

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES D. CHAPMAN,

APPELLANT

Appellate Case No. 2011-198167

FINAL BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

RECEIVED

NOV 30 2012

SC Court of Appeals

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUES ON APPEAL.....	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION.....	14

TABLE OF AUTHORITIES

Cases

Botehlo v. Bycura, 282 S.C. 578, 320 S.E.2d 59 (Ct. App. 1984) 10

Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 609 S.E.2d 506 (2005)..... 8

Gooding v. St. Francis Xavier Hospital, 326 S.C. 248, 487 S.E.2d 596 (1997)..... 10, 11, 12

Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988) 8, 9, 10

Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995)..... 8

Manning v. City of Columbia, 297 S.C. 451, 377 S.E.2d 335 (1989)..... 8, 9

McDill v. Mark's Auto Sales, 367 S.C. 486, 626 S.E.2d 52 (Ct. App. 2006)..... 10, 12, 13

O'Tuel v. Villani, 318 S.C. 24, 455 S.E.2d 698 (Ct. App. 1995)..... 10

State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001)..... 11

State v. Price, 368 S.C. 494, 629 S.E.2d 363 (2006)..... 8

State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009) 9

Strange v. South Carolina Dep't of Highways & Pub. Transp., 307 S.C. 161, 414 S.E.2d 138
(1992) 8

Rules

Rule 702, SCRE..... 8, 9

STATEMENT OF ISSUES ON APPEAL

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

STATEMENT OF THE CASE

A Greenville County Grand Jury indicted Appellant for murder during its April 2011 term. Indictment. The prosecution, represented by L. Mark Moyer, called the case for trial on August 22, 2011 before the Honorable G. Edward Welmaker and a jury. R. 1. Brian P. Johnson represented Appellant. R. 1. After a two-day trial, the jury found Appellant guilty of murder. Supp R. 1, l. 21 – R. 267, l. 14. Judge Welmaker sentenced Appellant to life in prison. R. 268, l. 25 – R. 269, l. 2; Sentence sheet.

This brief follows.

ARGUMENT

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

Appellant admitted that on April 23, 2010, he killed his mother. R. 7, ll. 14-16; R. 8, l. 21; R. 210, ll. 4-13; R. 243, ll. 5-6. At the time of the incident, Appellant lived with his mother in an apartment. R. 216, l. 6 – R. 217, l. 2. During the evening of April 23, 2010, Appellant went to Sharkey's Pub where he ordered five shots of tequila and three beers. R. 203, ll. 18-19; R. 204, ll. 23-24; R. 219, ll. 9-13. Appellant testified the tequila shots were doubles, and he drank all of the alcohol himself. R. 205, ll. 2-14. Afterwards, he went home where he and his mother engaged in a confrontation concerning Appellant's drinking. R. 207, ll. 2-5; R. 207, ll. 10-17; R. 208, ll. 3-8; R. 208, l. 23 – R. 209, l. 3; R. 239, l. 25 – R. 240, l. 12. According to Appellant, his mother hit him repeatedly in the head. R. 209, ll. 11-12; R. 210, l. 1; R. 210, l. 4; R. 214, ll. 9-12; R. 215, ll. 5-8; R. 225, ll. 14-15; R. 228, ll. 2-8. In a rage, Appellant struck back at his mother several times. R. 210, ll. 5-15; R. 224, l. 9 – R. 225, l. 15. She died as a result of blunt force trauma of the head. R. 172, ll. 1-8.

Appellant presented evidence that he was guilty of voluntary manslaughter, not murder. R. 7, ll. 7-22; R. 243, ll. 7-18. Primarily, Appellant relied upon the injuries to his head as evidence that he acted in the sudden heat of passion based upon sufficient legal provocation. R. 247, ll. 3-11. Appellant explained that he "went crazy" and acted in the sudden heat of passion after receiving multiple blows to his head. R. 247, l. 20 – R. 248, l. 2; R. 249, ll. 5-7.

