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Evidence

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EVIDENCE

I. FORMAL ASPECTS

In *State v. Greene*[1] six defendants were tried on the charge of prison rioting and the possession of weapons with which to facilitate an escape. During cross-examination the solicitor asked several defendants if they knew of any reason why certain State's witnesses would have testified against them if the statements made were not true. Objection was made to such questioning and was overruled. The supreme court, in upholding the trial court's ruling, held that the State was entitled to bring out the relationship between the witnesses and the defendants, this being within the discretion of the trial judge. The court further stated that in order to justify the granting of a new trial, it must be shown not only that the trial judge committed error, but also that the error was prejudicial and denied to the accused his right to a fair trial.

In *State v. Lee*[2] the court again dealt with the scope of cross-examination. During the trial, at which the defendant was convicted of manslaughter, a defense witness testified that he saw the defendant in the decedent's store on the morning of his death, and that the defendant was a part time employee of the decedent. Defense counsel then objected when the witness was cross-examined on the part time employment. The supreme court upheld the trial court's overruling of the objection, saying that the trial judge may allow cross-examination on collateral matters where such matters have been opened up on direct examination. The general rule is that the scope of cross-examination rests largely within the discretion of the trial court and, in the absence of an abuse of such discretion, the supreme court will not interefere.[3]

In *Lee* the supreme court also reiterated the South Carolina law in regard to cross-examinining without reserving an objection. The defense counsel objected to testimony of a State's witness and his objection was overruled. The court held that since the defense had later cross-examined the witness on the point in question, without reservation of his objection, the objection was lost.

In the cases of *State v. Willard*[4] and *State v. Ham*[5] the supreme court held that by not objecting to the introduction of evidence at trial,

1. 180 S.E.2d 179 (S.C. 1971).
2. 255 S.C. 309, 178 S.E.2d 652 (1971).
3. State v. Swilling, 249 S.C. 541, 155 S.E.2d 607 (1967).
4. 255 S.C. 68, 177 S.E.2d 129 (1970).
5. 180 S.E.2d 628 (S.C. 1971).

the defendants had waived their rights to complain, and such objections could not be brought up for the first time on appeal. For a more complete discussion of these cases, see the Criminal Procedure Survey.

II. OPINION EVIDENCE

A. Layman

In *Sellers v. Public Savings Life Insurance Co.*,[6] an action to recover under a life insurance policy, the deceased and another man were driving in a pick-up truck when the truck skidded off the road into a ditch. Apparently neither the deceased nor the passenger was injured in the wreck. Assistance was obtained from a Mr. White who lived nearby. After attempts to remove the truck from the ditch proved unsuccessful, further attempts were abandoned for the night. Although Mr. White and the passenger left, the deceased insisted on remaining with the truck during the night. The next morning the deceased was found dead, laying face down in the ditch with his head under the water which was standing in the ditch. Under the terms of the life insurance policy, the double indemnity benefit was paid if the insured accidentally drowned; excluded from coverage was any injury as a result of the insured being intoxicated.

At the trial, Mr. White was asked by defense counsel if, in his opinion, the deceased was highly intoxicated when he was left with the truck. Since a defense asserted by the defendant was that the deceased was intoxicated, the supreme court held that it was error for the trial court to refuse to allow the witness to give his opinion. The court stated that a lay witness may testify whether or not, in his opinion, a person was drunk or sober on a given occasion when observed by the witness, and that the weight of such testimony is for the jury to decide.

In *South Carolina Highway Department v. Wilson*,[7] a highway condemnation case, the supreme court held that it was the practice in this state, in accordance with the general rule,[8] to allow a landowner, who is familiar with his land and its value, to give his or her estimate as to the value of the land, even though the owner is not an expert. The court further noted that the extent and source of the witness's knowl-

6. 255 S.C. 251, 178 S.E.2d 241 (1970).
7. 254 S.C. 360, 175 S.E.2d 391 (1970).
8. *See* 32 C.J.S. *Evidence* § 546 (116) (1964).

edge as to allegedly comparable sales, used as a partial basis for the opinion, would generally only affect the weight to be given to the opinion evidence rather than its competency or admissibility. In this case, the witness's knowledge as to the value in comparable sales was gained, in part, from reading abstracts of recorded deeds prepared by her attorney, as opposed to reading the recorded instruments herself. The court held that such a method of acquiring knowledge affected only the weight to be given to the testimony.

