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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health, ...Appellant-Respondent.

In re:

The State, ...Respondent,

v.

Jevon Kenneth Carter,.....Respondent-Appellant.

FINAL BRIEF OF RESPONDENT

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2. Whether the circuit court's order denying Respondent-Appellant's discharge from inpatient treatment and ordering continued hospitalization should be affirmed where it was explicitly based on a clear and convincing evidentiary standard and its findings of fact are supported by evidence in the record and not controlled by an erroneous conception or application of the law?

    A. Whether the circuit court that is statutorily tasked to "hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580" is bound by either the initial determination or any expert opinion testimony "by officials of the State Hospital that the person is no longer in need of hospitalization?"

    B. Whether the circuit court's consideration of "placement concerns" was appropriate in the context of the required statutory determinations of: (1) whether Respondent-Appellant would be in an environment where he would be able to continue making responsible decisions with respect to his treatment and (2) whether Respondent-Appellant would be in an environment that could create a likelihood of serious harm to himself or others?

    C. Whether the circuit court acted in full compliance with all constitutional, federal, and/or state mandates regarding providing treatment in the most medically appropriate integrated environment when it determined, under a clear and convincing evidentiary standard, that Respondent-Appellant should not yet be discharged and needed continued inpatient hospitalization?

STATEMENT OF THE CASE

Respondent-Appellant, Jevon Kenneth Carter (Carter), was indicted at the August, 2021 term of the grand jury for Greenville County for murder and possession of a weapon during the commission of a violent crime (R.p.263-p.264), and burglary in the first degree (R.p.265-p.266). On July 5, 2021, Carter was evaluated by Appellant-Respondent, the South Carolina Department of Mental Health (SCDMH), for criminal responsibility and capacity to conform his conduct to the requirements of the law. In a written report dated October 4, 2021, SCDMH diagnosed Carter with Schizoaffective Disorder – Bipolar Type and found "sufficient evidence that [Carter] has a serious mental illness that would have substantially impaired his ability to distinguish legal or moral right from legal or moral wrong." SCDMH concluded: "it is our opinion that he would not have been criminally responsible pursuant to S.C. Code. Ann. § 17-24-10 (1976)." (R.p.346).

On June 8, 2022, Carter proceeded to a bench trial at the Greenville County Courthouse before the Honorable Perry H. Gravely. He was present and represented by D. Josev Brewer, Esquire, and Anastasia Walker, Esquire, both of the Greenville County Bar. Respondent (the State) was represented by Assistant Solicitor Andrew Miller of the Thirteenth Circuit Solicitor's Office. After accepting submission of a stipulation of facts, exhibits, affidavits, and testimony, and with the consent of both Carter and the State, the trial court adjudicated Carter not guilty by reason of insanity (NGRI) pursuant to S.C. Code Ann. § 17-24-40. (R.p.3-p.6). On August 16, 2022, Carter was admitted to the custody of SCDMH.

On November 10, 2022, SCDMH issued a "Request for Discharge Report" and advised the circuit court it believed Carter was no longer in need of inpatient treatment. (R.p.357-p.363). On December 8, 2022, a hearing was held before the Honorable Perry H. Gravely to consider the

discharge request. (R.p.7-p.11). In an Order dated January 9, 2023, Judge Gravely declined to accept the request and recommendation for discharge. (R.p.7-p.11).

On July 7, 2023, SCDMH issued a second "Request for Discharge Report" and renewed its recommendation, again advising it believed Carter was no longer in need of inpatient treatment. (R.p.364-p.371). On August 30, 2023, a hearing was held before the Honorable Alex Kinlaw, Jr. to consider the second discharge request. (R.p.14). At that hearing, SCDMH presented testimony from two witnesses; Dr. Jennifer Alleyne, Carter's attending psychiatrist, and Dr. Richard Frierson, Professor and Director of the Forensic Psychiatry Fellowship at the University of South Carolian School of Medicine. Dr. Frierson's Violence Risk Assessment was introduced into evidence. (R.p.83). The State did not call any witnesses in response; however, it cross-examined Dr. Alleyne and Dr. Frierson extensively about their findings and recommendations in the context of their review of medical records from Carter's previous commitments to the Prisma Health Marshall I. Pickens Psychiatric Hospital (MIP)[1] and the Greenville County Detention Center (GCDC), all of which were provided to the court. At the hearing, Carter argued that based on the expert testimony offered he was no longer in need of hospitalization and must, therefore, be discharged as a matter of law. (R.p.114-p.118). At the conclusion of the hearing, Judge Kinlaw requested briefs from the State, SCDMH, and Carter, and all three parties subsequently submitted post-hearing briefs. (R.p.372-p.420). In an Order dated October 31, 2023, the circuit court declined to accept the request and recommendation and ordered that Carter continue with inpatient treatment. (R.p.1-p.2).

[1] Prisma Health is a nonprofit health company and the largest health care system in South Carolina, serving more than 1.2 million unique patients annually. The Prisma Health Marshall I. Pickens Hospital in Greenville provides "a complete spectrum of care for psychiatric, emotional and psychological disorders" and offers "both inpatient and outpatient settings for treating patients." https://prismahealth.org/locations/hospitals/marshall-i-pickens-hospital.

On November 10, 2023, prior to receiving written notice of entry of Judge Kinlaw's Order, Carter filed a notice of intent to appeal. On November 13, 2023, also before receiving written notice of entry of the order, SCDMH timely filed a separate notice of intent to appeal. On November 28, 2023, this Court advised all parties that it had received multiple notices of appeal and that they would be consolidated for consideration by the Court. On June 8, 2023, Carter served and filed his Initial Brief of Respondent-Appellant and on June 10, 2023, SCDMH filed its Initial Brief of Appellant-Respondent. By way of a letter dated July 10, 2023, the State advised all parties of its intent to serve and file a single Brief of Respondent in response to both briefs because they are advocating the same position, requesting the same relief, and have made overlapping if not substantially identical arguments. This Brief of Respondent now follows.

STATEMENT OF FACTS

On February 9, 2020, Carter presented to the Prisma Health emergency department (ED) in Greenville with altered mental status after he took "shrooms." He was discharged after his "anxiety" resolved. (R.p.340). On July 2, 2020, Carter was brought into the ED by police officers where he presented as agitated, paranoid, and delusional. It was recommended that he be admitted for inpatient psychiatric treatment. (R.p.340). On July 3, 2020, Carter was admitted to MIP. (R.p.340). On the day of his admission to MIP, Carter demanded to leave and jumped over the nurse's station split door and tried to grab his cell phone. When security approached to escort him out, he barricaded the door to his room and tried to bust out the window to escape. (R.p.341).

The following day, on July 4, 2020, Carter walked past the nurse's station at MIP and out of an open door to the patio area (used for patient recreation). He scaled the fence surrounding the area and left the premises. (R.p.341). Later, during the nighttime hours, Carter entered the dwelling of his great aunt, Francis Mattison, without consent, retrieved a knife from the kitchen,

and stabbed Mattison in the neck, resulting in her death. After the incident, Carter left the scene and did not report his actions to law enforcement or medical staff. (R.p.263-p.266; p.54, lines 12-17).

The following day, on July 5, 2020, Carter presented to the ED with complaints of being "lightheaded" and that he had "passed out." After a medical workup, he was returned to MIP; however, on July 8, 2020, Carter again successfully eloped when he forced his body through a glass door and went to his father's house. Law enforcement returned him to the ED and he was sent back to MIP. (R.p.341). When Carter returned to MIP on July 9, 2020, he was ordered to be observed with one-to-one staff monitoring due to his high risk for elopement. He was overheard telling a peer that he was going to escape again, and nursing notes record his "poor insight and poor compliance with medications." (R.p.341). It was noted that when he would ingest the prescribed medications, he immediately went to his room to regurgitate them in the toilet. (R.p.341). By July 18, 2020, Carter began to interact more with the MIP staff and his peers, and he took his medications as prescribed. He was described as stable and was discharged on July 22, 2020, with a diagnosis of Bipolar I Disorder, with mood congruent psychotic features. (R.p.341; p.271-p.274).

Five days later, on July 27, 2020, Carter again presented to the ED with altered mental status after being pulled over by police for driving erratically and admitting to cannabis use. His symptoms had resolved by July 29, 2020, and he was again discharged to home. (R.p.342).

