South Carolina Code provides:

> Whenever a judge of the circuit court or family court *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 order examination* of the person by two examiners designated by the Department of Mental Health if the person is suspected of having a mental illness or designated by the Department of Disabilities and Special Needs if the person is suspected of having intellectual disability or having a related disability or by both sets of examiners if the person is suspected of having both mental illness and intellectual disability or a related disability.

S.C. Code Ann. § 44-23-410(A)(1) (emphasis added). Despite the mandatory language that "the judge shall order examination," our courts have consistently held the phrase "has reason to believe" tempers this language to mean it is within the trial judge's discretion to determine whether a defendant should be given a mental evaluation. *State v. Bradshaw*, 269 S.C. 642, 644, 239 S.E.2d 652, 653 (1977); *State v. Bradley*, 343 S.C. 461, 464, 539 S.E.2d 720, 722 (Ct. App. 2000). Thus, a refusal to order a mental evaluation will only be reversed where there has been an

abuse of discretion. *State v. Singleton*, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (1996); *Bradley*, 343 S.C. at 464, 539 S.E.2d at 722.

Here, the trial court did not err in denying Appellant's motion for a mental health evaluation to determine his competency to stand trial because, after a careful review of the evidence in the record, it concluded there was no showing by Appellant that would warrant granting the motion. Instead, the trial court determined Appellant was competent to stand trial without medical evaluation because he was able to consult with his attorney, understand the court's process, understand the role of the participants, and had a factual understanding of how the trial would proceed.[5]

In considering Appellant's competency, the trial court undertook an interview process with both counsel and Appellant. The court first questioned counsel, who said Appellant did not have trouble communicating with him, appeared to understand everything being discussed with him, and was able to assist in his own defense, and said there were no times counsel could recall Appellant being unable to assist him. (Tr.p.31-p.32). Next, Appellant was sworn and proceeded to give testimony that accurately and succinctly explained his educational history, his employment history, his criminal history, and his military service record. (Tr.p.23-p.29). The Appellant also correctly identified the attorneys for the State and defense, what their individual responsibilities and roles are, and the purpose of the trial. (Tr.p.29-p.31). The only question Appellant incorrectly answered under examination was who had the burden of proof of proving

[5] The test for determining competency to stand trial is whether the defendant has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as a factual understanding of the proceedings against him. *Dusky v. United States*, 362 U.S. 402 (1960); *State v. Weik*, 356 S.C. 76, 81, 587 S.E.2d 683, 685 (2002). Competency is required to ensure that [the defendant] has the capacity to understand the proceedings and to assist counsel. *Godinez v. Moran,* 509 U.S. 389 (1993); *Weik*, 356 S.C. at 81, 587 S.E.2d at 685. "The standard for determining whether an accused is entitled to a competency to stand trial . . . is that evidence of a defendant's irrational behavior, his demeanor at trial and any prior medical opinion on competence to stand trial are all relevant in determining whether further inquiry is required . . . ." *State v. Blair*, 275 S.C. 529, 534, 273 S.E.2d 536, 538 (1981) (*citing Drope v. Missouri*, 420 U.S. 162 (1975)).

guilt. Appellant said he and his counsel had the burden of proving his innocence, rather than that burden resting with the State. (Tr.p.31). However, Appellant appeared to understand this was erroneous when corrected by the trial judge. Under the relevant standard, the trial court correctly ascertained that Appellant was competent to stand trial because he had a "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and "a rational as well as a factual understanding of the proceedings against him." *Weik*, 356 S.C. at 81, 587 S.E.2d at 685.

The trial court also asked counsel if there were any medical records showing a mental illness or history of psychiatric treatment. Counsel stated he requested any and all medical records from SCDC regarding Appellant and in over 300 pages of medical documents received, none specifically showed Appellant had been treated inside or outside for any mental illness, and only one document showed Appellant had previously taken the psychiatric medication Wellbutrin. (Tr.p.29). Counsel failed to request any records from the military and failed to consult with regional social services to determine if any medical records existed. (Tr.p.35-p.36). In short, the only history of any psychiatric treatment at SCDC that could contribute to showing a need for an evaluation was a brief mention of Appellant taking Wellbutrin and a vague reference to an outside referral for treatment.