B. Expert

In *State v. Ham*,[9] the defendant was tried for the possession of marijuana. At the trial, a laboratory technician of the South Carolina State Law Enforcement Division testified as to the identity of the marijuana taken from the defendant. The technician stated that he had identified marijuana on numerous occasions and had seen it growing in the fields. The court, in holding that the laboratory technician was qualified to make the identification, stated that the law in this state does not require a man to have a professional degree to qualify as an expert. Such determinations rest in the discretion of the trial judge.[10]

III. IMPEACHMENT

A. Prior Inconsistent Statements

In *Boston Old Colony Insurance Co. v. C. B. Prentiss & Co.*,[11] the plaintiff was the insurer of trucks owned by one defendant and used in his business, and the defendants included the owner of the trucks, the owner's nephew and the injured party. The plaintiff was seeking a declaratory judgment denying liability in an accident in which the owner's nephew, who was working for the owner and who was allowed to take the truck home at night, was involved. The accident occurred at night in a skating rink parking lot. The plaintiff claimed no liability because the nephew was not acting in the scope of his employment or with the owner's permission at the time of the accident. After the accident, the owner, pursuant to South Carolina Code sections 46-722 and 723,[12] filled out forms showing that the nephew was covered

9. 180 S.E.2d 628 (S.C. 1971).

10. Parks v. Morris Homes Corp., 245 S.C. 461, 141 S.E.2d 129 (1965); C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE § 13 (1954).

11. 180 S.E.2d 653 (S.C. 1971).

12. S.C. CODE ANN. §§ 46-722, 723 (1962).

under his liability insurance to prevent having the nephew's license suspended. The supreme court held that testimony as to the submission of these forms was clearly relevant and admissible. Such testimony reasonably gave rise to the inference that the owner himself, shortly after the accident, certified to the Highway Department that his nephew did have permission to drive the truck at the time of the accident. Therefore, the court held, the testimony was admissible to impeach testimony by both the owner and the nephew to the effect that the nephew did not have such permission.

B. One's Own Witness

In *State v. Lee*[13] the supreme court upheld the trial court's declaration of a State's witness to be a hostile witness and the trial court's allowing the prosecution to cross-examine. This aspect of the case is dealt with more thoroughly in the Criminal Procedure Survey.

C. Bias

In two cases, *State v. Lewis*[14] and *State v. Lagerquist*,[15] the supreme court held that the testimony of co-defendants who had pled guilty was not made inadmissible solely because they had not yet been sentenced.

IV. COMPETENCY

The case of *Burns v. Caughman*[16] presented the court with a question of novel impression with respect to the Deadman's Statute.[17] The plaintiff, sister of the deceased, was seeking to recover for value of services rendered in caring for her brother while he was alive. At the trial, the plaintiff was allowed to testify that she moved in with her

13. 258 S.C. 309, 178 S.E.2d 652 (1971).
14. 255 S.C. 466, 179 S.E.2d 616 (1971).
15. 180 S.E.2d 882 (S.C. 1971).
16. 255 S.C. 199, 178 S.E.2d 151 (1970).
17. S.C. CODE ANN. § 26-402 (1962), the pertinent wording being:
> No party to an action or proceeding . . . shall be examined in regard to any transaction or communication between such witness and a person at the time of such examination deceased . . . as a witness against a party then prosecuting or defending as executor or administrator . . . of such deceased person . . . when such examination or any judgment or determination in such action or proceeding can in any manner affect the interest of such witness.

brother and performed domestic services for him, and she testified as to the nature, type and extent of the services.

The court, noting that the application of the term "transaction" in such an instance was one of first impression, stated that the general rule was:

> [W]here the services are of a personal kind which by their very nature had to be performed in the presence or with the knowledge or consent of the deceased, so that the testimony would tend to show the existence of an implied contract by the deceased to pay for the services, the witness is prohibited to testify as to the services rendered.[18]

The court then held that general household and domestic chores were of such a nature, and therefore testimony of such transactions was inadmissible under the Deadman's Statute. However, the court further held that the admission of the testimony was not prejudicial in this case, because the defendant admitted that the plaintiff had rendered such services.

V. PRIVILEGES

The cases decided during this survey period which involved privileges, dealt mainly with the constitutional aspects of allowing the admission in evidence of confessions and evidence gained from searches.