On August 28, 2020, following a nearly two-month law enforcement investigation, Carter was arrested for the July 4, 2020, incident and was charged with burglary and the murder of his great aunt. He was subsequently indicted at the August, 2021 term of the grand jury for Greenville County for murder and possession of a weapon during the commission of a violent

crime (R.p.263-p.264), as well as burglary in the first degree (R.p.265-p.266). After Carter's arrest, during his final six months at the GCDC, between February 2022 and July 2022, Carter refused medications on fifty separate occasions for a total of eighty-seven missed doses of his prescribed medicine. This included Carter refusing Oxcarbazepine[2] a total of forty-six times. (R.p.307-p.334). On June 8, 2022, Carter proceeded to a bench trial and was adjudicated NGRI for voluntary manslaughter, possession of a weapon during a violent crime, and burglary in the first degree. (R.p.3-p.6). On August 16, 2022, when bed space became available, Carter was admitted to the custody of SCDMH.

Bench Trial

When Carter's criminal charges came before Judge Gravely on June 8, 2022, both the State and Carter waived a jury trial pursuant to Rule 14, SCRCrimP, and proceeded with a bench trial. (R.p.255; p.3). At that trial, the State submitted a stipulation of facts along with twelve exhibits that were admitted into evidence with the consent of the defense. The solicitor then recited those facts with reference to each exhibit before the State rested. (R.p.214-p.223). The defense introduced six additional exhibits, without objection, including an October 4, 2021 Criminal Responsibility and Capacity to Conform Evaluation from SCDMH. (R.p.224-p.225; p.3). The defense then called the supervising physician of the NGRI program at SCDMH, forensic psychiatrist Stephanie Le, to the stand. She described the documents and information she reviewed in evaluating Carter and offered her expert opinion, to a reasonable degree of psychiatric certainty, that he was not criminally responsible for his actions on July 4, 2020. Dr. Le noted a diagnosis of schizoaffective disorder, bipolar type. (R.p.226-p.246). Notably, Dr. Le testified that Carter was still hearing voices even after his mood had been stabilized with mood

[2] Oxcarbazepine, or Trileptal, is an anticonvulsant often used to stabilize mood. (R.p.19-p.24).

stabilizing medications. (R.p.238, lines 10-16). The court then questioned Carter in regard to waiving his right to testify before the parties gave closing arguments and the case was taken under advisement. (R.p.247-p.256).

In an order dated June 13, 2022, Judge Gravely found: "that the facts could have supported a jury finding of the lesser included charge of voluntary manslaughter and possession of a weapon during a violent crime as to indictment 2021-GS-23-5230, and first-degree burglary as to indictment 2021-GS-23-5231. In addition to the evaluation, Judge Gravely heard the testimony of Dr. Stephanie M. Le, a supervising physician for SCDMH and the author of the evaluation. Judge Gravely noted both parties consented to a finding of NGRI and concluded "that at the time of the commission of the alleged offenses, [Carter], as a result of mental disease or defect, did not have the capacity to distinguish moral or legal right from moral or legal wrong." (R.p.4). The trial court found Carter NGRI of voluntary manslaughter, possession of a weapon during commission of a violent crime, and burglary, 1st degree, and ordered him committed to a facility designated by SCDMH for a period of hospitalization not to exceed 120 days for examination regarding continued hospitalization and treatment. (R.p.4-p.5). On August 16, 2022, when bed space became available, Carter was admitted to the custody of SCDMH.

First Discharge Hearing

At the December 8, 2022 discharge hearing before Judge Gravely, SCDMH presented testimony from Dr. Alleyne, Carter's attending psychiatrist. Although Dr. Alleyne testified in support of the SCDMH recommendation for outpatient treatment (R.p.130-p.142), under cross-examination, she admitted to numerous significant red flags in Carter's history and shortcomings in the proposed discharge plan which could negatively impact Carter's capacity to make

reasonable decisions with respect to his treatment and the likelihood he might harm himself or others. (R.p.142-p.186).

These red flags and shortcomings included: (1) the short, ninety-day time frame between Carter's admission to SCDMH and the written discharge recommendation (R.p.145); (2) the serious anti-psychotic and mood stabilization medications Carter would be required to continue taking, the inability to guarantee his stability if he stopped taking those medications, and the fact that those medications had been administered by a nurse during his inpatient treatment (R.p.144 & p.146-p.148); (3) Carter's six-month long history of repeatedly refusing to take his medications while he was at GCDC (R.p.149-p.151); (4) Carter's comments to GCDC medical staff showing he understood the evaluation process he would undergoing at SCDMH and understood he would need to be compliant with taking his medications there in order to get released (R.p.152-p.153); (5) Carter's constant monitoring during inpatient treatment and the lack of such monitoring after release (R.p.156-p.157); (6) Carter's ability to come and go as he pleased, 24 hours a day, following discharge (R.p.160); (7) Carter's proposed placement with his mother, who has a history of criminal convictions including one for unlawful neglect of Carter and one for possession of cocaine which required mental health counseling as part of the sentence (R.p.161-p.165); (8) Carter's proposed placement with his mother, who participated in a recorded phone call Carter placed from GCDC during which she said she was under the influence of drugs (R.p.165-p.166); (9) Carter's proposed placement with his mother, who is under the care of Greenville Mental Health (R.p.166); (10) Carter's proposed placement with his mother, who called MIP when Carter eloped to say: "you're responsible for finding him, y'all should have chained him down and given him shots" (R.p.168-p.169); (11) Carter's documented use of marijuana five days after a previous discharge even after being informed that the use of

recreational drugs could significantly elevate his risk of dangerous behaviors (R.p.170-p.172); (12) the month-long gaps in active monitoring after discharge, during which Carter could theoretically walk away from the proposed residence with no one from SCDMH knowing for almost month, unless someone from his family chose to report his absence earlier (R.p.175); (13) the fact that if Carter had some sort of relapse or psychotic episode after discharge, he "would be on his own" (R.p.175-p.176); (14) the fact that steak knives would be allowed in the proposed residence (R.p.177); and (15) the fact that Carter would be living with a known felon if discharged to the proposed residence. (R.p.179). In addition to the testimony from Dr. Alleyne, the court also considered Briefs/ Memoranda submitted by all three parties; the November 4, 2022 Designated Examiner's Report; the October 4, 2021 Evaluation; and arguments presented at the hearing. (R.p.8).

Based on his review, Judge Gravely found "by clear and convincing evidence that [Carter] is still in need of inpatient treatment and a more adequate transitional plan for release into society and outpatient treatment." (R.p.8). Specifically, Judge Gravely found "that SCDMH has not provided sufficient evidence for [Carter] to be released and transferred to outpatient treatment" and that "SCDMH has not provided an appropriate care plan." (R.p.9). The decision was based on a number of factors enumerated in the order, including the short length of Carter's housing at SCDMH, his medical history, his comments to staff at GCDC, his history of failing to comply with taking medication as prescribed while being monitored by jail personnel, and the environment where he would be placed—with his mother, who had failed to properly supervise him in the past and who suffers from her own mental health issues and problems with illegal substances. (R.p.10). Ultimately, Judge Gravely declined to accept the recommendation and found as follows:

> The Court finds, upon clear and convincing evidence, that [Carter] lacks sufficient insight or capacity to make reasonable decisions with respect to his treatment and that there is a likelihood of harm to himself of others. Therefore, the Court orders that [Carter] continue with inpatient treatment and be committed to the appropriate facility of SCDMH for further treatment. If SCDMH determines that [Carter] should be released as some point in the future, then a more appropriate treatment plan regarding supervision of [Carter] will need to be provided, including the consideration of transitional housing and a more stable environment with appropriate monitoring and supervision.

(R.p.10-p.11).

Second Discharge Hearing

At the August 30, 2023 discharge hearing before Judge Kinlaw, SCDMH again presented testimony from Dr. Alleyne. After being admitted as an expert in the field of forensic psychiatry, without objection, Dr. Alleyne testified Carter was diagnosed with schizoaffective disorder, bipolar type, and opined he had been psychiatrically stable since his admission to the State forensic hospital. She explained Carter was being treated with three medications: Abilify (Aripiprazole)—an antipsychotic administered by injection, Trileptal (Oxcarbazepine)—an oral mood stabilizer, and Trazodone—an oral antidepressant with a side effect of sedation to help with sleep. (R.p.19-p.24). Dr. Alleyne said the Abilify injections were administered by a nurse at the hospital, but that Carter was self-administering his other medications. She said he had no recorded refusals or missed doses. Dr. Alleyne explained that in terms of the injectable medicine, SCDMH or another medical entity could determine whether Carter had taken it or not by "leveling"—doing a blood draw to see how much was in his system at any given time. She said the failure to take the scheduled injection after discharge would be grounds for readmission to the hospital. (R.p.24-p.26).

