STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMAR BRYANT,

APPELLANT,

Appellate Case No. 2013-000671.

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

Whether the trial court's refusal to order a mental competency examination was erroneous because it was based on an improper consideration, a mistake of fact, and the State consented to the evaluation?

RESPONDENT'S COUNTER STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in denying Petitioner's request for a mental competency evaluation.

RESPONDENT'S STATEMENT OF THE CASE

A Georgetown County Grand Jury indicted Appellant, Tamar Yaron Bryant, in May 2011 for murder. (R. p. 345). On September 21, 2012, Petitioner appeared at a hearing before the Honorable Steven H. John. (R. p. 322). On December 17, 2012, Petitioner appeared at a hearing before the Honorable Benjamin H. Culbertson. (R. p. 296). At both hearings, Petitioner's counsel, Ronald Hazzard, made a motion for an evaluation as to competency. (R. pp. 323–328; R. pp. 298–311, 316). Each time, the motion was denied. (R. pp. 327–328; R. p. 311).

On March 18, 2013, Appellant's case was called to trial before the Honorable Larry B. Hyman, Jr. (R. p. 1). Ronald Hazzard continued to represent Appellant during the three-day trial. (R. p. 1). Solicitor Erin Bailey represented the State. (R. p. 1). The jury returned a verdict of guilty. (R. p. 288, line 14–p. 290, line 12). Judge Hyman sentenced Appellant to thirty-five (35) years imprisonment for murder. (R. p. 294, lines 9–15).

Thereafter, Appellant served a timely notice of appeal, dated March 26, 2013. (R. p. 332).

RESPONDENT'S STATEMENT OF THE FACTS

At Appellant's trial, the State presented evidence, including Appellant's own statement to law enforcement, that Appellant shot Deon Myers (Victim) in a club called Ghost Den on March 15, 2011.

The State presented three witnesses who were at Ghost Den at the time of the shooting. Terell Myers, Victim's brother, testified that he was working the door at Ghost Den when Victim came to the club on March 15, 2011. (R. p. 54, line 14–p. 55, line 22). About twenty minutes after Victim arrived, Lavern Holmes entered the club carrying a rifle. (R. p. 56, lines 3–19). According to Terell Myers, Lavern Holmes went towards Victim, who made his way into the bathroom. (R. p. 56, line 20–p. 57, line 5). Shaquettia Holmes, Lavern Holmes's niece, then "got in the bathroom and stopped everything." (R. p. 56, line 25–p. 57, line 1; R. p. 72, line 18–p. 74, line 21). As Victim left the bathroom and got midway into the club, a short man wearing a red bandana over his mouth and nose ran up to Victim and shot him. (R. p. 56, lines 6–16; R. p. 66, lines 14–17). Though Terell Myers was unable to recognize the man who shot Victim, he identified the gun that the man used as a small, black handgun. (R. p. 57, lines 17–22). According to Terell Myers, after shooting Victim, the man in the red bandana ran back out of the club. (R. p. 66, lines 14–17).

Shaquettia Holmes also testified about the night of the shooting. Shaquettia Holmes witnessed Lavern Holmes approach Victim with a long gun in his hand. (R. p. 86, line 25–p. 89, line 3). Victim ran into the bathroom, and Laverne Holmes followed him. (R. p. 88, line 14–p. 89, line 14). Shaquettia Holmes also went to the bathroom. (R. p. 89, lines 8–14). There, she saw Laverne Holmes holding the door with Victim positioned behind the door. (R. p. 89, lines 9–14). Shaquettia Holmes testified that

> [Laverne Holmes] was in there saying something to [Victim] about, "You threaten to kill my family or something," and [Victim] didn't know what he was talking about and when [Victim] said he didn't know what he was talking my thing was for him to leave him alone and that was that. It wasn't much words exchange.