The prosecution called Brian Simmons, a paramedic, to testify. Simmons, who had been working for EMS for five years, was employed by Greenville County EMS at the time. R. 42, ll. 19-24. In order to become a paramedic, Simmons “went through [his] basic level of EMT, [his] intermediate level of EMT and [his] paramedic level.” R. 43, ll. 11-13. He responded to the incident location at 10:10 p.m. R. 43, l. 14 – R. 44, l. 2. Simmons determined the victim was dead on arrival after a brief evaluation. R. 45, l. 6; R. 45, l. 13 – R. 46, l. 11. Thereafter, Simmons began drafting his report in the hallway of the apartment complex. R. 46, l. 14-17. Officers had placed Appellant, who was handcuffed, in the hallway. R. 46, ll. 18-19. Simmons described Appellant as “very excited, very talkative, and verbally aggressive.” R. 46, ll. 22-24. In this state, Appellant admitted to killing the victim. R. 47, l. 22 – R. 48, l. 4.

Simmons testified that an officer asked him to look at Appellant’s physical condition. R. 48, ll. 10-12. Simmons testified that Appellant’s “wounds appeared minor” because they “appeared superficial, non-life threatening.” R. 48, ll. 17-21. Simmons admitted he spent a very short amount of time looking at Appellant’s wounds, however. R. 48, ll. 23-25. Simmons administered no medical treatment to Appellant. R. 49, ll. 7-10. In response to the prosecutor’s questioning, Simmons testified that Appellant acted inconsistent with a person who had a head injury. R. 50, ll. 2-7. When the prosecutor asked Simmons to elaborate and Simmons began discussing a “typical closed head injury or something that’s going on with [the] brain,” Appellant objected that Simmons was testifying as an expert, but had not been qualified as such. R. 50, ll. 8-13. The judge sustained the objection and directed the prosecutor to lay a foundation. R. 50, ll. 16-17.

Thereafter, Simmons explained the training he received to allow him “to make the assessment that [he was] making” to include school for basic EMT, intermediate EMT, and paramedic. R. 50, ll. 21-23. In order to obtain his status as paramedic, Simmons testified he attended one thousand hours of classroom and clinical time. R. 50, l. 25 – R. 51, l. 1. He explained that he took “a brief class” on traumatic brain injuries. R. 51, l. 2-9. As a paramedic, he saw people with head trauma “every once in a while.” R. 51, l. 10-14.

Appellant engaged in voir dire of Simmons concerning his qualifications as an expert in head injuries. Simmons admitted that he did not encounter people with head injuries “regular enough ... to establish a pattern” or “to give a number.” R. 52, ll. 3-9. Appellant objected to the prosecutor’s request to qualify Simmons as an expert in head injuries. R. 52, ll. 10-11. Nevertheless, the trial judge “allow[ed] him to testify as to his expertise limited to that or what he’s been trained under EMS.” R. 52, ll. 15-17.

In response to the prosecutor’s questioning, Simmons opined that Appellant acted inconsistent with people who suffer from a head injury. According to Simmons people with head injuries are “either combative or, more or less, comatose or unconscious.” R. 52, ll. 18-25. In Simmons’ opinion, Appellant was “the opposite of combative” because he was “sitting there while he was talking” and “didn’t seem incoherent, slinging around, fighting.” As to not being comatose, Appellant “was alert, talking, knew the events that had happened, was discussing them.” R. 53, ll. 1-7. On cross-examination, Simmons clarified that in his opinion, Appellant was not suffering from a head injury because he “was not either combative or unconscious.” R. 53, ll. 15-20.

During his closing argument, the solicitor relied upon Simmons' testimony to undermine Appellant's argument that he was guilty of voluntary manslaughter, not murder.

The solicitor argued to the jury:

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

R. 262, ll. 17-22.

The qualification of a witness as an expert and the subsequent admission of that witness' opinion testimony are matters within the sound discretion of the trial judge. State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); Lee v. Suess, 318 S.C. 283, 285, 457 S.E.2d 344, 345 (1995); Manning v. City of Columbia, 297 S.C. 451, 453, 377 S.E.2d 335, 336-337 (1989); Honea v. Prior, 295 S.C. 526, 530, 369 S.E.2d 846, 849 (Ct. App. 1988). Therefore, an appellate court reviews a trial judge's ruling concerning an expert witness' qualification and the admission of opinion testimony for an abuse of discretion. Strange v. South Carolina Dep't of Highways & Pub. Transp., 307 S.C. 161, 163, 414 S.E.2d 138, 139 (1992); Honea, 295 S.C. at 530; 369 S.E.2d at 849. "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion that is without evidentiary support." Fields v. Reg'l Med. Ctr. Orangeburg, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005); see also, Suess, 318 S.C. at 285, 457 S.E.2d at 345. If the ruling is "manifestly arbitrary, unreasonable, or unfair," then the trial court abused his discretion. Id.