Dr. Alleyne next explained what it meant for a patient to have "insight" to make responsible decisions with respect to medical treatment. She opined Carter had good insight and

believed he would be able to successfully treat himself on an outpatient basis. (R.p.26-p.27). In regard to Carter's likelihood of harming himself or others, Dr. Alleyne said they look at self-reporting, mood, and behavior, that Carter had not exhibited any signs that were concerning to her, and that she thought he would be safe to be discharged under the plan. (R.p.27-p.28). She then discussed the proposed discharge plan itself, including the residence where Carter would be placed, the support system Carter would have from family and friends, and the supervision he would be under from Greater Greenville Mental Health Center, the SCDMH forensic outreach clinic, and the Department of Probation, Parole and Pardon Services, all of which she claimed supported her conclusions. Dr. Alleyne opined the discharge plan was likely to be therapeutic for Carter and that he would not derive any additional benefit from staying in the hospital for further inpatient treatment. (R.p.28-p.33). She concluded by testifying she believed Carter had sufficient insight with which to properly treat himself on an outpatient basis and that there was not a likelihood of serious harm to himself or others. (R.p.33).

Upon further examination by Carter, Dr. Alleyne testified Carter was able to demonstrate he can manage his own medication and that he was one of their most responsible and medically compliant patients. She said Carter was also one of the most well-behaved patients, with no behavioral incidents or demotions, and no physical or violent altercations during his stay at the hospital. (R.p.33-p.35).

Under extensive cross-examination, Dr. Alleyne acknowledged that she had spent only about an hour and a half total with Carter, that his mental disorder still existed, and that it would always exist.[3] She further acknowledged that if Carter missed a dose of Aripiprazole or Trileptal (Oxcarbazepine), his symptoms would start to return. Dr. Alleyne admitted that shortly before

[3] This testimony directly refutes the claim in Carter's brief that: "There was no testimony or evidence to support the circuit court's finding that [Carter] is 'mentally ill.'" (Brief of Respondent-Appellant, p.19).

his admission to SCDMH, Carter refused or failed to take his prescribed medications on at least 50 separate occasions, and he commented to GCDC staff that he understood he would need to comply in order to go home. She testified Carter would remain "psychiatrically stable" if he continued to take his medications but that she could not "guarantee anything" and could certainly not guarantee his stability after discharge if he failed to take any of his medications. (R.p.36-p.41).

Dr. Alleyne next acknowledged that when Carter was discharged from MIP, their staff had opined he was stable enough for discharge; however, five days later he was found by the police driving under suspension, shaking and not making sense, and was in the possession of marijuana. A portion of the MIP discharge records that had already been provided to Judge Kinlaw were made a part of the court's record as a State's Exhibit. (R.p.42-p.45; p.271-p.274). Dr. Alleyne was then questioned about Carter's proposed discharge plan. She said she was familiar with Judge Gravely's order rejecting discharge following the first hearing, and that his order was consulted as part of coming up with the new discharge plan. She recognized Judge Gravely had a problem with Carter living with his mother due to her own psychiatric symptoms and difficulties with maintaining her own health. She explained this was why the plan was modified—to change the proposed residence from Carter's mother to his grandmother, but admitted the two residences were only about fifty feet apart. (R.p.45-p.50).

Dr. Alleyne also admitted Carter would be free to come and go from his grandmother's house as he pleased, twenty-four hours a day, and his grandmother would be under no obligation to report a decline in his condition or any violations. (R.p.50-p.52). Dr. Alleyne further admitted that despite the restriction on Carter possessing weapons, guns, or knives, this would not extend to all knives, and that Carter's grandmother would be permitted to have steak and kitchen knives

in the house despite the facts of the index offense. She also admitted that despite the restriction on Carter associating with known felons, this would not extend to his mother even though she is a convicted felon and would be living next door. She claimed this felon restriction was standard and was never intended to apply to family members who were convicted felons, yet SCDMH made no attempt to change this term to specifically note this family-member exception, despite Judge Gravely's prior concerns. (R.p.54-p.57). Finally, Dr. Alleyne acknowledged that despite the restriction on Carter using drugs or alcohol, the proposed residence was located near a neighbor with a history of drug use. She admitted the solicitor would only be notified if Carter was actually returned for hospitalization and not merely for violating the terms of his conditions, and that as a consequence nobody would notify the victim's family of any basic violations either. (R.p.57-p.63; p.73-p.77).

Next, SCDMH called Dr. Frierson to describe the formal violence risk assessment he performed on Carter. He was admitted as an expert in forensic psychiatry, without objection. Dr. Frierson explained how the assessment was conducted—describing the documents he reviewed, his interviews with Carter, and Carter's diagnosis and medications. His written report was entered without objection. (R.p.79-p.86). Dr. Frierson opined Carter was properly medicated for his illness and said he had been taking all of his prescribed medications for over a year at the hospital. He noted Carter lacked insight when he was previously treated at MIP but in his opinion, that insight was ninety-eight percent better because Carter now demonstrated a thorough knowledge of his illness, the reasons for the medications, warning signs of decompensation, and the need for lifelong treatment. Dr. Frierson testified Carter was very remorseful and did not want anything like the index offense to happen again. (R.p.87-p.89).

Dr. Frierson next addressed whether he believed Carter was a danger to himself or others. He detailed the things he considered, including historical risk factors, clinical factors, and risk management factors. Dr. Frierson specifically noted he considers the patient's "living situation" and whether he or she has "personal support" and an "involved family" when assessing risk. (R.p.89-p.91). Dr. Frierson then explored Carter's history of compliance, coping skills, and lack of violent ideation, as well as how a long-acting injectable would help Carter because "you can't cheat an injection." (R.p.92-p.95). He noted how periodic and unannounced drug screens and placement of Carter on the National Instant Criminal Background Check System (NICS) list would help protect against possible danger, and opined placement at his grandmother's residence would be proper for Carter. Dr. Frierson further opined there was no additional therapeutic benefit to keeping Carter in the hospital and that discharge would be the most therapeutic option. (R.p.95-p.100).

On cross examination, Dr. Frierson explained he believed Carter had shown remorse for the index offense "through his facial expressions" and his understanding of how it impacted other people in the family; however, he also noted Carter has a particular understanding of "how it changed *his* life" and that it was "something *he* will always have to live with." (R.p.100-p.102) (emphasis added). Dr. Frierson admitted he could not guarantee, with any medical certainty, that Carter would not act out violently in the future. He said he would be most worried if Carter missed a dose of his antipsychotic medication because if he had a return of symptoms, "it is possible he could develop a delusion about another person and engage in violent behavior." He said it was hard to find the perfect solution and that there are no guarantees. (R.p.103-p.107).

After hearing from two representatives of the victim's family who opposed discharge and being advised that law enforcement investigators were similarly opposed, Judge Kinlaw

requested briefs from the State, SCDMH, and Carter. (R.p.107-p.113). Counsel for Carter and his family members were also given an opportunity to address the court. Counsel made arguments in support of discharge, concluding with the comment: "But the generalized concerns about the underlying conduct can't be the basis just for endless extrapolated risks going forward. It's a determination right now. *It's a medical determination* right now as to whether he needs hospitalization." (R.p.113-p.125) (emphasis added).

The parties submitted briefs, and in a subsequent Order dated October 31, 2023, the circuit court declined to accept the request and recommendation. In the order, Judge Kinlaw stated he had reviewed and considered the briefs and memoranda submitted by the parties, the arguments made at the hearing, the violence risk assessment and other supporting documentation, *Judge Gravely's previous order*, and the testimony of the two experts in reaching his decision. (R.p.1-p.2) (emphasis added). Ultimately, Judge Kinlaw made the following findings of fact and conclusions of law:

> Based on this review, the Court finds by clear and convincing evidence that [Carter] is still in need of inpatient treatment pursuant to the standard of §44-17-580(A). The Court finds that [Carter] is mentally ill; needs involuntary treatment; and because of his condition lacks insight or capacity to make responsible decisions regarding treatment; and there is a likelihood of serious harm to himself or others. Therefore, the Court orders that [Carter] continue with inpatient treatment and be committed to the appropriate facility of SCDMH for further treatment.