(R. p. 95, lines 20–24). Laverne Holmes then left the bathroom, and Appellant entered the bathroom.[1] (R. p. 89, line 25–p. 91, line 24). Shaquettia Holmes noticed that Appellant had "a little black gun." (R. p. 91, lines 9–12). According to Shaquettia Holmes, while Victim and Appellant were in the bathroom the "only words that were exchanged out of [Victim's] mouth was he was good and [Appellant] was saying he was good . . . ." (R. p. 91, lines 3–4). Shaquettia Holmes interpreted Appellant's words to mean that it was alright for Victim to leave the bathroom. (R. p. 91, lines 6–8). The three left the bathroom—Appellant left first, followed by Victim, and then Shaquettia Holmes. (R. p. 91, lines 17–22). Shaquettia Holmes did not see Victim get shot, but she heard the gunshot. (R. p. 90, lines 24–25). She then went back to the bathroom. (R. p. 91, lines 13–14).

Cameron Green testified that, on the evening of March 15, 2011, Kawaun Myers, Lavern Holmes, Brandon Cheek, Appellant, and himself were hanging out, drinking, and talking about an altercation that occurred earlier that day between Kawaun Myers and Lavern Holmes and Victim, in which Victim pulled a gun on Lavern Holmes. (R. p. 113, line 1–p. 114, line 22). At some point, someone brought out a revolver that was missing the grip.[2] (R. p. 114, line 23–p.

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[1] Shaquettia Holmes could not recall if Appellant had on a bandana the night of the shooting, but she knew that both Laverne Holmes and Cameron Green had red bandanas on that night. (R. p. 91, line 25–p. 92, line 8).

[2] Cameron Green originally stated that the gun was silver, but he later stated that State's Exhibit 7 looked like the gun he saw that night and stated that he was mistaken about the color. (R. p. 116, lines 3–9).

Law enforcement officers later recovered the gun identified by Cameron Green (State's Exhibit 7) from Appellant's co-defendant, Brandon Cheek. (R. p. 116, lines 3–9; R. p. 146, line 6–p. 150, line 2). A firearms and tool marks expert testified,

115, line 17). The group then headed to Ghost Den, but, before going to the club, they stopped by the house of one of Appellant's relatives. (R. p. 115, line 18–p. 116, line 24). Appellant went inside the house and then emerged with a shotgun. (R. p. 116, lines 10–13).

When the group arrived at Ghost Den, Lavern Holmes and Cameron Green went into the club, but Cameron Green did not stay in the club because he did not want to pay the cover charge. (R. p. 117, lines 4–17). According to Cameron Green, "[I]t was only for 15 more minutes. So I figured if I went back out, after 15 more minutes they . . . would have stopped charging." (R. p. 117, lines 21–22). While waiting outside, Cameron saw people start running out of the club. (R. p. 118, lines 7–10). Cameron Green testified,

> I wasn't quite sure what was going on, but I had, somewhat had an idea that some type of crazy altercation happened between the victim and my Co-Defendant Lavern Holmes.
>
> . . . .
>
> [A]s the people was running out the club I was looking for, I was searching for Lavern Holmes, but I notice some people were still in the club and some people ran out, but I didn't know where he was at. So I went to the car. Kawaun Myers was still at the car when I went there and [Appellant] and Brandon [Cheek] they came before Lavern [Holmes] and he came last. As Lavern was coming to the car, he let off a shot with the shotgun. I don't know who had the 22 revolver at the time, and then we left.

(R. p. 118, lines 10–23). In the car "Lavern [Holmes] kept questioning [Appellant] why he shot him, why he shot him, and [Appellant] apologized for just doing it, he said, he said, ['']My

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> I was not able to say conclusively that State's Exhibit Nine [the bullet recovered from Victim] was fired from State's Exhibit Seven [the gun]. However, the general markings of the land and groove impressions that are unique to State's Exhibit Seven were similar to those that were on State's Exhibit Nine and State's Exhibit Nine could have been fired in State's Exhibit Seven.

(R. p. 214, line 11–p. 218, line 5; *see also* R. p. 155, lines 5–18).

bad,['] but he couldn't explain exactly why he did it. He say he don't know why he did it." (R. p. 119, lines 4–7).