Rule 702 of the South Carolina Rules of Evidence governs when the admission of expert testimony is appropriate and supplies the bases by which an expert may be qualified to give an opinion. Specifically, the Rule provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Thus, several criteria must be met prior to the admission of expert testimony. First, the trial court must determine that such evidence will assist the jury to understand the evidence or determine a fact in issue. Second, the witness must be qualified as an expert due to experience or training. Third, the trial court must determine whether the proposed expert testimony satisfies a reliability threshold for the jury's ultimate consideration. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009).

The first criterion requires the trial judge to determine whether the proffered testimony, which is based upon specialized knowledge, will assist the jury in understanding evidence or determining a fact. A matter understood without any specialized knowledge does not require the witness to be qualified as an expert. Additionally, if the testimony will not assist the jury's understanding of a relevant matter, then no expert testimony is needed. See Manning, 297 S.C. at 453-454, 377 S.E.2d at 337 (holding that "[t]o qualify as an expert, a person must have acquired by study or practical experience a special knowledge of a subject matter about which the jury's good judgment and average knowledge is inadequate"); Honea, 295 S.C. at 531, 369 S.E.2d at 849. The third criterion requires the trial judge to ensure the proffered testimony "meets a reliability threshold for the jury's ultimate consideration." White, 382 S.C. at 270, 676 S.E.2d at 686. As explained by the South Carolina Supreme Court, "[r]eliability is a central feature of Rule 702 admissibility." Id.

The second criterion, which is at issue in Appellant's case, requires that the expert's proffered testimony be based upon "knowledge, skill, experience, training, or education." In order for a witness to be competent to testify as an expert, the "witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony." O'Tuel v. Villani, 318 S.C. 24, 28, 455 S.E.2d 698, 701 (Ct. App. 1995). Qualification as an expert "depends on the particular witness' reference to the subject." Gooding v. St. Francis Xavier Hospital, 326 S.C. 248, 253, 487 S.E.2d 596, 598 (1997); see also Suess, 318 S.C. at 285, 457 S.E.2d at 346. "[A]n expert is not limited to any class of persons acting professionally." Gooding, 326 S.C. at 253, 487 S.E.2d at 598 (citing Botelho v. Bycura, 282 S.C. 578, 586, 320 S.E.2d 59, 64 (Ct. App. 1984)). In addition, our courts place no exact requirement regarding how that knowledge or skill must be acquired by the witness. Honea, 295 S.C. at 531, 369 S.E.2d at 849. In fact, "[e]ven where the problem presented may be one that usually requires some scientific knowledge or training, a person with long experience may testify as an expert although he or she did not pursue a special study of the matter." Id.

In McDill v. Mark's Auto Sales, 367 S.C. 486, 491, 626 S.E.2d 52, 55 (Ct. App. 2006), this Court held the trial judge did not err in refusing to qualify a state trooper as an expert in accident reconstruction. Although the trooper had experience in investigating accidents and took a six-week accident reconstruction course along with updating courses, the trooper was not a member of the Highway Patrol's accident reconstruction team. The trooper did not use any particular reconstructive techniques in making his determination of the car speeds; rather, he relied upon statements from the drivers as to their speeds. The

trooper had testified in federal court previously concerning his opinion as to accident investigation, not reconstruction. Id. As this Court noted, “if investigating an accident qualified an officer as an expert in accident causation, then every highway patrolman would qualify as an expert.” Id.

