

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM PICKENS COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

Patrick C. Fant, III, Circuit Court Judge

Case No.: 2020-CP-39-00617

State of South Carolina, ..... Respondent.

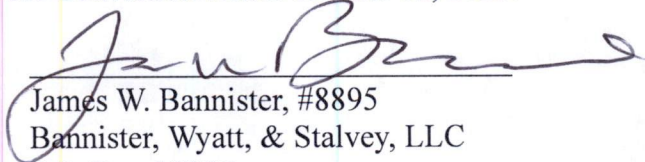
v.

Suzanna Brown Simpson, #368727, ..... Appellant.

NOTICE OF APPEAL

Suzanna Brown Simpson appeals the Order Denying Post-Conviction Relief of the Honorable Patrick C. Fant, III dated June 2, 2025 and filed June 9, 2025. Appellant received written notice of the entry of this Order Denying Post-Conviction Relief on June 12, 2025.

June 18, 2025

  
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submitted in lieu of post hearing briefs. This Court has considered the arguments for and against the granting of relief. Along with the submissions of the proposed orders, this Court has also considered the testimony, the transcripts, and all other filings and matters relevant to this action. After careful consideration of the evidence and arguments and having observed the witnesses and passed on their credibility, this Court finds that Applicant has failed to show she is entitled to any relief. This Court now **DENIES** and **DISMISSES** the application with prejudice. The Court begins with a recitation of the procedural history.

### **PROCEDURAL HISTORY**

During its February of 2014 term, the Pickens County Grand Jury indicted Applicant for two counts of murder (2014-GS-39-0396; -0397), attempted murder (2014-GS-39-0398), and possession of a weapon during the commission of a violent crime (2014-GS-39-0397). Applicant was represented by John I. Mauldin, Esq., Teal Johnson, Esq., and Jacob Goldstein, Esq. The Thirteenth Circuit Solicitor, William Walter Wilkins, III, and Assistant Solicitor Betty C. Strom prosecuted the case. Petitioner pled “not guilty for reason of insanity” (NGRI). On June 20, 2016, through June 23, 2016, Applicant proceeded to a jury trial before the Honorable Brian M. Gibbons. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for consecutive terms as follows: for each count of murder, imprisonment for life; for attempted murder, imprisonment for thirty years; and for possession of a weapon during the commission of a violent crime, imprisonment for five years.

Mr. Mauldin filed a timely notice of appeal on Applicant’s behalf. Chief Appellate Defender Robert Michael Dudek of the South Carolina Commission initially represented Applicant on appeal, but was relieved as counsel and J. Falkner Wilkes was substituted as counsel for Applicant before briefing began. *State v. Simpson*, S.C. Ct. App. Order filed October 17, 2016.

Assistant Attorney General Susannah R. Cole of the South Carolina Attorney General's Office represented Respondent. Wilkes argued on appeal that Judge Gibbons erred (1) in admitting forensic testimony of the State's expert witness because the State violated the discovery requirements of Rule 5, SCRCrimP, and *Brady v. Maryland*, 373 U.S. 83 (1963), (2) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained in violation of state and federal privacy laws, (3) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained pursuant to an unlawful seizure, (4) in excluding testimony of the defense's expert regarding statements made by the State's expert, (5) in denying trial counsel's motions for a directed verdict and a new trial, and (6) in allowing the State's witness to give forensic testimony and give an opinion as to Applicant's sanity without being qualified as a forensic expert. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. *State v. Simpson*, 425 S.C. 522, 823 S.E.2d 229 (S.C. Ct. App. 2019). The Court of Appeals subsequently denied Wilkes' petition for rehearing. *State v. Simpson*, S.C. Ct. App. filed February 21, 2019.