(R.p.1-p.2).

STANDARD OF REVIEW

An involuntary civil commitment proceeding where the hearing court is sitting without a jury, pursuant to statute, and whose outcome is dependent upon completion of a hearing and consideration of records, constitutes an action at law. *See, e.g., In re Treatment and Care of Luckabaugh*, 351 S.C. 122, 130, 568 S.E.2d 338, 342 (2002) ("The record establishes the court

below issued its order as a hearing court conducting an action at law, sitting without a jury pursuant to South Carolina Code Ann. § 44-48-100."); *See also* S.C. Code Ann. § 44-17-580(A) (establishing that, upon completion of a hearing and consideration of the records, a court may order a person to be civilly committed if it finds, upon clear and convincing evidence that the person is mentally ill, needs involuntary treatment, and because of his condition, either lacks the capacity to make responsible decisions regarding his treatment, or is likely to seriously harm himself or others). In an action at law tried without a jury, the appellate court will not disturb the trial court's findings of fact unless there is no evidence to reasonably support them. *Nationwide Mut. Fire Ins. Co. v. Walls*, 433 S.C. 206, 212, 858 S.E.2d 150, 153 (2021); *Renewable Water Res. v. Ins. Reserve Fund*, 442 S.C. 272, 278–79, 897 S.E.2d 558, 561 (Ct. App. 2024). Indeed, the appellate court will not disturb the trial court's findings of fact unless those findings are wholly unsupported by the evidence or controlled by an erroneous conception or application of the law. *Renewable Water*, 442 S.C. at 279, 897 S.E.2d at 561. However, an appellate court may make its own determination on questions of law and need not defer to the trial court's rulings in this regard. *Nationwide*, 433 S.C. at 212, 858 S.E.2d at 153; *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 593, 748 S.E.2d 781, 785 (2013); *Renewable Water*, 442 S.C. at 279, 897 S.E.2d at 561.

ARGUMENT

I.

Respondent-Appellant's argument, that the circuit court's order denying discharge from inpatient treatment and ordering continued hospitalization is facially deficient for failing to make adequate findings of fact and conclusions of law, if correct, would render any substantive challenge to that order unpreserved for appellate review because neither Respondent-Appellant nor Appellant-Respondent filed a motion to alter or amend pursuant to Rule 59(e), SCRCP. Consequently, if there *is* indeed a facial deficiency with the order itself, Carter and SCDHM are left with

***no* viable issues for consideration in this appeal and the entire appeal should be denied and dismissed. If there *is not* a facial deficiency, the circuit court's order should be affirmed for the reasons argued below.**

Carter argues the circuit court's order is "facially deficient" because it fails to "find the facts specifically." *See* Rule 52(a), SCRCP ("In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon."). He goes on to argue that "remand is a typical remedy for such deficiencies but only when there is 'contradictory testimony below' to be resolved;" however, he contends that because "there is no contradictory evidence to resolve or any evidence that could ever support the conclusions of the circuit court's order . . . [he] should be immediately released on the conditions recommended." (Brief of Respondent-Appellant, p.21-p.22).

The State strongly disagrees and submits Carter has skipped a critical step in his analysis which undermines consideration of this entire appeal. While remand to correct a lower court order deemed deficient for a lack of factual findings may sometimes be appropriate, this is *only* true where the issue has been properly preserved for appellate review. Here, Carter's allegation of facial deficiency is effectively a claim that the circuit court did not adequately rule on the ultimate issues before it. This argument is not preserved for appellate review because neither Carter nor SCDMH filed a motion to alter or amend pursuant to Rule 59(e), SCRCP, in response to the circuit court's judgment denying discharge. Consequently, if there is indeed a facial deficiency with the order itself, Carter and SCDHM are left with *no* viable issues to raise on appeal. The entire appeal should be denied and dismissed, and the circuit court's order should be affirmed.

The losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. *I'On, L.L.C.*

v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000). If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review. *Id.* This type of motion is often required for issue preservation purposes. *Elam v. S.C. Dep't. of Transp.*, 361 S.C. 9, 22, 602 S.E.2d 772, 779 (2004). Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after is has considered all relevant facts, law, and arguments. *I'On*, 338 S.C. at 422, 526 S.E.2d at 724. Thus, in the event the lower court fails to make specific findings of fact and conclusions of law regarding an issue, it is incumbent upon a party to file a Rule 59(e), SCRCP motion to properly challenge the alleged deficiency so as to preserve that issue for appellate review. *See, e.g., Hill v. S.C. Dep't of Health and Envtl. Control*, 389 S.C. 1, 19, 698 S.E.2d 612, 622 (2010) (holding it was incumbent upon the appellant to show that he had clearly raised the issue to the Administrative Law Judge and asked for a specific ruling in that regard in order to preserve the issue for review by the circuit court); *USAA Property and Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 652, 661 S.E.2d 791, 795 (2008) (finding it was incumbent upon Respondent/Appellant to file a motion pursuant to Rule 59(e) of the South Carolin Rules of Civil Procedure to request that the circuit court provide specific factual findings for its decision).

Neither Carter nor SCDMH filed a Rule 59(e) motion, and they have failed to establish any valid reason why their failure to file a Rule 59(e) motion should be excused. Therefore, to the extent this Court agrees with Carter's argument regarding the "facial deficiency" of the circuit court's judgment, the entire appeal should be denied and dismissed as unpreserved for appellate review. If Judge Kinlaw's order provides factually inadequate findings for review, there are no issues for this Court to review on appeal. To the extent this Court disagrees with

Carter and concludes the circuit court *did* sufficiently find facts to enable appellate review of its decision, the State submits that decision should be affirmed for all of the reasons set forth below. Under either scenario, the circuit court's order denying Carter's discharge should be affirmed.

II.

The circuit court's order denying Respondent-Appellant's discharge from inpatient treatment and ordering continued hospitalization should be affirmed because it was explicitly based on a clear and convincing evidentiary standard and its findings of fact are supported by evidence in the record and not controlled by an erroneous conception or application of the law.

SCDMH and Carter argue the circuit court erred in denying Carter's discharge and ordering continued hospitalization for three reasons. First, they contend the circuit court erred by making its own reasoned decision instead of simply adopting the opinions expressed in the testimony of two expert witnesses that: (1) Carter has insight and capacity to make responsible decisions with respect to his treatment and (2) there is not a likelihood of serious harm to himself of others. Second, SCDMH contends the circuit court erred by considering "placement concerns" in making the two central determinations because such concerns fall "outside the appropriate statutory standards of S.C. Code § 44-17-580." (Brief of Appellant-Respondent, p.13-p.14). Third, they contend the circuit court erred because its refusal to discharge Carter to the most therapeutic and integrated environment, despite the expert opinions offered, violated constitutional, state, and/or federal law. (Brief of Appellant-Respondent, p.6-p.17; Brief of Respondent-Appellant, p.9-p.22).

The State disagrees on all fronts. The circuit court's findings of fact, explicitly made under a clear and convincing evidence standard, that Carter was mentally ill; needed involuntary treatment; and because of his condition (1) lacked insight or capacity to make responsible

decisions regarding treatment, and (2) there was a likelihood of serious harm to himself or others, are supported by evidence in the record and not controlled by an erroneous conception or application of the law. Consequently, those findings of fact should not be disturbed on appeal. The determination "by officials of the State Hospital that the person is no longer in need of hospitalization" is a precursor to the evidentiary hearing and does not control the decision of the court which is statutorily tasked to "hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580." S.C. Code Ann. § 17-24-40(C)(2)(c). Further, the circuit court's consideration of "placement concerns" was entirely appropriate in the context of the required statutory determinations of: (1) whether Carter would be in an environment where he would be able to continue making responsible decisions with respect to his treatment and (2) whether Carter would be in an environment that could create a likelihood of serious harm to himself or others. Finally, the circuit court acted in full compliance with all constitutional, federal, and/or state mandates regarding the preference for treatment in the most medically appropriate integrated environment when it found continued hospitalization was appropriate under a clear and convincing evidentiary standard. For all of these reasons, the circuit court's decision to decline Carter's discharge and continue his hospitalization and inpatient treatment should be affirmed.