On the other hand, in Gooding, 326 S.C. at 252, 487 S.E.2d at 597, the South Carolina Supreme Court held an emergency medical technician (EMT) and paramedic, was qualified to testify as an expert on intubation. The EMT testified that in addition to being a certified paramedic, he had intubated over one hundred patients, and instructed and tested physicians on intubation and extubation procedures. Id. at 251, 487 S.E.2d at 597.

In State v. Ellis, 345 S.C. 175, 177-178, 547 S.E.2d 490, 491 (2001), the Supreme Court held a police officer, who was qualified to testify as an expert in crime scene processing and fingerprint identification exceeded the scope of his expertise when he testified as to his conclusion drawn from the measurements and observations he made. In Ellis, the victim was found dead as a result of gunshot wounds near his bicycle and a knife. The defendant admitted to shooting the victim, but claimed he acted in self defense when the victim dropped his bike and approached the defendant with the knife. When the victim refused to stop, the defendant shot the victim. The prosecution’s theory of the case was that the defendant shot the victim while the victim remained on the bike. Id. at 176, 547 S.E.2d at 491. The police officer testified that the victim was on his bike when he was shot based upon his measurements and observations of the crime scene. Id. at 177-178, 547 S.E.2d at 491. Further, the Court held the error in allowing the officer to testify was not harmless in light of the defendant’s contention that he was acting in self defense. Id. at 178, 547 S.E.2d at 491. The Court held the prosecutor was free to argue that the evidence supported an

inference that the victim was on the bicycle at the time of the shooting, and the jury could have concluded as such, but the officer “was not qualified to give such an ‘expert’ opinion.”

Id.

The trial judge erred in qualifying Simmons, a paramedic, as an expert in head injuries and in permitting Simmons to testify regarding whether Appellant’s conduct was consistent with an individual suffering from head trauma. Simmons lacked the required knowledge, skill, experience, training or education necessary for him to testify as an expert. When the trial judge properly sustained Appellant’s objection to Simmons testifying concerning his opinion, the prosecutor had established that Appellant had worked for EMS for five years and had completed courses in EMT basic, EMT intermediate, and paramedic. The foundation later laid by the prosecution in an attempt to qualify Simmons as an expert added very little. Simmons testified he attended a brief class on traumatic brain injuries and saw people with head trauma only “every once in a while” as a paramedic. Simmons’ education and training concerning head injuries was very limited as he explained his class on the subject was brief, not even a full semester class. Similarly, Simmons’ experience with head injuries was very limited as he testified that he encountered them so seldom he could not establish a pattern or give a number. Thus, he lacked the knowledge, skill, training, education, or experience with head injuries to qualify him to testify as an expert. If Simmons were qualified as an expert in head injuries, then every paramedic would be qualified as an expert in head injuries. See McDill, 367 S.C. at 491, 626 S.E.2d at 55.

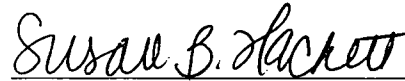
Unlike the paramedic in Gooding who had intubated over one thousand individuals and instructed others on proper technique, Simmons’ experience related to individuals with head injuries was so infrequent he could not even give an estimated number. Simmons, like

the trooper in McDill, lacked the necessary experience, training, and education to qualify as an expert. The trooper in McDill attended a six-week course on accident reconstruction and attended continuing education on the subject; whereas, Simmons participated in a very brief class as part of his paramedic certification process.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and sentence based upon the trial court's error in qualifying the paramedic as an expert in head injuries and allowing the paramedic to give his opinion concerning Appellant's conduct.

Respectfully submitted,



Susan B. Hackett
Appellate Defender

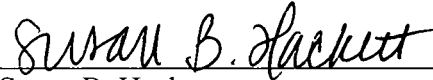
ATTORNEY FOR APPELLANT

This 30th day of November, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 30th, 2012



Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

THE STATE,

RESPONDENT,


V.

JAMES D. CHAPMAN,

APPELLANT

CERTIFICATE OF SERVICE

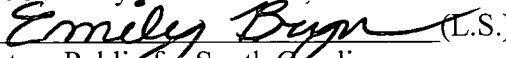
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, SC 29472, this 30th day of November, 2012.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 30th day of November, 2012.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: November 16, 2022.