Wilkes filed a petition for a writ of certiorari, arguing Judge Gibbons erred in (1) admitting expert forensic testimony when the State had not timely disclosed the forensic examination or testimony to the defense, (2) admitting expert forensic testimony where the documents underlying the expert's testimony were unlawfully seized, (3) admitting forensic testimony where the State's expert was not properly qualified as a forensic expert, and (4) excluding commentary of the defense's expert that the treating physician concurred in his analysis. Cole continued to represent Respondent before the South Carolina Supreme Court. The Supreme Court granted Wilkes' petition for a writ of certiorari as to his fourth issue only, and ordered the parties to file briefs. *State v. Simpson*, S.C. Sup. Ct. Order filed August 6, 2019. Wilkes argued in his brief that Judge Gibbons

erred in excluding testimony of the defense's expert as to statements made by Applicant's treating physician during a personal interview because: (1) the testimony was not hearsay, (2) if it was hearsay, the testimony was admissible to explain the reason for the expert's opinion and the underlying factual basis thereof, and (3) Applicant had a constitutional right to present the evidence and was prejudiced by its exclusion. The Supreme Court dismissed the writ of certiorari as improvidently granted. *State v. Simpson*, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam). The remittitur was issued on January 22, 2020.

### **CURRENT APPLICATION**

In her second amended application for post-conviction relief, filed on April 4, 2024, Applicant argues she is entitled to relief based upon multiple claims, which are as follows:

(a) **Ineffective Assistance of Counsel:** failure to adequately request pre-trial notice of state's expert on due process ground. "Trial counsel did not raise Due Process as a ground for forcing State to disclose their expert witness, the expert's opinions and the basis for those opinions pre-trial."

(b) **Ineffective Assistance of Counsel:** failure to preserve Due Process grounds for state's failure to provide adequate notice of expert testimony. "Trial counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial."

(c) **Ineffective Assistance of Counsel:** failure to follow 613(b), SCRE, as to state's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert. "Trial counsel failed to ask the State's expert witness all the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness."

(d) **Ineffective Assistance of Counsel:** failure to provide a sur-reply to the State's expert witness called during State's Reply. "Trial counsel failed to offer any evidence in sur-reply to the State's introduction of mental capacity evidence in the State's Reply."

(e) Ineffective Assistance of Counsel: failure to call mitigating witnesses, including family and friends, for the purposes of introducing good character evidence and seek a corresponding jury charge to the same.

(f) Ineffective Assistance of Counsel: failure to meet with/investigate/prepare for treating physician

(g) Ineffective Assistance of Counsel: failure to investigate or offer expert testimony on Adderall Induced Psychosis

Applicant prays the Court would grant post-conviction relief and overturn her convictions and remand for a new trial.

This Court was provided with the records of the Pickens County Clerk of Court regarding Applicant's convictions; the records from Applicant's direct appeal, including but not limited to the trial transcript; and Applicant's records from the South Carolina Department of Corrections.

#### **SUMMARY OF FACTS FROM TRIAL**

The South Carolina Court of Appeals set forth the facts of the case in its consideration of Applicant's direct appeal. This Court sets forth those same facts, and supplements the Court of Appeals' opinion with additional facts where relevant to the PCR claims raised in this action:

On May 14, 2013, a neighbor of Suzanna and Michael Simpson heard a noise in his yard and found Suzanna Simpson's truck in a ditch near some downed trees. When the neighbor approached the truck, Simpson told him her back hurt. The neighbor repeatedly asked Simpson where her husband and children were, and Simpson only responded "I don't know" and "Am I going to be okay?" According to the neighbor, Simpson was coherent, and he had no trouble communicating with her.

Simpson was transported to the hospital for treatment. According to a nurse who treated Simpson, Simpson told him, "I shot my husband and kids ... [a]nd then I had an accident." When the nurse asked Simpson why she shot her family, she responded, "because it's an awful world." When the nurse asked why Simpson did not kill herself instead, she replied, "I thought about it and tried, but I couldn't do it." According to the nurse, Simpson was alert, knew where she was, and spoke clearly. Simpson refused to talk to the police at the hospital.

While Simpson was receiving treatment, police went to the Simpson home and found the bodies of Simpson's five-year-old son

and seven-year-old daughter in their bedrooms, both with gunshots to the head. Michael Simpson was also shot and found still breathing on the floor of the master bedroom. Police later found a .40 caliber handgun at the scene of Simpson's wreck.

