

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

JAN 25 2018

APPEAL FROM LAURENS COUNTY  
Court of General Sessions

SC Court of Appeals

Frank Addy, Circuit Court Judge

Case No. 2015-002435

STATE OF SOUTH CAROLINA,

Respondent,

v.

GREGORY FIELDER,

Appellant.

PETITION FOR REHEARING

Appellant, Gregory Fielder (hereinafter, "Mr. Fielder" or "Appellant"), through counsel, respectfully seeks rehearing pursuant to Rule 221(a), SCACR, and submits the herein Petition for Rehearing.

ARGUMENT

**The Court of Appeals overlooked or misapprehended that the issue of whether the Trial Judge abused its discretion by failing to order an examination to determine if Mr. Fielder was competent to stand trial has been preserved for appellate review.**

"In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]." State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003). Shortly after the call of the case, the Judge Griffith noticed that the Appellant did not appear to

be well. (R. p. 8, lines 14-15). Mr. Fielder confirmed that he was not well, and advised Judge Griffith that he was under medical care. (See R. p. 9, lines 12-14). After Judge Addy began presiding over the case, Mr. Fielder provided Judge Addy a physician's note from Fountain Inn Family Practice, indicating that Mr. Fielder was to be evaluated and referring Mr. Fielder to a neurosurgeon for radiating back pain from injuries that he sustained after he fell from his porch. (R. p. 29, lines 21-25). Mr. Fielder also provided Judge Addy with a prescription bottle, dated October 19, 2015, for Alprazolam, for Appellant's anxiety. (R. p. 29, line 25; R. p. 30, lines 1-5).

As indicated in the *Final Brief of Appellant*, common side effects for Alprazolam may include: drowsiness, feeling tired, slurred speech, lack of balance or coordination, memory problems, and feeling anxious early in the morning. Mr. Fielder made several statements indicating that he did not understand what was happening during the proceedings. (See R. p. 10, lines 17-21; R. p. 12, line 14; R. p. 19, lines 19-20). Furthermore, Mr. Fielder made the following statements to the Court in response to the Trial Judge's indication that Mr. Fielder was fit to stand trial, and that the trial would proceed:

"I do want to put on the record that if I am forced to go forward, I will go forward but I will do it under duress, under terrorism, under threat, and under coercion." (R. p. 29, lines 11-14); "I will repeat, this forces me to go forward, I will do it, but under duress, under terrorism, under threats, under coercion." (R. p. 31, line 25; R. p. 32, lines 1-2).

Thereafter, the Trial Judge indicated that he believed Mr. Fielder was lucid and fit to stand trial. Subsequently, Mr. Fielder, again, stated to the Court that he was being forced to proceed, and the following exchange took place between Mr. Fielder and the Trial Judge:

Mr. Fielder: "First motion, wanted to be on the record that I am being forced to move forward under duress, terrorism, threat of coercion."

The Court: Appreciate your position, I have already addressed that. What is your next motion.

Mr. Fielder: The next motion is that I reject the fact that Your Honor has made a medical determination that I do not and cannot have anxiety...

The Court: Your next motion.

Mr. Fielder: Have you ruled on it[?]

The Court: I will do them one at a time. As far as the Court making a medical determination that you do not have medical anxiety. I am not making any such determination, I am simply stating that whatever medical or mental conditions you suffer from is not so acute or severe as to warrant the delay of these proceedings or to affect your ability to present your case.” (R. p. 36, line 18 – R. p. 37, line 13).

The above-referenced statements show that the issue of whether the Trial Court abused its discretion by failing to order an examination to determine if Mr. Fielder was competent to stand trial, has been raised and ruled upon by the Trial Court. Despite Mr. Fielder’s arguments that he was not fit to stand trial (along with the physician’s note, doctor’s prescription, and Mr. Fielder’s poor physical appearance), the Trial Judge ruled that Mr. Fielder was fit to stand trial without ordering an examination. Therefore, this issue has been preserved for appellate review.