Some time after the shooting, Investigator Clinton Busbee arrested Appellant around 3:30 a.m. one morning pursuant to a warrant. (R. p. 157, line 19–p. 158, line 11). All of Appellant's co-defendants had already been apprehended and were in custody. (R. p. 158, lines 5–6). Investigator Busbee then took Appellant to the sheriff's office to interview him, but because it was 3:30 a.m., no one was at the sheriff's office, so Investigator Busbee and Appellant waited outside until Investigator Busbee's supervisor arrived. (R. p. 158, line 18–p. 159, line 19). Initially, Appellant told Investigator Busbee "that he was with those guys, but he didn't shoot the guy." (R. p. 160, lines 2–5). However, as they stood outside and talked, Appellant's story evolved. (R. p. 160, line 1–p. 161, line 7). Eventually, Investigator Busbee's supervisor arrived, and Investigator Busbee took Appellant's statement, which he audio and video recorded. (R. p. 161, lines 4–7).

In the video recorded statement, Appellant gives a detailed report about the circumstances that led to the shooting and what happened at Ghost Den. (State's Ex. 11, 3:00–17:20). Throughout the statement he responds to questions by Investigator Busbee. (State's Ex. 11). He clearly admits to shooting Victim. (State's Ex. 11, 16:44–46 ("[T]hat's when I shot him.")). He also gives reasons for shooting Victim—including because Victim was one of those "arguing, arguing, arguing like some females" and because Appellant remembered that Victim had previously shot at him in 2007. (State's Ex. 11, 22:39–23:50). Appellant also recounts what he and his co-defendants did after leaving Ghost Den. (State's Ex. 11, 17:20–22:04). Appellant tells Investigator Busbee that he wiped off the gun and gave it to Brandon Cheek. (State's Ex. 11, 20:07–20).

ARGUMENT

The trial court did not err in denying Appellant's motion for the court to order a mental competency examination.

Introduction

Respondent submits that the trial court did not err in denying Appellant's motion to have an evaluation of Appellant's competency where three different circuit court judges found there was no need for an evaluation based on the information presented by Appellant.

How the Issue Was Raised at Trial

September Hearing

At the hearing before Judge John, defense counsel stated, "The biggest issue that we have is that anytime I represent someone charged with the ultimate crime, which carries almost the ultimate sanction, I'm very concerned and mindful regarding their mental state, and that that be determined before the Court." (R. p. 323, lines 14–18). Defense counsel then explained that he could not get Appellant to "grasp the concept that an inculpatory statement that is made without any apparent pressure or coercion whatsoever, that that is evidence . . . ." (R. p. 323, line 23–p. 324, line 1). Defense counsel further indicated that he did not know if Appellant was just in denial or if he was actually incapable of understanding that idea, but he wanted the trial court to make a determination as to whether Appellant needed an evaluation. (R. p. 324, lines 3–9).

According to defense counsel, Appellant's family agreed with the evaluation, and they indicated that Appellant "had a tough upbringing," but defense counsel had no specifics to offer the court on Appellant's upbringing. (R. p. 324, lines 10–21). Defense counsel further told the court that he had no information that Appellant was ever a special needs student. (R. p. 325, lines 4–10).

Judge John then questioned Appellant about his understanding of the roles of defense counsel, counsel for the State, the judge, and the jury. (R. p. 325, line 20–p. 326, line 9). Judge John also questioned Appellant about his understanding of the evidence and of his potential defense in the case. (R. p. 326, line 10–p. 327, line 12). The court then made its ruling:

> Mr. Hazzard, I appreciate the concern that you have, and I understand your concern, I can't see any reason at this point in time to order an evaluation. If the—you know, if—and again, communicating with the family members, understanding the Court's position, you tell them there has to be some specific information as, has there ever been any kind of evaluation done in the past, or hospitalization or something—
>
> . . . .
>
> —But based upon the information that has been presented, my questioning of the Defendant, and what I've heard so far I just don't see any reason or rationale to order an evaluation in this particular matter.