In *State v. Lee*,[19] the defendant objected to the admission in evidence of his confession. The trial court held an evidentiary hearing with the jury absent, at which the trial judge found that the defendant had been given all the warnings required by *Miranda v. Arizona* [20] and that the confession was voluntarily given. The trial judge then instructed the jury that they should consider the same issue and to disregard the confession, unless they found that the State proved that the confession was voluntarily made. The court held that such a procedure was in accordance with United States Supreme Court guidelines set out in *Jackson v. Denno*,[21] and that the admission of the confession was not error.

18. 255 S.C. 199, 203, 178 S.E.2d 151, 152 (1970), *quoting from* Annot., 155 A.L.R. 961, 970 (1944).

19. 255 S.C. 309, 178 S.E.2d 652 (1971).

20. 384 U.S. 436 (1966).

21. 378 U.S. 368 (1964).

The cases of *State v. Funchess*[22] and *State v. Duckson*[23] also concerned admission in evidence of confessions. An extensive coverage of these cases is found in the survey article on Criminal Procedure.

Rule 1 of the Defense of Indigents Act[24] requires that every person arrested for the commission of a crime, within the jurisdiction of the Court of General Sessions be taken before the clerk of court or other designated officer as soon as practicable for the purpose of securing the accused the right to counsel. In *State v. Bishop*,[25] the defendant objected to the admission of a confession made while in custody, but before he was taken before the clerk of court. However, the supreme court held that the purpose of the rule was to insure appointment of counsel in a timely manner and not to impose a condition on the right of police to interrogate a willing suspect in custody before he appears before the clerk of court. Citing the principle of *State v. Funchess*,[26] the court held that a confession resulting from such interrogation was admissible in evidence so long as it was freely and voluntarily made and the procedural safeguards of *Miranda* were met. Since the appeal did not challenge the voluntariness of the confession, the court did not consider the question of whether it should have been excluded on that ground.

In the case of *State v. Patrick*,[27] the defendant entered a liquor store with a knife in his belt and a "hold-up" note in his pocket. While the operator was serving him, the defendant hit him over the head with a pistol which had been laying on the counter. The operator grabbed a pistol from beneath the counter and shot the defendant. The defendant crawled from the store, but was found by the police a few minutes later and taken to the Columbia Hospital. During the course of a search of his clothing, in an effort to establish his identity so that the consent of relatives to an emergency operation might be sought, the "hold-up" note was found. At his trial for attempted armed robbery, the defendant objected to the admission in evidence of the note. He claimed that it was the fruit of an illegal arrest without a warrant for a misdemeanor not committed in the presence of the arresting officer. The supreme court rejected this contention, holding that the search was not being

22. 255 S.C. 385, 179 S.E.2d 25 (1971).
23. 255 S.C. 372, 179 S.E.2d 40 (1971).
24. Defense of Indigents Act, S.C. CODE ANN., Vol. 15, p. 49 (Supp. 1970).
25. 181 S.E.2d 477 (S.C. 1971).
26. 255 S.C. 385, 179 S.E.2d 25 (1971).
27. 255 S.C. 130, 177 S.E.2d 545 (1970).

conducted incident to arrest, but was incident to hospital procedures to establish his identity and that the defendant was treated no differently from any helpless accident victim. In *Patrick* the court also held that the note was not irrelevant, but was properly admitted in evidence as a circumstance to be considered by the jury.

The cases of *State v. McRae*[28] and *State v. Pollard*[29] concerned the admission in evidence of objects discovered during searches of automobiles. A more thorough treatment of these cases is found in the Criminal Procedure Survey.

VI. RELEVANCY

A. Similar Happenings

In South Carolina the market price on property may be proved by other sales in the neighborhood. The only limitation is that the trial judge must exercise discretion in allowing in evidence only prior sales fairly comparable in time, character and location.[30] In the highway condemnation case of *South Carolina Highway Department v. Wilson*,[31] testimony was allowed on behalf of the landowners as to the sale price of two properties sold approximately nine years prior to the condemnation. There was also testimony that the witnesses had been unable to discover any more recent sales of comparable properties. The supreme court, in upholding the admission of the testimony, stated that in the absence of a clear abuse of discretion amounting to an error of law, the trial court's ruling would not be disturbed. Although the sales were quite remote in time, the per acre prices of the sales were approximately one half of the per acre price claimed by the landowners as the market value of their land, and therefore, there was no prejudice to the Highway Department's case.