In February 2014, Simpson was indicted by the Pickens County Grand Jury for two counts of murder, one count of attempted murder, and possession of a weapon during the commission of a violent crime. A jury trial was held on June 20-23, 2016.

During pre-trial motions, Simpson moved for a directed verdict, arguing that after she informed the State she intended to plead not guilty by reason of insanity, the State was required to put her on notice of any expert witnesses to rebut her insanity claim. Because the State had not given Simpson notice of its intention to call an expert witness, she argued the State would not meet its burden of proof. The State argued the motion for a directed verdict was not appropriate as a pre-trial motion because the defense of insanity is an affirmative defense requiring Simpson to present some evidence. The State also asserted it was not obligated to give Simpson notice of an expert witness and an expert witness was not required to combat the affirmative defense of insanity. The trial court denied Simpson's motion for a directed verdict.

Simpson also sought to limit the opinion testimony of lay witnesses, again arguing the State could not prove she was sane without expert testimony. The State countered they could prove their case with lay witnesses. The trial court denied Simpson's motion. Simpson then asserted the State could not prove through lay witnesses that she had a mental impairment, and, thus, could not conform her conduct to the requirements of the law. The trial court denied Simpson's motion to limit witness testimony.

Simpson next moved to bar the testimony of her treating psychiatrist, Dr. Jeff Smith. Simpson's expert witnesses had consulted Dr. Smith and he was a known witness. The State informed the court it might ask to qualify Dr. Smith as an expert in psychiatry, but it was not sure how it would use his testimony. The trial court decided to rule on any objections to the testimony at the appropriate time.

During trial, several witnesses testified as to Simpson's behavior leading up to the shootings. Nathan Stegall, a friend of the Simpsons, testified he visited the Simpson's home the day before the shootings. Stegall testified that while he waited for Michael, Simpson seemed angry. Stegall believed Simpson and her husband were arguing. Later that evening, Stegall received a text message from Simpson that read, "Hell on earth?"

At Simpson's children's school, another parent testified he saw Simpson in the school office the day before the shootings. The parent observed Simpson withdrawing her daughter from school.

When asked for the reason, Simpson said she was picking up her daughter because her son was sick, and she was afraid her daughter might also be sick. Simpson's son, who was with her, said, "I'm not sick, Mom." The parent observed Simpson pacing back and forth and growing impatient while waiting for her daughter. When the parent suggested Simpson's daughter was likely collecting her backpack, Simpson replied "Where she's going to go, she don't need no backpack." Simpson also appeared angry and snapped at the parent as she left the building with her children.

Simpson's mother-in-law, Allison, testified regarding a conversation the night before the shootings in which Simpson asked her why her mother-in-law and father-in-law did not come to visit and help with the kids more often. Allison also recalled another conversation with Simpson the previous year following Simpson's release from a behavioral care center. After Simpson was discharged, Michael left on a hunting trip, and Simpson called Allison asking if she thought Michael would return home to his family.

Simpson's mother, Susan, testified Simpson called her the day before the shootings and asked her if her parents really wanted her. Later that day, Simpson called again and asked her mother if various relatives who were deceased were better off in heaven. In another call, Simpson spoke to Susan about the evils of the world and how you could not protect your children from those evils. When Simpson called again that evening, Susan testified Simpson sounded happy, saying she and her husband were going to seek marital counseling. Later that evening, however, Simpson called Susan again and said, "Mike's through with me. He thinks I can't take care of the children." When Susan pressed her for details, Simpson said Michael told her she stares into space all the time. Susan also testified Simpson had what appeared to be a psychotic episode in 2012. Simpson was hospitalized for five days after this episode and was then transferred to a behavioral health center where she remained for three days. Susan recalled several instances in which her daughter told her she believed the family was being watched.

At the close of the State's case, Simpson renewed her motion for a directed verdict, arguing the State had failed to give the defense notice of their intent to call an expert witness. The State argued the law presumes the defendant is sane and an affirmative defense requires the defense to prove by a preponderance of the evidence that Simpson was insane at the time of the shootings. The trial court asked the State if it intended to call an expert witness, and the State said it could not be sure without knowing how Simpson would present her case, but if it did call a witness, it would be Dr. Smith. The trial court again denied Simpson's motion for a directed verdict.