Finally, the trial court took testimony from Lieutenant Clarey, the intake administrator of Appellant's detention center during his pretrial confinement. She was responsible for classifying inmates by need during their incarceration, and ensuring that they were housed appropriately based on mental illness, gang affiliation, medical conditions, and nature of offenses. (Tr.p.18). Clarey testified she had extensive contact with the inmates, had known the Appellant since he was first incarcerated, and had significant contact with him during his incarceration. She said

did not need to make special arrangements for him and that he had no behavioral issues and had exhibited no irrational or bizarre behavior during his pretrial confinement. (Tr.p.18). Clarey testified Appellant had no issues communicating with staff and she was not aware of him being treated for any medical issues, including psychiatric conditions. (Tr.p.19-p.20).

The trial court looked for evidence of irrational behavior, considered Appellant's demeanor, and looked for any medical evidence tending to indicate that the Appellant should be evaluated for competency prior to trial. Having no *reason to believe* Appellant lacked the capacity to assist in his own defense or to understand the proceedings, S.C. Code Ann. § 44-23-410, the trial court properly refused the request for an evaluation. Indeed, the only "evidence" counsel provided the court besides the one time use of Wellbutrin and the outside referral was the feeling "in the pit of" counsel's stomach, and his "personal opinion" that "there is something wrong with Stanley Moultrie." (Tr.p.14-p.15). The trial judge did not abuse his discretion and did not err in refusing to order a competency hearing when there were no manifest signs or medical documentary evidence of any inability of Appellant to stand trial, particularly where Appellant's own conduct and demeanor in the courtroom failed to show any need for an evaluation.

Appellant's reliance on *Singleton* is misplaced. In *Singleton*, this Court held the trial court abused its discretion in not ordering a competency examination in conjunction with probation revocation proceedings. *Singleton*, 322 S.C. at 483, 472 S.E.2d at 642. However, this was because the lower court "denied the motion without explanation" and then stated "I urge treatment for [Singleton's] mental condition while he's incarcerated . . . ." *Id.* at 482, 472 S.E.2d at 641. Here, the trial judge conducted a competency hearing and fully explained why he was denying Appellant's motion. He then ordered: "Mental Health Treatment as deemed necessary."

In *Singleton*, the judge ordered treatment after apparently recognizing the defendant had a medical condition. In Appellant's case, the judge found Appellant had failed to provide sufficient evidence that he had a medical condition, and ordered treatment only if SCDC deemed it necessary. Thus, the cases are easily distinguishable.

Appellant's challenge to the trial court's refusal to order a mental evaluation to determine his competency to stand trial should be dismissed as moot. Alternatively, it should be denied and dismissed on the merits because the trial judge conducted a competency hearing which gave him reason to believe Appellant was fit to stand trial. There was no abuse of discretion. For all of these reasons, Appellant's conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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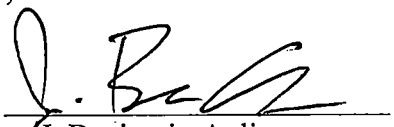
BY: 
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Columbia, South Carolina
December 8, 2017

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GEORGETOWN COUNTY
D. Craig Brown, Circuit Court Judge

Appellate Case No. 2016-001830

THE STATE, ...RESPONDENT

v.

STANLEY DELANOR MOULTRIE,.....APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Coordinator, hereby certify that I have served the within *Initial Brief of Respondent* and *Designation of Matter*, both dated December 8, 2017, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

Laura R. Baer, Esquire
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I further certified that all parties required by Rule to be served have been served. This 8th day of December, 2017.

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ALAN WILSON
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December 8, 2017

Laura R. Baer, Esquire
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Re: The State v. Stanley Delanor Moultrie
Appellate Case No. 2016-001830

Dear Ms. Baer:

I am enclosing two (2) copies of the Initial Brief of Respondent and Designation of Matter in the above-referenced case.

Sincerely,

J. Benjamin Aplin
Senior Assistant Deputy Attorney General
S.C. Bar No. 8729

JBA/ab
Enclosures

cc: Honorable Jenny A. Kitchings (original enclosed)
Victim Advocacy Division