Analysis

In South Carolina, when a verdict of NGRI is returned, the trial judge must order the person committed to the South Carolina State Hospital for a period not to exceed one hundred twenty days, and during that time an examination must be made of the person to determine the need of hospitalization of the person pursuant to the standards set forth in Section 44-17-580 of the South Carolin Code. S.C. Code Ann. § 17-24-40(A). Following that examination, a report of

the findings must be made to the chief administrative judge of the circuit where the trial was held, the solicitor, the person, and the person's attorney. S.C. Code Ann. § 17-24-40(B). Within fifteen days after receipt of the report, the court must hold a hearing to decide whether the person should be hospitalized pursuant to the standards of Section 44-17-580, and if the judge finds the person is in need of hospitalization, the judge *must* order the person committed to the South Carolina State Hospital. S.C. Code Ann. § 17-24-40(C).

If the person is so committed, and of particular import to this appeal, the Code goes on to provide that:

> If at a later date it is determined by officials of the State Hospital that the person is no longer in need of hospitalization, the officials must notify the chief administrative judge, the solicitor, the person, and the person's attorney. Within twenty-one days after the receipt of this notice, the chief administrative judge, upon notice to all parties, *must hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580.* If the finding of the court is that the person is in need of continued hospitalization, the court *must* order his continued confinement. If the court's finding is that the person is not in need of continued hospitalization, it *may* order the person released upon such terms or conditions, if any, as the chief administrative judge considers appropriate *for the safety of the community* and the well-being of the person.

S.C. Code Ann. § 17-24-40(C)(2)(c) (emphasis added). Pursuant to this standard, the court *must* order the person's continued confinement:

> If upon completion of the hearing and consideration of the record, the court finds upon clear and convincing evidence that the person is mentally ill, needs involuntary treatment and because of his condition:
>
> (1) lacks sufficient insight or capacity to make responsible decisions with respect to his treatment; or
>
> (2) there is a likelihood of serious harm to himself or others.

S.C. Code Ann. § 44-17-580(A) (emphasis added). On the other hand, if the Court finds further hospitalization is *not* required, the Court: "*may* order the person released upon such terms or conditions, if any, as the judge considers appropriate *for the safety of the community* and the well-being of the person." S.C. Code Ann. § 17-24-40(C)(2)(c) (emphasis added). Any terms and conditions imposed must be therapeutic in nature, not punitive, and *must* include, but not be limited to: (1) continue taking medication for an indefinite time and verifying in writing the use of medication; (2) receive periodic examinations and reviews by psychiatric personnel; and (3) report periodically to the probation office for an evaluation of his reaction to his environment and general welfare. S.C. Code Ann. § 17-24-40(D). These terms *may* also include: "provisions for the safety of the community in general and the victim in particular, including 'no contact' strictures, specific housing requirements, and curfew restrictions." *Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*, Admin. Order No. 2014-04-24-01 (S.C. Sup. Ct. Order dated April 24, 2014).

Here, Judge Kinlaw found: "by clear and convincing evidence" that [Carter] "is still in need of inpatient treatment pursuant to the standard of § 44-17-580(A)" and "is mentally ill; needs involuntary treatment; and because of his condition lacks insight or capacity to make responsible decisions regarding treatment; and there is a likelihood of serious harm to himself or others." (R.p.1-p.2). Because these findings are supported by ample evidence in the record and not controlled by an erroneous conception or application of the law, they should not be disturbed on appeal.

That evidence was comprised of: (1) the testimony elicited from Dr. Alleyne and Dr. Frierson; (2) the medical records from MIP and GCDC that were reviewed by Dr. Alleyne and Dr. Frierson and used by the State during cross-examination; and (3) the findings in the June 9,

2023 Order issued by Judge Gravely. In sum, it constituted clear and convincing evidence to find both that Carter lacked sufficient insight or capacity to make reasonable decisions with respect to his treatment and that his discharge would pose a likelihood of serious harm to himself or others.

Carter Lacked Insight or Capacity to Make Responsible Decisions with Respect to His Treatment

The evidence showed Carter had a track record of non-compliance with treatment when he was not in the inpatient care and treatment of SCDMH. While under prior inpatient psychiatric care at MIP, Carter successfully eloped on two separate occasions. (R.p.302-p.304). During the first elopement he committed the index offenses. Carter attempted to elope from inpatient care on one additional occasion by breaking a window on July 7, 2020. (R.p.306). The fact that Carter tried on three separate occasions, twice successfully, to escape from involuntary commitment indicated that he was incapable of making responsible decisions regarding his own care and treatment, even when he had been in an inpatient setting.

Carter also exhibited an unwillingness to comply with taking required medications. During inpatient care, nurses noted "his poor insight and poor compliance with medications. It was noted that when he would ingest the medications, he immediately went to his room to regurgitate them in the toilet." (R.p.341). During Carter's final six months in GCDC, he refused prescribed medications on fifty separate occasions for a total of eighty-seven missed doses. (R.p.307-p.334). Although he had been moved to "self-administer" his oral medications within the SCDMH hospital, they were still provided to him in the correct dosages at the correct time and monitored by hospital staff. Under the proposed plan, Carter would have administered that medication at home and there would be no responsible party monitoring that they were properly taken. Carter's track record of noncompliance from GCDC was clear evidence that he lacked

sufficient insight with respect to his required treatment and demonstrated a high likelihood of noncompliance if daily monitoring by SCDMH medical staff was suddenly removed.

Dr. Alleyne testified Carter was in compliance with taking his medications and treatments at SCDMH during his evaluation period. (R.p.24-p.25). Yet, Dr. Alleyne acknowledged evidence admitted at the first hearing revealed that Carter was quite aware that he was being monitored for the purpose of determining the need for ongoing hospitalization. Carter was aware that, in order to achieve his desired outcome of going home, he would have to be fully compliant for a set amount of time. (R.p.40, lines 13-16). A pattern emerged of Carter refusing medications when he believed his compliance was not related to his immediate release, followed by strict compliance when being evaluated and motivated by the potential to leave a treatment facility. He even advised staff at GCDC: "I'm going to Columbia for four to six months and then I will get out." When encouraged to be compliant he stated: "I will. I want to get out." (R.p.335). This behavior provided the circuit court with no reassurance that Carter would continue to comply with taking his medications if he was discharged and expected to fully monitor himself.

Additionally, the evidence showed two instances where Carter was discharged to his family from a treatment facility after which he actually demonstrated a lack of insight and responsible decision making with respect to his own care. Carter was initially discharged to his family from MIP on July 22, 2020. On July 27, 2020, a mere five days later, he was "pulled over by police after being found driving erratically. He admitted to cannabis use." (R.p.342). Then, following his arrest for the index offenses on August 28, 2020, the GCDC noted that on "September 4, 2020, he reported his mood was depressed. He admitted to paranoid and racing thoughts. Mid-October 2020, he continued to report auditory hallucinations from God telling

him scripture and that he was going to be famous." (R.p.342). These incidents displayed an inability to make responsible decisions with respect to his treatment once discharged. In the first instance, Carter had a negative interaction with law enforcement within just five days of discharge. In the second instance, he was actively experiencing symptoms and was not stabilized by the end of the approximately one-month period, following his discharge.

The first instance also indicated an immediate return to illegal drug use upon discharge from inpatient care. As noted in Dr. Alleyne's testimony, drug use, including cannabis, alcohol, or stimulants can have serious negative interactions with Carter's prescribed medications and would be detrimental to his continued treatment. The totality of the evidence supports Judge Kinlaw's findings of fact regarding Carter's lack of sufficient insight.

Carter Posed a Likelihood of Serious Harm to Himself or Others

Carter was found NGRI for two offenses classified as "Violent" and "Most Serious:" Voluntary Manslaughter and Burglary in the 1st Degree. He admitted to those acts in addition to stipulating that a jury would likely have found him guilty of those offenses. The underlying incident was violent with no known motive. As recognized by our U.S. Supreme Court, the finding of insanity in a criminal trial is sufficiently probative of mental illness and dangerousness to justify confinement. *Jones v. United States*, 463 U.S. 354, 363-64 (1983). Similarly, the violent attack perpetrated by Carter in July of 2020 was strong evidence of risk of serious harm to the community. When that evidence, along with Carter's history of elopement and medical non-compliance was weighed against the predictive opinions presented by SCDMH, the clear and convincing evidence standard was clearly met.