(R. p. 327, line 14–p. 328, line 1).

For the remainder of the hearing, the court addressed the issue of setting bond, which Appellant had reminded defense counsel of at their meeting that morning. (R. p. 328, line 4–p. 330, line 21).

December Hearing

The court held a hearing on December 17, 2012, to address Appellant's motions for the court to set a bond and for an evaluation as to competency and criminal responsibility. (R. p. 298, lines 2–15). Defense counsel told Judge Culbertson the following:

> Your Honor, Mr. Bryant is a very easy person to talk to, there's no question about that. The time we spend together is very enjoyable. The issue I'm having is that in the 20 some odd years that I've been practicing law and doing cases that carry 30 to life I've never had a client with a taped confession to a murder who does not appear to grasp the severity of the situation . . . .
>
> [F]or instance, he has not—he, he does not allow the, the possibility of any plea offer and I understand that obviously he has the absolute right to a jury trial and that's what I am here for and I've got no problem with doing that. I do not

> believe I've ever seen a situation where a client has been charged with the crime of murder with a confession on the record who did not even want to explore the possibility of what plea offer might be out there. That's one instance of it. Another thing is I don't know if Mr. Bryant does not trust me, and again, I do not categorize him as hostile because he is not, we get along great. There are just certain things about his past history, certain experiences that he, that he has experienced as a child that he's not very forthcoming as far as his personal history with me. He says that those things really do not matter in the grand scheme of trial preparation . . . . [I]t's been very difficult and is very difficult to get from him the information I need that will help me to best represent him and I can't figure out why that is.

(R. p. 299, line 7–p. 5, line 16).

The court asked why defense counsel had waited from the time of Appellant's arrest in March 2011 until the hearing to raise this issue, and defense counsel explained that he had brought the issue up at an earlier hearing, but he had since gotten Appellant's school records, which indicated that Appellant had been held back on multiple occasions and that he had personal trauma as a child. (R. p. 300, line 17–p. 301, line 19). Defense counsel stated,

> I think he's actually a very bright young man, very bright, but really he's an enigma to me, Judge, simple as that, and based on the nature of these charges, if we were talking about a shoplifting I wouldn't have any problem in the world with saying, "Yeah, I'm sure he's ok, we can go forward," but my job in protecting his interest is to bring any issues I have before the Court for the Court's consideration and that's simply what I'm doing.

(R. p. 301, lines 12–19).

Judge Culbertson then questioned Appellant about his understanding of what was going on with his case and about his interaction with defense counsel. (R. p. 301, line 20–p. 303, line 19). Judge Culbertson also asked Appellant about his mental health history, and Appellant told the court that he had been prescribed Adderall and Ritalin when he was thirteen or fourteen years old to help him pay attention in school. (R. p. 303, line 20–p. 304, line 9). However, Appellant also told the court that he was no longer on the medication and that he did not have any trouble paying attention now. (R. p. 304, lines 15–19).

Judge Culbertson then ruled as follows:

> [O]n your motion for evaluation I'm going to deny that. There's nothing in the responses by Mr. Bryant that shows or indicates to me that he does not understand the charges against him and is unable to assist in his defense. So I'm going to deny the motion for an evaluation.

(R. p. 305, lines 9–14).

Judge Culbertson then moved on to the issue of bond reduction, asking the State what reason it had for the delay in calling Appellant's case to trial. (R. p. 305, lines 15–18). Counsel for the State explained that the case had five co-defendants, which made it extremely complicated, and counsel further stated that she had concerns about Appellant's competency and wanted him to be heard on that issue. (R. p. 305, lines 19–25). Counsel for the State further informed the court that defense counsel had indicated that he had concerns about Appellant's competency based on new information, and she "didn't want to call the case without proper consideration." (R. p. 306, lines 5–10). The court pointed out that Appellant had been sitting in jail awaiting trial since March 2011, further stating, "I think this competency is just a ploy to kind of put it off." (R. p. 306, lines 11–17). Judge Culbertson clarified that he didn't think it was a ploy by the defense, however. (R. p. 306, lines 21–p. 307, line 1).