Simpson presented three expert witnesses at trial. Dr. Leonard Mulbry testified he met with Simpson three times after the shootings and examined her medical records. Dr. Mulbry diagnosed Simpson with schizoaffective disorder bipolar type. Dr. Mulbry outlined her medical treatment in the years before the shooting, beginning with mild depression in college, followed by episodes of post-partum depression. He further noted that in 2010 Simpson began seeing Dr. Smith who treated Simpson with several medications in an effort to control her symptoms. After a review of Simpson's medical records and Dr. Smith's notes, Dr. Mulbry explained that Simpson's moods cycled through depression, sleeplessness, confusion, and paranoia. Dr. Mulbry opined Simpson was unable to distinguish legal and moral right from wrong at the time of the shootings.

On cross examination, Dr. Mulbry testified he examined Simpson nine months after the shootings. Dr. Mulbry also acknowledged he never consulted with Dr. Smith and relied only on Dr. Smith's notes in forming his opinion. Dr. Mulbry noted that after Simpson received treatment for her bipolar disorder at the treatment facility in 2012, her mood improved, she had no hallucinations or homicidal thoughts, and she didn't mention any concerns for her children. Dr. Mulbry also noted Simpson had not been diagnosed with schizoaffective disorder prior to the shootings. Dr. Mulbry admitted that during the period he believed Simpson suffered from schizoaffective disorder in the hours before the shooting, he could not opine whether Simpson knew right from wrong when she spoke to the officials at the children's school, interacted with Nate Stegall and her neighbor, and had several conversations with her mother and mother-in-law.

Simpson's second expert witness, Dr. David Price, evaluated Simpson by meeting with her and Dr. Smith and reviewing Simpson's extensive medical records. Dr. Price also diagnosed Simpson with schizoaffective disorder bipolar type and opined Simpson was not able to distinguish between right and wrong at the time of the shootings. Dr. Price testified there was "no question" about Simpson's psychosis, delusions, and paranoia on the night of the shootings. Dr. Price testified Dr. Smith agreed with his opinion, and the State objected based on hearsay. The trial court sustained the objection.

Dr. Richard Frierson, a court appointed psychiatrist, also diagnosed Simpson with schizoaffective disorder bipolar type. Dr. Frierson testified Simpson suffered from episodes of mania, depression, and delusional or paranoid thinking. Dr. Frierson opined Simpson could not distinguish right from wrong at the time of the shootings.

At the conclusion of the defense's case, the State informed the court it sought to call Dr. Smith as a reply witness. Simpson

renewed her motion for a directed verdict, arguing the State was not entitled to present a rebuttal witness because her due process rights were violated when the State did not present evidence of her sanity beyond a reasonable doubt in its case-in-chief.

Simpson further argued she did not consent to Dr. Smith's testimony, nor had she waived her physician/client privilege. The State argued Simpson waived her privilege in accordance with section 44-22-90 of the South Carolina Code (2018) when she released her medical records to her retained experts. The State also argued it was entitled to call Dr. Smith pursuant to Rules 703 and 705, SCRE, because Simpson's experts relied on Dr. Smith's treatment of Simpson in forming their opinions about her diagnosis. The State said Dr. Smith would be qualified as a psychiatrist and as a fact witness to his treatment of Simpson in the years prior to the shootings. The State informed the court it also expected Dr. Smith to explain that Simpson's remediation within forty-eight hours of the shootings was atypical, and that he would not expect to see that in a patient with a true psychosis.

Simpson argued Dr. Smith should not be permitted to testify whether she knew right from wrong or could conform her behavior. The trial court replied, "Because you say he's not qualified to because he's not a forensic psychiatrist." The court informed Simpson it would make that determination after voir dire. The following day, the State argued Dr. Smith was qualified to testify about Simpson's ability to conform her behavior to the requirements of the law because of his qualifications as a psychiatrist. The State argued any distinction between a treating psychiatrist and a certified forensic psychiatrist would be a matter of weight for the jury to determine. Simpson countered that it would be unethical for the State to call a treating physician to testify "in a forensic manner against his own patient."