At the time of the hearing, Carter had been incarcerated in GCDC for two years and he had only been in SCDMH care and professionally monitored by their staff for a period of one year prior to the issuance of the second discharge request. (The first request for discharge was issued less than three months after admission). Dr. Alleyne has now testified twice that she only spent a matter of a few hours total with Carter, which the State maintained was inadequate to persuade the circuit court to outweigh the clear evidence of Carter's prior questionable history. As a matter of common sense and as shown by the evidence, it was reasonable for the circuit court to conclude Carter continued to pose a likely risk of serious harm to himself or others. As noted in Dr. Frierson's Violence Risk Assessment and his testimony, "There is little medical evidence that future violent acts could be successfully predicted by mental health professionals. Therefore, despite opinions contained in this report, there is no guarantee that Mr. Carter will or will not behave in a violent manner in the future." (R.p.347-p.356; p.103-p.107).

Previously admitted medical records were also illustrative of the potential danger Carter poses to himself or others when not properly medicated and monitored. They described his condition as "dangerously unpredictable" during an incident in which he broke a chair and window, requiring five security guards to finally subdue him. (R.p.302-Clinical Notes of RN Angela D. Porterfield). Also, in the History and Physical Examination performed when Carter was admitted to MIP, doctors concluded: "Outside the hospital, based on the patient's current state, dangerousness to self or others would be significant due to inability to avoid dangers in the environment." (R.p.290 - History and Physical Exam Notes of Dr. Consola E. Lobwede and Dr. Rebecca Anne Frost). Consult Notes from Carter's readmission to MIP after he committed the index offenses indicate he had a "gouge type laceration of the left upper chest," likely incurred during the stabbing, but apparently insufficient to lead Carter to consider reporting the incident to authorities. (R.p.297 - Consult Notes of Dr. Patricia A. Crawford). Those notes also indicate: "[Carter] occasionally smokes marijuana, but only occasionally. (R.p.297 - Consult Notes of Dr. Patricia A. Crawford). Disturbingly, in a Consult Note made on July 14, 2020, ten days *after* the index offenses, Dr. Diehl notes Carter had quit his job to begin selling Cutco knives. (R.p.300 - Consult Notes of Dr. Luther A. Diehl). Dr. Alleyne testified the Defendant was currently stabilized, but she could not guarantee he would maintain stability even if he were to comply with the SCDMH proposed plan, not to mention if he were to deviate from it. (R.p.41, lines 17-24).

As maintaining stability is more likely when one is properly medicated and not using illegal drugs, the likelihood of harm in this case related directly to Carter's inability to make responsible decisions with respect to his treatment and his recreational drug use. "If the Defendant should fail to take his medication, based on his history and evidence presented, the

consequences could be severe and could result in violence as shown by his prior killing of his great aunt without any apparent motive." (R.p.7-p.11).

Also relevant to the court's decision was the clear pattern of Carter refusing medications at GCDC. It illustrates that Carter was unlikely to comply with taking required medications when discharged from SCDMH care. Carter exhibited a sudden streak of compliance when he was transported to the hospital from GCDC, but only after telling a counselor that he would comply because: "I'm going to Columbia for four to six months and then I will get out...I will [comply]. I want to get out." (R.p.335). His desire to get out at all costs and go home was evident throughout his commitment at MIP. When admitted, "[Carter] proceeded to ask why he is in the hospital, because he wants to go home." (R.p.291 – History and Physical Exam Notes of Dr. Lobwede and Dr. Frost). Carter's "admission was complicated by several elopement attempts and two successful elopements." (R.p.295 – Consult Note of Dr. Gena Williams). On July 4, 2020, immediately before he eloped and stabbed his great aunt, "[Carter] stated several times, "Im a grown 18 year old man that pays bills. I don't even know why I'm here. Do you know when I'll be able to go home?" (R.p.304 - Clinical Notes of RN Yonada Nichelle Golden). While it certainly was natural for Carter to desire going home, it is also apparent that he intended to essentially play along for a short period of time to obtain that desired result. There was little to no evidence Carter would comply with taking his medications when not actively monitored by medical staff on a daily basis. Again, within five days of his discharge on July 22, 2020, Carter was showing symptoms, using recreational drugs, experienced a seizure, and had a negative interaction with law enforcement. (R.p.342). Based on this record, it was reasonable for the circuit court to anticipate a return to similar circumstances within a short period of discharge from SCDMH care if Carter was not closely monitored by medical professionals.

The proposed plan from SCDMH asked the community and Carter to take on these risks, with effectively no safeguards in place to either ensure compliance or respond to an emergency. Given the violent and inherently dangerous nature of the index offenses in this case and Carter's demonstrated danger and potential for violence when symptomatic, the circuit court reasonably concluded returning him to the community would present an unreasonable risk of serious harm without substantial safeguards and sufficient monitoring,

The SCDMH Proposal Failed to Comply with Judge Gravely's Previous Order

Discharge was before the circuit court previously, on December 8, 2022, when SCDMH submitted a nearly identical Report of Findings and Request for Discharge as the one before Judge Kinlaw. (R.p.357-p.363). Two paragraphs were added to the new SCDMH report updating the Defendant's treatment progress: Carter's Mother's name was replaced with his Grandmother, and the proposed address of discharge was changed from 5 Harrison Ave. to 3 Harrison Ave. (R.p.364-p.371). It was established at the hearing that these residences are approximately twenty-to-fifty feet apart from each other. (R.p.49-p.50). Judge Gravely's previous order found the initial location to be inappropriate and stated that "If SCDMH determines that the Defendant should be released at some point in the future, then a more appropriate treatment plan regarding supervision of the Defendant will need to be provided, including the consideration of transitional housing and a more stable environment with appropriate monitoring and supervision." It is clear from the submitted discharge plan and testimony that this order was largely disregarded. As described by Dr. Alleyne's testimony, no additional monitoring or supervision, at least in any meaningful sense, was added. She stated that Carter's family could monitor him, but that they would not be legally or morally required to do so in any particular way. This was essentially the same monitoring and supervision that Judge

Gravely found insufficient at the first hearing, and was not corrected for the hearing before Judge Kinlaw. Furthermore, the very individuals SCDMH would rely upon for family support upon discharge had been active participants in his care while he was at MIP with unsuccessful results. (R.p.292-p.294 - Discharge Summary Notes of Dr. Gena Williams). The circuit court reasonably determined the proposed placement with those who failed to adequately prevent continued drug use and erratic behavior would not satisfy the statutory requirements. In conclusion, the record is replete with evidence supporting Judge Kinlaw's decision.

A. The circuit court is statutorily tasked to "hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580" and is not bound by the either the initial determination or any expert opinion testimony "by officials of the State Hospital that the person is no longer in need of hospitalization."

SCDMH and Carter argue the court erred in denying his discharge because no findings of fact were made as a basis for the order for continued hospitalization. They complain "there is scant, if any, evidence in the record" to support the court's decision where the "undisputed testimony of two experts" showed discharge was appropriate and that "there was no evidence whatsoever that he needed further hospitalization." (Brief of Appellant-Respondent p.7; Brief of Respondent-Appellant, p.12). But, the determination "by officials of the State Hospital that the person is no longer in need of hospitalization" is a precursor to the evidentiary hearing and does not control the decision of the court which is statutorily tasked to "hold a hearing to determine whether the person is in need of continued hospitalization pursuant to the standard of Section 44-17-580." S.C. Code Ann. § 17-24-40(C)(2)(c). Indeed, our Supreme Court has appropriately characterized the initial determination as a "request" and has ordered that: "After conducting the hearing, *if the Judge determines* that the Defendant remains in need of continued hospitalization, he shall deny the request of the hospital director and issue an Order requiring SCDMH to

continue secure hospitalization for inpatient care and treatment of the Defendant until further order of the Court." *Interagency Protocol for Defendants Found Not Guilty by Reason of Insanity*, Admin. Order No. 2014-04-24-01 (S.C. Sup. Ct. Order dated April 24, 2014) (emphasis added). Thus, the circuit court is not required to accept the recommendation of SCDMH regarding continued hospitalization. If it was so required, there would be no need for a hearing at all.

Similarly, the court is not required to accept the recommendations of SCDMH simply because they are presented by way of testimony at the hearing in support of the underlying request. Clearly, such testimony from experts, who either work directly for SCDMH or have prepared reports at the behest of SCDMH, will mirror or support the recommendations made in the "Designated Examiner's Report of Findings" and "Request for Discharge" prepared by SCDMH. While that testimony certainly must be taken into consideration, the circuit court must also weigh any information elicited during cross-examination of those witnesses and "consideration of the record," including the facts and circumstances of the index offense and the Defendant's entire history of commitments and supervision. S.C. Code Ann. § 44-17-580(A). As recognized by our Rules of Evidence, expert testimony is intended to "assist the trier of fact," not to dictate what the trier of fact must conclude. *See* Rule 702, SCRE (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.").