In response, counsel for the State indicated that she had consistently consented to the evaluation. (R. p. 307, lines 3–9). Defense counsel then informed the court about what occurred at the earlier hearing with Judge John and what defense counsel had since learned about Appellant's past. (R. p. 308, line 3–p. 309, line 2). Judge Culbertson again expressed his dissatisfaction with the fact that Appellant's case had not yet gone to trial and further stated, "I agree with Judge John. I don't see the need for a mental evaluation." (R. p. 309, line 3–p. 311, line 5). The court then heard the remaining arguments on the bond reduction issue and

eventually granted Appellant's motion and set Appellant's bond at $75,000. (R. p. 311, line 7–p. 320, line 8).

Pretrial Hearing

The first matter addressed at the pretrial hearing was the State's motion to introduce Appellant's videotaped statement. (R. p. 6, line 2–p. 31, line 25). The State presented the testimony of Investigator Busbee and Appellant's videotaped statement to law enforcement. (R. p. 6, lines 15–p. 23, line 5; Court's Ex. 2). Defense counsel, on the other hand, informed the trial court that Appellant did not wish to present evidence or to testify in the *Jackson v. Denno* hearing, and defense counsel asked the trial court to confirm that with Appellant. (R. p. 24, lines 4–13).

The trial court then questioned Appellant about his decision not to testify, and Appellant affirmed that he understood that he could testify at the pretrial hearing but that he did not wish to. (R. p. 24, line 14–p. 25, line 5). Defense counsel then argued that certain factors went against the State's position that the statement was voluntary. (R. p. 25, line 6–p. 30, line 7). In particular, defense counsel told the trial court about Appellant's educational struggles and traumatic childhood experience of witnessing his father beat his mother, "almost beating her to death." (R. p. 25, line 12–p. 26, line 20). Defense counsel also presented the trial court with Appellant's mental health records. (R. p. 26, lines 5–8; R. p. 334).

The trial court specifically asked defense counsel if Appellant "suffer[ed] from any diagnosed mental illness"—to which defense counsel responded, "Nothing that would prohibit him from being able to understand what is going on here today." (R. p. 26, lines 21–24). Defense counsel then summarized and quoted from the findings in the mental health records as follows:

> [H]e's been referred for clinical assessments on several occasions, was not placed on medication, but basically their position on him is that he's just a young man who has, let's see, for instance they indicate he needs attitude, ability to follow the rules and regulations, things of that nature. He's a 16—at this time, he was a 16 year old that just came back from DJJ due to his behavior with credit card fraud and theft. He was living with his mother and sister. He is very rude and defiant young man that wants to go his way. He doesn't respond well to people that he feels asks so much questions and he will ignore others. His father is currently incarcerated; his mother thinks that is why Tamar is having behavior problems. Mother seems to be a little afraid to control him and says very little to him about things when he is wrong. The things about it is from all that I have seen, prior to that incident he was a very pleasant, well-adjusted young man and ever since that incident, as they indicate, he has been defiant, truculent, hard to get along with and subject to saying and doing things that are very impulsive. Whether they are true or not he'll say them, and I simply bring this to the Court's attention and want to make them part of the record.

(R. p. 27, lines 2–23; R. p. 334).

The trial court noted that Appellant seemed to understand and appropriately answer all of the questions posed to him regarding whether he wanted to testify in the *Jackson v. Denno* hearing and commented, "I think that's quite remarkable under the circumstances for a 17 year old." (R. p. 27, line 24–p. 28, line 6). Judge Hyman asked if an intellectual assessment had ever been done. (R. p. 28, lines 6–7). Defense counsel responded that he had not received one but that Appellant's grades "were not the best" though "[w]hether that is from a lack of knowledge or a lack of effort [he] obviously [could not] say." (R. p. 28, lines 8–12).