State v. Greene,[32] a trial for prison rioting in which the supreme court noted that ordinarily the prosecution cannot refer to other charges which could have been brought against the defendant, held that under the circumstances of the case, a comment by the solicitor that

28. 255 S.C. 287, 178 S.E.2d 666 (1971).
29. 255 S.C. 339, 179 S.E.2d 21 (1971).
30. J. DREHER, A GUIDE TO EVIDENCE LAW IN SOUTH CAROLINA 40 (1967), *citing* S.C. Highway Dep't v. Hines, 234 S.C. 254, 107 S.E.2d 643 (1959).
31. 254 S.C. 360, 175 S.E.2d 391 (1970).
32. 180 S.E.2d 179 (S.C. 1971).

more charges could have been lodged against the defendant was neither prejudicial nor ground for a mistrial. The court stated that it was obviously the intent of the solicitor to submit to the court the proposition that various acts of improper conduct and other offenses, assault being specifically mentioned, went to make up a riot and that the State could prove various offenses in making a riot charge. When viewed in the light of the overall trial, there was no error.

In *Greene* the trial court allowed testimony as to the violent assault by another inmate who had pled guilty and was not on trial. The supreme court held that such testimony along with other testimony that the inmate was acting together with two of the defendants, was not improper to describe the conduct of those who participated in the affray.

B. Demonstrative Evidence

In *Senn v. J. S. Weeks & Co.*,[33] the court was faced with the question of admissibility of photographs of reconstructed conditions at the scene of an accident. The plaintiff was injured when a third party failed to stop for a stop sign and entered an intersection striking the plaintiff's automobile. The plaintiff claimed liability rested with the defendant, because his truck was parked in a no parking zone obscuring the stop sign from the view of persons entering the intersection from the non-through street. At trial there was testimony as to the relative heights and locations of the truck and stop sign. The trial court refused to admit in evidence pictures taken by the defendant of his truck in substantially the same position as indicated by the testimony and which showed the view of the stop sign from the direction in which the third party had been traveling. The supreme court, in holding that this was error, stated that the similarity to the accident conditions made the pictures competent and that they were relevant to the one basic and vital issue in the case.

In the case of *State v. Parker*,[34] in which the defendant was convicted of murder for stabbing a fellow prisoner, the defendant objected to the introduction in evidence, as the murder weapon, of a blood-stained knife which officials found in a garbage can in the ward shortly after the crime was discovered. There was testimony by an eyewitness

33. 180 S.E.2d 336 (S.C. 1971).
34. 255 S.C. 359, 179 S.E.2d 31 (1971).

that the defendant stabbed the deceased with a knife, wrapped the knife in a rag and threw it in a trash can in the ward. There was further testimony that the knife in evidence was the only knife found on the ward. The supreme court, stating the general rule to be that an object can be admitted in evidence only if it is shown to be relevant to the proof of some fact in issue, and that it is relevant if there is evidence showing that it is reasonably connected with the commission of the crime charged, held that it was reasonably inferable that the knife found in the ward was the weapon used by the defendant in the commission of the crime and consequently was properly admitted in evidence.

In *State v. Seifried*,[35] a laboratory technician from the South Carolina State Law Enforcement Division testified that he found no powder burns on the sweater and shirt of the prosecuting witness when he examined them. The supreme court held that admission of such testimony was not grounds for reversal since there was not testimony as to actual tests on the clothing, only that the witness examined the articles and saw no powder burns. Because there had been no tests, it was not necessary that there be testimony that the clothing was in an unchanged condition from the time of the shooting, that there be testimony showing various factors affecting the presence or absence of powder burns, or testimony showing the significance of such presence or absence. The court held that: "the absence of burns was a mere physical fact about which the jurors were at least as likely to speculate from their own inspection of the garments in the jury room as from their consideration of the oral testimony on point."[36]

VII. HEARSAY

A. General

Many reasons have been given for the exclusion of hearsay evidence, but the South Carolina Supreme Court has recently emphasized the most important.[37]

> The real basis for the exclusion, however, appears to lie in the fact that hearsay testimony is not subject to the tests which can ordinarily be applied for the ascertainment of the truth of testimony

35. 255 S.C. 481, 179 S.E.2d 718 (1971).
36. *Id.* at 486, 179 S.E.2d at 720.
37. C. MCCORMICK, *supra* note 10, § 224.