SCDMH and Carter place emphasis on the fact that the State "did not call any witnesses to provide testimony," contending the conclusions and recommendations of Dr. Alleyne and Dr. Frierson were "undisputed" and therefore must prevail. Yet nothing in the statute dictates which

participants must call witnesses, expert or otherwise, or why. Indeed, it would be within the circuit court's discretion to make a ruling based on a review the record, submitted reports, and arguments made at the discharge hearing without taking any testimony. Here, the circuit court appropriately: listened to *all* testimony from Dr. Alleyne and Dr. Frierson; reviewed all relevant reports and records submitted; reviewed the prior order from Judge Gravely; heard from Carter's family members and the family members of the victim; heard arguments from Carter's counsel; and accepted and reviewed written post-hearing before from all parties before making its decision. Contrary to the belief expressed by Carter at the conclusion of the hearing—that "[i]t's a medical determination right now as to whether he needs hospitalization" (R.p.125, lines 10-12)—it was in fact a *judicial decision*, a judicial decision that was made using a clear and convincing evidentiary standard to determine Carter was in need of further hospitalization for the exact reasons set forth in the Code.

In regard to Carter's insight, SCDMH argues: "It is unclear how the court can determine that expert testimony will assist the trier of fact only to find, without any conflicting testimony, 'clear and convincing evidence' that directly contradicts the opinions, conclusions, and recommendations of both experts as to the insight and capacity of Carter." (Brief of Appellant-Respondent, p.10). However, as set forth in detail above, the record includes ample evidence to support the court's independent analysis and conclusion.

In regard to the likelihood of serious harm, SCDMH and Carter focus on the statutory definition of "likelihood of serious harm" which means, in relevant part, a "substantial risk of physical harm to other persons as manifested by evidence of homicidal or other violent behavior and serious harm to them." S.C. Code Ann. § 44-23-10(13). SCDMH argues that since "there is no evidence in the record of homicidal or other violent behaviors in the time since Carter began

treatment," the court's reliance on the index offense in finding a substantial risk of serious harm was error. They contend this line of reasoning would always be applicable, meaning an NGRI acquittee would never cease being a danger. (Brief of Appellant-Respondent, p.10-p.13). The State disagrees for two key reasons.

First, in this case, and unlike the circumstances for many NGRI acquittees, Carter was actually *in psychiatric treatment* at MIP at the time he eloped and committed the index offenses. To argue consideration of these circumstances should not be part of the circuit court's calculus is unreasonable. Second, as articulated in more detail above, the reason Carter may not have exhibited violent behavior since he has been treated by SCDMH is precisely because he has been hospitalized in an inpatient setting where his antipsychotic and mood stabilization medicine have been closely administered or monitored on a daily basis. The circuit court was not constrained to follow the recommendation of the experts. Its order had ample support and should be affirmed.

B. The circuit court's consideration of "placement concerns" was entirely appropriate in the context of the required statutory determinations of: (1) whether Respondent-Appellant would be in an environment where he would be able to continue making responsible decisions with respect to his treatment and (2) whether Respondent-Appellant would be in an environment that could create a likelihood of serious harm to himself or others.

SCDMH argues that Section 17-24-40(C)(2)(c) establishes a "bifurcated approach" to the circuit court's decision concerning the need for continued hospitalization. It contends "placement" should only be considered during the second part of that approach, after the court has determined the person is no longer in need of inpatient commitment, and that in this case, "placement concerns may have been inappropriately used by the court to justify continued hospitalization." SCDMH complains "the [State's] Brief in Opposition and a majority of their questions on cross-examination sought to make the proposed discharge a basis for ordering

continued hospitalization" and argue "[The State's] urging, and the court's apparent application, of placement concerns as a basis for denying release was in error." (Brief of Appellant-Respondent, p.13-14). The State disagrees.

As recognized by their own experts, the circuit court's consideration of "placement concerns" was entirely appropriate in the context of the required statutory determinations which the court had to make in deciding whether continuing inpatient hospitalization was required. Indeed, the clean, bifurcated separation posited by SCDMH is neither mandated by the statute nor practical in the context of the decision the court had to make. The circuit court was required to determine whether Carter would be in an environment: (1) where he would be able to continue making responsible decisions with respect to his treatment, and (2) that could create a likelihood of serious harm to himself or others. Completely removing Carter's proposed "placement" from this determination is impossible. The circuit court must consider the safety of the community where the person will live upon release in regard to dangerousness, which necessarily relates back to the decision to release itself.

This connection was explicitly recognized by the SCDMH experts on direct examination. In regard to Carter's likelihood of harming himself or others, Dr. Alleyne said they look at self-reporting, mood, and behavior, that Carter had not exhibited any signs that were concerning to her, and that she thought *he would be safe to be discharged under the plan.* (R.p.27-p.28). She then discussed the proposed discharge plan itself, including the *residence* where Carter would be placed, *the support system* Carter would have from family and friends, and the *supervision* he would be under from Greater Greenville Mental Health Center, the SCDMH forensic outreach clinic, and the Department of Probation, Parole and Pardon Services, *all of which she claimed supported her conclusions.* Dr. Alleyne opined the discharge plan was likely to be therapeutic

for Carter and that he would not derive any additional benefit from staying in the hospital for further inpatient treatment. (R.p.28-p.33). (emphasis added).

Similarly, Dr. Frierson addressed whether he believed Carter was a danger to himself or others. He detailed the things he considered, including historical risk factors, clinical factors, and risk management factors. Dr. Frierson specifically noted he considers the patient's *living situation* and whether he or she has *personal support* and an *involved family* when assessing risk. (R.p.89-p.91). Thus, it was both appropriate and wise for the circuit court to consider "placement" when making its decision on the statutory factors.

In regard to the proposed placement itself, there is ample evidence placement with Carter's grandmother, Cynthia Chapman, would have been an unreasonably ineffective situation. Testimony and evidence showed that she was involved with Carter's initial discharge from MIP. It was elicited at the hearing that Carter was found by the Greenville Police Department a mere five days later driving under suspension, in possession of marijuana, and requiring medical attention. Dr. Alleyne testified Carter's family would be part of his monitoring and supervision, to include Carter's mother, Ms. Young. But testimony was elicited that Ms. Young was convicted of Unlawful Neglect in February 2020, with Carter being a victim in that case. (R.p.55, lines 4-13; p.257-p.259). She was further convicted of Possession of Cocaine in that same month and was ordered herself to mental health counseling as part of that sentence. (R.p.260-p.262). Finally, she was convicted of Driving under the Influence, 2nd Offense, in October 2022. (R.p.267-p.270). Additionally, as part of a prior SCDMH evaluation, it was noted that she "receives disability benefits for physical and mental health. She has a diagnosis of Bipolar Disorder." (R.p.342). Ms. Young has also demonstrated a prior unwillingness to be of assistance during a medical emergency in which the Defendant escaped from MIP. When

reached by phone at Ms. Chapman's house after Carter's elopement, she was irate and said: "you are responsible for finding him. Y'all should've chained him down and given him shots." (R.p.304 - Clinical Notes of RN Yolanda Nichelle Golden).

Also in regard to the proposed placement, the proposed order regarding required attendance and participation in treatment appeared on the surface to ensure that Carter would maintain stability with regard to his treatment, but the supporting testimony made it clear this language was clearly insufficient. No solid details were provided to Judge Kinlaw as to how often any appointments, activities, or drug screens would occur. Dr. Alleyne testified that appointments are usually monthly at the outset, but could not testify to an exact time frame, how noncompliance would be determined, or who would report noncompliance. (R.p.52-p.53). Dr. Alleyne further testified that should Carter stop taking his medications, leave the residence, or have a symptomatic episode, it likely would not have been reported until he missed at least one, if not more monthly meetings. The potential for large gaps of time in monitoring presents an unreasonable risk to both Carter and the community. The circuit court properly considered these risks. Other than a relatively short stay in SCDMH care, Carter demonstrated a history of noncompliance with respect to taking his prescribed medications. The circuit court likely concluded that such a sudden removal of essentially all guardrails with respect to medications, due to the proposed placement, could set Carter up for failure and substantially increases the risk of harm to both himself and the community. The consideration of "placement" was appropriate, and the circuit court's order should be affirmed.