**The Court of Appeals overlooked or misapprehended that the issue of whether the Trial Judge unreasonably restricted Mr. Fielder’s ability to testify was preserved for appeal.**

“In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court].” State v. Dunbar, 356 S.C. 138, 142, 587 S.E.2d 691 (2003). In

this case, Mr. Fielder clearly desired to testify on his own behalf. Mr. Fielder advised the Court, on more than one occasion that he wished to testify. As stated in the *Final Brief of Appellant*, Mr. Fielder advised the Trial Court that he wanted to testify on his behalf, but that he needed some time to organize his documents. (R. p. 241, lines 11-15). The Trial Court gave Appellant only five minutes to prepare himself. (R. p. 241, lines 20-22). After a brief recess, a bench conference took place. In the Trial Judge's summary of the bench conference, the Trial Judge stated that Mr. Fielder advised the Court that he could not testify, because he needed additional time to organize his materials. Consequently, the Trial Judge prohibited Mr. Fielder from testifying. At no time did Mr. Fielder waive his right to testify on his behalf. To the contrary, Mr. Fielder consistently maintained that he wished to testify, but that he needed some time to prepare his materials. Therefore, the issue of whether the Trial Judge unreasonably restricted Mr. Fielder's ability to testify was raised and ruled upon by the Trial Court, and, thus, was preserved for appellate review.

**The Court of Appeals overlooked or misapprehended that the Trial Court abused its discretion by refusing to sequester James Bryan.**

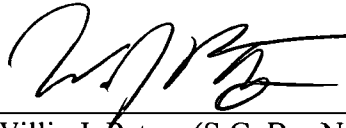
"The purpose of the exclusion rule is, of course, to prevent the possibility of one witness shaping his testimony to match that given by other witnesses at the trial..." State v. Huckabee, 388 S.C. 232, 694 S.E.2d 781 (S.C. App., 2010). James Bryan (hereinafter, "Mr. Bryan") clearly had no personal knowledge of Ms. Montgomery's mental competency, and he based it entirely on the testimony of previous witnesses. Nonetheless, Mr. Bryan used testimony from the witnesses who testified before him to shape and bolster his own testimony. At trial, Mr. Bryan made several improper and unfairly prejudicial statements, which were highlighted in the *Final Brief of Appellant*, that were entirely gleaned from previous witnesses' testimony. As an

attorney, Mr. Bryan's testimony was likely given greater weight than the average lay witness. Mr. Bryan's testimony was improper, unfairly prejudicial, and it likely led the jury to believe that he had special knowledge regarding Ms. Montgomery's mental competency. The Trial Court's decision to not sequester Mr. Bryan went against the purpose of the exclusion rule, because Mr. Bryan's testimony was shaped by the State's witnesses who testified before him. Therefore, the Trial Court abused its discretion by failing to sequester Mr. Bryan.

### CONCLUSION

For the aforementioned reasons, Appellant requests a rehearing pursuant to Rule 221(a), SCACR.

Respectfully submitted,



---

Willie J. Peters (S.C. Bar No.: 100974)  
Darren S. Haley (S.C. Bar No.: 14564)  
The Haley Law Firm, LLC  
1007 Pendleton Street  
Greenville, SC 29601  
(864) 235-6638 (Ph) (864) 370-1201 (Fax)  
darren@darrenhaley.com  
Attorneys for Appellant

Greenville, South Carolina  
January 25, 2018

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LAURENS COUNTY  
Court of General Sessions

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

Case No. 2015-002435

The State of South Carolina,

Respondent,

v.

Gregory Fielder,

Appellant.

RECEIVED

JAN 25 2018

SC Court of Appeals

PROOF OF SERVICE

I certify that I have served a copy of the *Petition for Rehearing* on the Respondent by depositing a copy of it in the United States Mail, postage prepaid, on January 25, 2018, addressed to J. Benjamin Aplin, Esq., P.O. Box 11549, Columbia, SC 29211-1549, Alan McCrory Wilson, Esq., P.O. Box 11549, Columbia, SC 29211-1549, Karen C. Ratigan, Esq. P.O. Box 11549, Columbia, SC 29211-1549, and David A. Fernandez, Esq., P.O. Box 11549, Columbia, SC 29211-1549.



Willie J. Peters (S.C. Bar No.: 100974)  
Darren S. Haley (S.C. Bar No.: 14564)  
The Haley Law Firm, LLC  
1007 Pendleton Street  
Greenville, SC 29601  
(864) 235-6638 (Ph) (864) 370-1201 (Fax)  
darren@darrenhaley.com  
Attorneys for Appellant

Greenville, South Carolina  
January 25, 2018