> . . . . Probably the most important objection to admitting hearsay testimony in evidence is that the declarant is not present and available for cross-examination. The exercise of the right to cross-examine the witness is regarded as . . . essential in the administration of justice to discover the falsity of testimony and prevent the admission of perjured testimony.[38]

This standard was applied in the case of *State v. James*[39] to hold in error the admission in evidence of a report of a urine analysis introduced by a person other than the analyzer. A urine specimen had been sent to a California laboratory for analysis for arsenic and only a report of the analysis was offered in evidence by a local doctor. The court stated that:

> [W]here the results of tests or analyses are offered to prove an essential element of a crime or connect a defendant directly with the commission of a crime, such results must be substantiated by the person who conducted the tests or analyses. Otherwise, the effect of their admission would be to allow a witness to testify without being subject to cross-examination, and thus deprive the accused of his constitutional right to be confronted with and to cross-examine the witness against him.[40]

Since the testifying doctors could not testify as to the analysis used or the identity and veracity of the tester, the report was hearsay and admission of it in evidence was error.

In *State v. Lee*,[41] the court held that evidence of previous threats and hostile declarations by the accused against the deceased was admissible to show malice, premeditation and state of mind.

In the similar homicide case of *State v. Peterson*,[42] the court affirmed the admission in evidence of previous difficulties between the accused and the deceased. The court stated that, provided the difficulties were not too remote in time, the evidence was admissible for the purpose of showing the *animus* of the parties and thereby aiding the jury in determining who was the probable aggressor. But the court emphasized, however, that the details of such difficulties were not admissible.

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38. Cooper Corp. v. Jeffcoat, 217 S.C. 489, 494, 61 S.E.2d 53, 55 (1950), *quoting from* 20 AM. JUR. *Evidence* § 452 (1939).

39. 255 S.C. 365, 179 S.E.2d 41 (1971).

40. *Id.* at 370, 179 S.E.2d at 43.

41. 255 S.C. 309, 178 S.E.2d 652 (1971).

42. 180 S.E.2d 341 (S.C. 1971).

In *State v. Key*[43] the trial court allowed a witness to testify as to a conversation he had with the mother of one of the defendants. The witness testified that the mother told him: "Atlas [the defendant] said he was going to take half of Rock Hill with him if he was sent off and it would be best for me to just leave town on Sunday."[44] The supreme court held that allowing the testimony as to the conversation was error, but the error was not prejudicial because there was conclusive proof of the defendant's guilt of armed robbery.

B. Admissions of a Party Opponent

Three cases were decided this survey period involving the general rule of law in South Carolina that if a party fails to call an available witness, over whom he has control, to testify as to a material issue, an inference may be drawn that the witness would have testified unfavorably to that party.[45] Two of the cases concerned the relationship between the party and the witness necessary for the inference to arise.

In the case of *Duckworth v. First National Bank*[46] the court, after first defining "control" as meaning only that the witness be in such a relationship with the party that it is likely that his presence could be procured, held that this indispensable element was missing since the manager-fighter contract no longer existed between the plaintiff and the uncalled witness at the time of the trial. In the second case, *Sellers v. Public Savings Life Insurance Co.*,[47] the supreme court held that where the uncalled witness was neither an agent, employee, relation nor associate of the defendant, and there was nothing to indicate that the defendant exercised any degree of control over him, and that he was just as available to the plaintiff as the defendant, the inference did not arise that the witness' testimony would have been adverse to the defendant.

The case of *Canady v. Martschink Beer Distributors, Inc.*[48] was an automobile accident case in which a passenger was suing the driver for damages. There was evidence that the driver had been drinking, but there was issue as to the extent of his drinking and the plaintiff's

43. 180 S.E.2d 888 (S.C. 1971).
44. *Id.* at 889.
45. J. DREHER, *supra* note 30, at 71.
46. 254 S.C. 563, 176 S.E.2d 297 (1970).
47. 255 S.C. 251, 178 S.E.2d 241 (1970).
48. 255 S.C. 119, 177 S.E.2d 475 (1970).

participation in the drinking. The plaintiff's brother had also been a passenger in the car and, therefore, was an eye witness who could testify as to the extent of the defendant's drinking and the participation of the plaintiff in the drinking. Under these facts, the supreme court reversed the trial court's ruling and held that the defendant was entitled to the benefit of the presumption that, if the brother had testified, his testimony would have been adverse to the plaintiff.