The trial court ultimately found that the State had met its burden to show that Appellant's statement was made knowingly, intelligently, and voluntarily. (R. p. 30, line 8–p. 31, line 25). The trial court based his finding on a number of factors, including "that this Defendant was very, very comfortable in giving this statement or he appeared to be comfortable. In fact, he appeared to be almost nonchalant in, in giving this statement." (R. p. 30, line 24–p. 31, line 2). The trial court further noted that though Appellant had not completed his formal education, he was "very street wise" and "very much in tune with the system." (R. p. 31, lines 3–6). Additionally,

Appellant seemed to understand his Miranda warning and the questions posed to him during his interview based on his own responses. (R. p. 31, lines 9–15).

The trial court then moved on to other pretrial matters. (R. p. 32, lines 1–9). Shortly thereafter, defense counsel informed Judge Hyman of the previous motions for mental evaluations before Judge John and Judge Culbertson and renewed his motion before Judge Hyman. (R. p. 37, line 17–p. 38, line 3). Judge Hyman asked if there had been any change in circumstances since those previous motions. (R. p. 38, lines 4–8). Defense counsel answered, "Not that I am aware of . . . ." (R. p. 38, line 9). The trial court then denied the motion, noting

> it would appear that he's had some drug and alcohol or drug or alcohol abuse in the past. I don't know what the extent of that was, and that he seems to be a very angry young man, but I see no diagnosis of mental health problems. I just don't see whether, where he has anything that would or there's anything here that would cause me to rule other than as was ruled on that issue by Judge Culbertson and Judge John, and I would respectfully deny a motion for an evaluation.

(R. p. 39, lines 3–11).

Standard of Review

> The ordering of a competency examination is within the discretion of the trial judge. *State v. Drayton*, 270 S.C. 582, 584, 243 S.E.2d 458, 459 (1978); *State v. Singleton*, 322 S.C. 480, 483, 472 S.E.2d 640, 642 (Ct. App. 1996). The refusal to grant such an examination will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Drayton*, 270 S.C. at 584, 243 S.E.2d at 459; *State v. Buchanan*, 302 S.C. 83, 85, 394 S.E.2d 1, 2 (Ct. App. 1990). "This is so, because the determination of whether there is 'reason to believe' a defendant lacks a certain mental capacity necessarily requires the exercise of discretion." *State v. White*, 364 S.C. 143, 147–48, 611 S.E.2d 927, 929 (Ct. App. 2005) (citing and quoting *State v. Bradshaw*, 269 S.C. 642, 644, 239 S.E.2d 652, 653 (1977)).
>
> An abuse of discretion occurs when the conclusions of the trial court either lack evidentiary support or are controlled by an error of law. *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001); *State v. Funderburk*, 367 S.C. 236, 239, 625 S.E.2d 248, 249–50 (Ct. App. 2006). If there is any evidence to support the trial judge's decision, the appellate courts will affirm it. *State v. Wilson*, 345 S.C. 1, 7, 545 S.E.2d 827, 829 (2001); *State v. Taylor*, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004). Even without any evidentiary support, "[i]n order for an

> error to warrant reversal, the error must result in prejudice to the appellant." *State v. Preslar*, 364 S.C. 466, 473, 613 S.E.2d 381, 385 (Ct. App. 2005); *see also State v. Beck*, 342 S.C. 129, 536 S.E.2d 679 (2000); *State v. Wyatt*, 317 S.C. 370, 453 S.E.2d 890 (1995) (error without prejudice does not warrant reversal).

State v. Colden, 372 S.C. 428, 435–36, 641 S.E.2d 912, 916–17 (Ct. App. 2007).