The trial court issued several rulings. First, the court found the State was entitled to present reply evidence. The trial court also found Simpson waived her privileged medical information because she released her records to three defense experts. The trial court further ruled it would allow Dr. Smith to testify and he would likely be qualified as an expert in psychiatry, and the court would make its determination of his qualifications as set forth in *State v. Council*. The trial court found it was within the purview of the jury to weigh the credibility of the expert's opinion on the matter.

Dr. Smith began treating Simpson in March of 2010. Over the course of his treatment, he saw Simpson as a patient thirty-four times. According to Dr. Smith, Simpson's condition appeared stable at times over the years, and at other times Dr. Smith would adjust her medications to treat her three conditions: bipolar disorder, attention deficit disorder (ADD), and anxiety. Dr. Smith testified

these three conditions were “tricky” to manage because the medications for ADD could enhance the symptoms of bipolar disorder if the patient were not taking the mood stabilizer to manage the mood disorder. In fact, in one of three instances in which Simpson admitted having paranoia, she also told Dr. Smith she had stopped taking her mood stabilizer. Dr. Smith stated Simpson's decision to continue taking the stimulant medication for ADD without the stabilizer would significantly contribute to her psychosis.

Dr. Smith reviewed the report of Dr. Frierson and spoke to Dr. Price. Dr. Smith testified he told Dr. Price that Simpson presented entirely differently in the thirty-four visits with Dr. Smith than she did during their evaluation. Dr. Smith stated he told Dr. Frierson, “it was like we were talking about two different individuals.” Dr. Smith explained Simpson only complained vaguely of paranoid thoughts along the lines of “I think people are talking about me.” Dr. Smith testified the delusions reported by Simpson and her family were never mentioned to him during the course of his treatment. Dr. Smith noted the hospital records from the treating emergency room psychiatrist, who saw Simpson directly after the shootings, did not indicate Simpson wanted to kill herself or heard any voices. Further, the emergency room psychiatrist's description of Simpson's psychosis was not nearly as severe as the forensic psychiatrists' reports. Dr. Smith believed Simpson's rapid resolution of symptoms, both during the earlier admission and during the treatment after the shootings, was an unusual response to a functional psychosis. Dr. Smith testified that typically a functional psychosis such as schizophrenia, bipolar disorder with psychosis, or depression with psychosis would not react that quickly and positively to medication.

Dr. Smith also found it unusual for Simpson's statements to her mother the day before the shootings to sound normal in one call and psychotic in another. Dr. Smith stated it would be unusual for someone who is psychotic to come in and out of psychosis throughout the day. Dr. Smith also pointed out Simpson's comment about her husband being “done with her” and her decision to withdraw the children from school indicated some organized planning on her part. Dr. Smith opined Simpson knew right from wrong at the time of the shootings.

At the conclusion of trial, the jury returned a verdict of guilty on all charges and the court sentenced Simpson to consecutive life sentences for the two counts of murder, a consecutive term of thirty years' imprisonment for attempted murder, and a consecutive term of five years' imprisonment for possession of a weapon during the commission of a violent crime.

*State v. Simpson*, 425 S.C. 522, 528–35, 823 S.E.2d 229, 232–36 (Ct. App. 2019), overruled by *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023).

### **FINDINGS OF FACTS AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the filings in this case and has heard the testimony and considered the evidence presented. This Court specifically notes that it has had the opportunity to observe the witnesses presented at the evidentiary hearing, and closely pass upon their credibility, weighing their testimony accordingly. After considering Applicant's and Respondent's positions, the testimony at the evidentiary hearing, and after having carefully reviewed the Record, this Court finds that the application for post-conviction relief must be denied. Set forth below are the relevant findings of fact and conclusions of law as required under S.C. Code Ann. § 17-27-80.