Another type of admission which comes within this exception to the Hearsay Rule is the testimony of a party which is favorable to the opposing party. The general rule is that if a party's uncontraverted testimony is favorable to the adverse party, he may be precluded from recovery on the basis of that testimony.[49]

In *Lytle v. Reagan*,[50] the defendant was appealing a verdict in favor of the plaintiff, claiming that the plaintiff's testimony precluded his recovery. The supreme court, while recognizing the existence of the general rule in South Carolina, stated that when a party's testimony consisted mainly of estimates, opinions and conclusions, rather than actual facts within his knowledge, the testimony was not conclusive upon him when there was other evidence tending to show his testimony was not in accord with the facts. Different witnesses will give different versions of the facts of the incident and the party was no different from any other witness. Therefore, the court, in finding that the plaintiff's testimony was no more than his version of the accident and thereby not barring recovery, dismissed the appeal.

C. *Spontaneous Declarations—Res Gestae*

It is a well established rule in South Carolina that for a statement to qualify under the *res gestae* rule it must be of such a character that it explains the nature of the event or fact in issue.[51] The supreme court relied on this requirement in upholding the exclusion of a statement in *Anders v. Nash*.[52] In this case the plaintiff was injured when struck by the defendant's car while crossing the street. The defendant objected to the exclusion of testimony of a witness that the plaintiff's son, while the plaintiff was still lying in the street, had said, "Mama, I told you

49. Crider v. Infinger Trans. Co., 248 S.C. 10, 148 S.E.2d 732 (1966).
50. 182 S.E.2d 302 (S.C. 1971).
51. *See* Bagwell v. McLellan Stores Co., 216 S.C. 207, 57 S.E.2d 257 (1949).
52. 180 S.E.2d 878 (S.C. 1971).

not to cross." However, the court ruled that even though the statement was sufficiently close in point of time and place to be a part of the *res gestae,* it did not explain the manner in which the plaintiff attempted to cross the street or the manner in which the defendant was driving. Consequently the statement amounted to no more than an irrelevant opinion that the plaintiff should not have attempted to cross the street, and it was properly excluded.

VII. PRESUMPTIONS

Only one case was found this survey period involving presumptions and that was the case of *Moye v. Wilson Motors, Inc.*[53] In this case the plaintiff was issued an insurance policy which contained a clause stating that the insurance company could cancel the policy at any time by mailing the plaintiff a written notice of cancellation and that the mailing of the notice was sufficient proof of notice. The insurance company cancelled the policy by mailing a notice, but the plaintiff claimed he never received the notice. The court found that since there was testimony that the plaintiff had received a copy of the policy and there had been no misrepresentation as to the cancellation clause, the plaintiff could not charge fraud in the misrepresentation of the contents of a written instrument. The plaintiff was charged with the knowledge of facts which could have been ascertained by reading the policy, and was presumed to know what was contained therein.

IX. HABEAS CORPUS PROCEEDINGS

In the case of *State v. Stallings,*[54] over the defendant's objection, the prosecution introduced the torn and blood stained clothing worn by the victim at the time of the assault, and pictures of the victim after the assault. The supreme court held that the evidence was admissible since it was introduced to show the forcefulness of the assault, and not solely to induce prejudice.

In *Stallings v. State of South Carolina,*[55] the District Court, in dismissing the defendant's *habeas corpus* petition, stated that as a general rule the admissibility of evidence was to be governed by state

53. 254 S.C. 471, 176 S.E.2d 147 (1970).
54. 253 S.C. 451, 171 S.E.2d 588 (1970).
55. 320 F. Supp. 824 (D.S.C. 1970).

law and may be reviewed only on appeal and not in a *habeas corpus* proceeding.

> It is only when the error in the admission of evidence is found to be . . . so conspicuously prejudicial as to deprive the defendant of a fair trial that a federal question is presented warranting federal intervention.[56]

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56. *Id.* at 825, *quoting from* U.S. *ex rel.* Cannon v. Maroney, 373 F.2d 908, 910 (3d Cir. 1967).