Analysis

S.C. Code Ann. § 44-23-410 requires a circuit court judge to order a mental examination if the judge "has reason to believe that a person on trial before him . . . 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." This Court has

> identified three factors to be considered in determining whether further inquiry into a defendants' fitness to stand trial was warranted. These are: (1) evidence of irrational behavior; (2) demeanor at trial; and (3) prior medical opinion regarding ability to stand trial. In some instances, the presence of just one of the factors may justify further inquiry requiring a mental evaluation.

Colden, 372 S.C. at 441, 641 S.E.2d at 920 (citing *State v. Burgess*, 356 S.C. 572, 590 S.E.2d 42 (Ct. App. 2003)). In *Colden* (and also in *Burgess*), the request for a competency evaluation was based not on a pre-existing history of mental illness, but on "a perceived difficulty counsel faced in discussing matters with their client." *Id.* In fact, Colden's responses to the court's questions were appropriate and demonstrated an understanding of the proceedings and the charges against him. *Id.* at 442, 641 S.E.2d at 920. Furthermore, Colden's counsel was unable to demonstrate that Colden's mental state rendered him unfit for trial. *Id.* In *Colden*, "[t]here was no evidence of irrational behavior before or during the trial, nor prior medical opinion concerning competency as to require an evaluation under the Burgess factors." *Id.* Thus, this Court drew "the ineluctable conclusion that the trial judge did not abuse his discretion in denying the motion." *Id.*

Respondent submits that, in this case, the trial court did not err in denying Appellant's multiple requests for a competency evaluation. Indeed, each time Appellant made a motion for a competency evaluation, the evidence before the judge considering the request supported their decision to deny it.

Judge John considered the information provided by defense counsel and the colloquy between Appellant and himself but found no "reason or rationale" to order a competency hearing at that time. (R. p. 327, line 23–p. 328, line 1). When Judge Culbertson considered the motion, defense counsel provided additional detail about Appellant's school history and the trauma he experienced as a child. But Judge Culbertson denied the motion after questioning Appellant about his understanding of the case and his mental health history, finding "nothing in the responses by Mr. Bryant that shows or indicates to me that he does not understand the charges against him and is unable to assist in his defense." (R. p. 305, lines 10–13). At the pretrial hearing, Judge Hyman asked defense counsel if anything had changed since Judge John and Judge Culbertson had denied Appellant's previous motions, and defense counsel answered, "Not that I'm aware of . . . ." Of course, having just evaluated the voluntariness of Appellant's statement based, in part, on Appellant's mental health history and, in part, on his own questioning of Appellant, Judge Hyman had his own basis for finding that there was nothing that would cause him to rule contrary to the earlier rulings. Thus, Judge Hyman denied the motion. The record in this case supports Respondent's position that the trial court had no reason to believe that an evaluation of Appellant was necessary.

Like in *Colden*, in this case, defense counsel's request for an evaluation was based on "a perceived difficulty counsel faced in discussing matters with [his] client." Indeed, defense counsel had difficulty with the fact that Appellant would not acknowledge the impact the

videotaped confession would have on his case. However, there was no evidence before the trial court that Appellant "[was] not fit to stand trial because [Appellant] lack[ed] the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity." *See* S.C. Code Ann. § 44-23-410 (2011). Defense counsel even told the court,

> [I]f we were talking about a shoplifting I wouldn't have any problem in the world with saying, "Yeah, I'm sure he's ok, we can go forward," but my job in protecting his interest is to bring any issues I have before the Court for the Court's consideration and that's simply what I'm doing.

(R. p. 301, lines 15–19). Respondent submits that this statement reveals that defense counsel's difficulties with Appellant did not rise to the level of incompetency to stand trial, and, thus, there was no reason for the trial court to believe Appellant was unfit to stand trial.

Appellant now asserts that Judge Culbertson improperly considered the age of the case in denying Appellant's motion. Respondent disagrees. Though it is clear from the record that Judge Culbertson was aware of the age of the case when he denied Appellant's motion, he did not go into a discussion about the amount of time the case had been pending until he moved on to Appellant's motion for a bond reduction.[3] Also, it is obvious that Judge Culbertson believed the State's reliance on the motion for a competency evaluation was "a ploy" to further delay bringing Appellant's case to trial—he did not believe it was a ploy by defense counsel. (R. p. 306, line 21–p. 307, line 1). The record shows that Judge Culbertson properly considered his own interaction with Appellant, not the age of the case, in ruling on Appellant's motion.