C. The circuit court acted in full compliance with all constitutional, federal, and/or state mandates regarding providing treatment in the most medically appropriate integrated environment when it determined, under a clear and convincing evidentiary standard, that Respondent-Appellant should not yet be discharged and needed continued inpatient hospitalization.

Carter argues the circuit court's refusal to release him "is affecting a continual constitutional and discriminatory violation." (Brief of Respondent-Appellant, p.19-p.21). Similarly, SCDMH argues that where the "uncontroverted testimony indicates Carter will not benefit from further hospitalization . . . [c]ontinued inpatient commitment beyond maximum therapeutic benefit renders the court's order a violation of Carter's constitutional rights." They further argue that in continuing hospitalization against the "reasonable assessment of its own professionals" the court is requiring SCDMH to violate the requirements of the Americans with Disabilities Act (the Act). Finally, SCDMH argues that: "in ignoring the expert testimony of the forensic psychiatrists it admitted as experts," the court is violating his "statutory right to receive treatment in the least restrictive appropriate setting." (Brief of Appellant-Respondent, p.15-16). The State disagrees.

Here, the circuit court did not ignore the testimony offered by Dr. Alleyne and Dr. Frierson. Instead, it considered that testimony in the context of the entire record before rendering a decision within the parameters of a statute that includes constitutionally valid safeguards including judicial review, which takes the recommendations of public health officials into account. The circuit court acted in full compliance with all constitutional, federal, and/or state mandates regarding the preference for treating people found NGRI in the most medically appropriate integrated environment when it found continued hospitalization was appropriate under a clear and convincing evidentiary standard. If the circuit court found Carter was *not* in need of further hospitalization, but nevertheless ordered he remain in inpatient treatment, there would likely be a constitutional or statutory problem. But here, inpatient treatment was determined to be the most medically appropriate and least restrictive environment under the totality of the circumstances. Thus, no possible violation could have occurred.

The relevant case law provides that an individual adjudicated NGRI can be constitutionally hospitalized as long as the reviewing court finds that he or she is both mentally ill and presents a danger. *Jones v. United States*, 463 U.S. 354, 368 (1983). SCDMH and Carter are attempting to equate his condition with that of the insanity acquittee in *Foucha v. Louisiana*, 504 U.S. 71 (1992), but unlike the case before Judge Kinlaw and this Court, it was uncontested that Foucha was no longer mentally ill. He had suffered a temporary, drug induced psychosis, which had been cured during his hospitalization. The United States Supreme Court held: "Louisiana does not contend that Foucha was mentally ill at the time of the trial court's hearing. Thus, the basis for holding Foucha in a psychiatric facility as an insanity acquittee has disappeared." Id. at 78. That is a far cry from the situation before the circuit court, in which it was undisputed that Carter is still mentally ill and would always be mentally ill. (R.p.37, lines 8-14). In addition to being mentally ill, the circuit court determined he presented a likely danger to the community, which further supports the constitutionality of his continued hospitalization. *See Matter of Oxner*, 440 S.C. 5, 12, 889 S.E.2d 586, 590 (2023) ("The state also has authority under its police power to protect the community from the dangerous tendencies of some who are mentally ill.").

SCDMH and Carter cite to *Addington v. Texas*, 441 U.S. 418 (1979) in support of their contentions and Carter further cites to *Vitek v Jones*, 445 U.S. 480 (1980); however, both of these cases are immaterial to the issue before this Court. *Addington* is purely a civil commitment case, with a far different standard than that for a person found NGRI. The Supreme Court clarified that distinction and upheld a system which places the burden of proof on the person found NGRI to prove that they are no longer mentally ill or a danger to the community. *Jones*, 463 U.S. at

368. *Vitek* deals with transferring a Defendant, without a finding of NGRI or judicial commitment, from a prison to a mental hospital, and is also not relevant to the current issue.

SCDMH also cites the Act, the Code of Federal Regulations, and *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), for the proposition that by denying his release against the reasonable assessment of Dr. Alleyne and Dr. Frierson, the circuit court is effectively requiring SCDMH to violate the requirements of the Act. SCDMH particularly relies on *Olmstead* for its recognition that: "Courts normally should defer to the reasonable medical judgments of public health officials." But *Olmstead* was a case where mentally disabled patients brought suit against the State of Georgia, challenging their confinement in a segregated environment. *Olmstead*, 527 U.S. at 581. The reference to giving deference to public health officials concerned determining whether an individual meets the essential eligibility requirements for habilitation in a community-based program. *Id.* at 602. The *Olmstead* court noted: "Absent such qualification, it would be inappropriate to remove a patient from the more restrictive setting." *Id.* In context, this would be akin to Judge Kinlaw ordering Carter's *removal* from his more restrictive setting at the State hospital if South Carolina public health officials had made a reasonable judgment that he should *not* be released. Furthermore, the *Olmstead* court recognized that courts "normally" should defer to the reasonable medical judgments of public health officials. As the medical history and facts of the index offenses show, Carter did not present a "normal" case. Also, the circuit court here appears to have concluded the recommendations for discharge were not reasonable under the circumstances. In sum, the circuit court appropriately considered the request from SCDMH, along with the judgments of Dr. Alleyne and Dr. Frierson in making the reasoned, balanced, and well-informed decision to deny discharge.

The pertinent case law is clear—South Carolina's statutory framework comports with due process and is constitutional. The Constitution and all state and federal laws and regulations permit a person found NGRI to be involuntarily hospitalized as long as the reviewing court finds, by clear and convincing evidence, that he is mentally ill and because of his condition: (1) he lacks sufficient insight or capacity to make responsible decisions with respect to his care, or (2) there is a likelihood of serious harm to himself or others, i.e. he poses a danger to the community. S.C. Code Ann. § 44-17-580(A). "It comports with common sense to conclude that someone whose mental illness was sufficient to lead him to commit a criminal act is likely to remain ill and in need of treatment." *Jones*, 463 U.S. at 366.

Here, Carter's need for ongoing hospitalization was found by clear and convincing evidence as required by S.C. Code Ann. § 17-24-40. There was sufficient evidence of both a lack of insight or capacity to make responsible decisions regarding treatment, and a likelihood of serious harm to himself or others. Under South Carolina law, upon finding of either one of these two factors by clear and convincing evidence, the circuit court was required to order further inpatient hospitalization. If, at a later date, SCDMH finds that Carter is no longer in need of further hospitalization, it can propose a new plan and discharge order, and a hearing must once again be conducted at that point in time.[4] The circuit court's order denying Carter's discharge was constitutional and should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the appeals of both Respondent-Appellant and Appellant-Respondent be denied and dismissed as unpreserved.

4 By Order dated May 7, 2024, Judge Gravely granted the State's motion to stay a third discharge hearing that had been scheduled for May 8, 2024. The court found, pursuant to Rule 205, SCACR, that it does not have appropriate jurisdiction to hear the new request because of the current appeal of the previous order.

Alternatively, the State requests that the circuit court's decision to decline Respondent-Appellant's discharge and continue his hospitalization be affirmed.

Respectfully submitted,

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Columbia, South Carolina
November 21, 2024

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Nov 21 2024
SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alex Kinlaw, Jr., Circuit Court Judge

Appellate Case No. 2023-001766

Ex Parte: South Carolina Department of Mental Health, ...Appellant-Respondent.

In re:

The State, ...Respondent,

v.

Jevon Kenneth Carter,.....Respondent-Appellant.

PROOF OF SERVICE

I, Susan Spencer, Legal Assistant, hereby certify that I have served the *Final Brief of Respondent,* dated November 21, 2024, on Appellant-Respondent and Respondent-Appellant by sending electronic copies via email to their respective attorneys, Logan Y. Royals and R. Alex Pate (SCDMH), and D. Josev Brewer (Carter) at the addresses listed for counsel in AIS.

I further certified that all parties required by Rule to be served have been served. This 21st day of November, 2024.

Susan Spencer

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From: Susan Spencer
Sent: Thursday, November 21, 2024 11:16 AM
To: Alex Pate; Logan Royals; Joe Brewer
Cc: Ben Aplin
Subject: Ex Parte: SCDMH Re: Jevon Carter (2023-001766)
Attachments: Ex Parte SCDMH (Jevon Carter) - Final Brief of Respondent.pdf

Good Morning,

Attached please find the Final Brief of Respondent in Ex Parte: SCDMH Re: Jevon Carter (2023-001766). This document will be filed today with the Court of Appeals via the AIS OneDrive system. If you will, please confirm receipt.

Thank you.

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