Appellant further contends that Judge Hyman's pretrial ruling is in error because errors in the earlier rulings of Judge John and Judge Culbertson are inextricable from Judge Hyman's

[3] The record shows that Judge Culbertson reaffirmed his earlier ruling that there was no need for a mental evaluation after reproving the State for failing to bring Appellant's case to trial when it had been pending for almost two years. However, it is also clear from the record that Judge Culbertson made his initial decision before going into the issue of the State's delay.

decision. However, as argued above, the evidence before each judge supported their individual conclusions that there was no need for a mental evaluation. Though Appellant believes that Judge Culbertson improperly considered the age of the case in coming to his decision, Respondent has refuted that contention above. Respondent respectfully asserts that Judge Hyman's decision stands on its own, but, even if it was based on the earlier rulings, those rulings were not in error.

Respondent also disagrees with Appellant's contention that Judge Hyman made his decision based on a factual error because he stated, "I see no diagnosis of mental health problems." (R. p. 39, lines 6–7). The record shows that Judge Hyman had already considered Appellant's mental health history during the *Jackson v. Denno* portion of the pretrial hearing, and, at that time, he specifically asked defense counsel if Appellant "suffer[ed] from any diagnosed mental illness[,]" and defense counsel responded, "Nothing that would prohibit him from being able to understand what is going on here today." (R. p. 26, lines 21–24). Thus, it seems likely that Judge Hyman's later reference to "no diagnosis of mental health problems" was based on the earlier declaration by defense counsel that none of Appellant's mental health issues impacted his understanding of the trial. Though perhaps incomplete, Judge Hyman's statement was not in error. However, even if the statement evinced a factual error on which Judge Hyman based his decision, Respondent does not believe that the error prejudiced Appellant. As established in *Burgess*, a trial court can find that a mental examination is not required under S.C. Code Ann. § 44-23-410 even with evidence that a defendant suffered from mental retardation if there is "nothing to demonstrate that [the defendant's] mental retardation was such as to render her unfit to stand trial." 356 S.C. at 576, 590 S.E.2d at 44. Even now, Appellant has not shown how his mental health issues rendered him unfit to stand trial.

Potential Remedy

Finally, even if this Court remanded this case for a competency hearing, Respondent submits that the remedy outlined in *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981),[4] would be sufficient to correct any error. If Appellant were found competent, Appellant's conviction and sentence would stand. Thus, contrary to Appellant's contention, there would be no need to reexamine whether his statement to law enforcement was made knowingly, voluntarily, and intelligently. If Appellant were found incompetent, in accordance with *Blair*, Appellant would be entitled to a new trial once he was found competent to proceed.

[4] Specifically, *Blair* provides, "[O]n remand, if the hearing reveals Blair was incompetent to stand trial, an order reversing his conviction should be entered and a new trial granted when he is presently competent to stand trial. However, if the hearing reveals Blair was competent to stand trial, the conviction will stand." 275 S.C. at 534, 273 S.E.2d at 538.

CONCLUSION

For all the foregoing reasons, Respondent respectfully asserts that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully Submitted,

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July 22, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Georgetown County

Larry B. Hyman, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TAMAR BRYANT,

APPELLANT,

Appellate Case No. 2013-000671.

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007 Order of the South Carolina Supreme Court, "Re Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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PROOF OF SERVICE

I, Kaycie S. Timmons, counsel for Respondent, certify that I have served the within Final Brief of Respondent and Certificate of Compliance on Appellant by depositing two (2) copies of the same in the United States mail, first class, postage prepaid, addressed to his attorney of record, David Alexander, at:

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I further certify that all parties required by Rule to be served have been served.

This twenty-second day of July, 2014.

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