#### *Jurisdiction*

The scope of this Court's jurisdiction for PCR matters is set out in S.C. Code Ann. § 17-27-20 (A). In addition to the listing of claims that may be raised in Section (A), there is a limitation. Section (B) provides: "This remedy is not a substitute for nor does it affect any remedy incident to the proceedings in the trial court, or of direct review of the sentence or conviction." S.C. Code Ann. § 17-27-20(B). Because a PCR action is not a substitute for those proceedings, a PCR applicant cannot assert any issues in his PCR action that could have been raised at trial and on direct appeal. This prohibition has long been recognized. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1975) ("Errors in a petitioner's trial which could have been reviewed on appeal may not be asserted for the first time, or reasserted, in post-conviction proceedings."); see also *Drayton v. Evatt*, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("The *Simmons* rule gives effect to the Legislature's clear intent that the post-conviction relief procedure is not a substitute for

appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.”).

#### *Standard of Review for Ineffective Assistance of Counsel Claims*

While previously heard or unheard freestanding trial or direct appeal issues are not cognizable, the general factual basis for the previously unheard issues may be reached by and through an allegation of ineffective assistance of counsel. *Drayton*, 312 S.C. at 9, 430 S.E.2d at 520 (“Issues that could have been raised at trial or on direct appeal cannot be asserted in an application for post-conviction relief absent a claim of ineffective assistance of counsel.”). Ineffective assistance of counsel claims constitute the general nature of issues appropriate for post-conviction relief actions. *See, e.g., Al-Shabazz v. State*, 338 S.C. 354, 367, 527 S.E.2d 742, 749 (2000) (discussing jurisdiction pursuant to S.C. Code § 17-27-20(A), and finding “A typical PCR claim of ineffective assistance of counsel falls into this category....”).

To establish that Sixth Amendment counsel was ineffective, a PCR applicant must show that counsel’s representation fell below an objective standard of reasonableness, and if not for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland, supra*. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.*

To satisfy the prejudice prong, an applicant must demonstrate “there is a reasonable probability that, but for counsel’s errors, the result of the trial would have been different.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing *Strickland*, 466 U.S. at 687, 104 S.Ct. at 2064, 80 L.Ed.2d at 693). “[T]he question is whether there is a reasonable probability that,

absent the errors, the factfinder would have had a reasonable doubt respecting guilt.” 466 U.S. at 695, 104 S.Ct. at 2068-69, 80 L.Ed.2d at 698.

“In determining whether the applicant has proven prejudice, the PCR court should consider the specific impact counsel’s error had on the outcome of the trial.” *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018); *See Strickland*, 466 U.S. at 695-96, 104 S.Ct. at 2069, 80 L.Ed.2d at 698-99 (explaining that the court must analyze how individual errors of counsel affect the important factual findings in a particular case). In addition, the PCR court should consider the strength of the State’s case in light of all the evidence presented to the jury. *See generally Jones v. State*, 332 S.C. 329, 333, 504 S.E.2d 822, 824 (1998) (“In deciding whether Jones was prejudiced, we must bear in mind the strength of the government’s case ...,” and “we must consider the totality of the evidence before the jury.”). In general, the stronger the evidence presented by the State, the less likely the PCR court will find the applicant met his burden of proving prejudice. *See Strickland*, 466 U.S. at 696, 104 S.Ct. at 2069, 80 L.Ed.2d at 699 (stating “a verdict ... only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support”).

When a question is posed whether trial counsel should have presented evidence, the actual inquiry a reviewing court makes is whether trial counsel’s investigation was reasonable under the *Strickland* standard. *Stone v. State*, 419 S.C. 370, 397, 798 S.E.2d 561, 575 (2017) (in considering whether evidence of brain damage should have been presented, framing the relevant question as “whether trial counsel’s investigation was reasonable under the Sixth Amendment even though trial counsel did not discover” evidence of “brain damage”). *See also Owens v. Stirling*, 967 F.3d 396, 413 (4th Cir. 2020) (“the Court’s cases indicate that the investigation need only be *reasonably* thorough” under the *Strickland* standard).

Moreover, an applicant must show *Strickland* prejudice from the deficiency. *Stone, supra*. Simply showing that additional presentations could be made is insufficient to find counsel was deficient and a defendant was prejudiced. *Id.*; *Thornell v. Jones*, 602 U.S. 154, 165 (2024) (rejecting argument that *Strickland* relief is warranted “whenever [the defendant] ‘presents substantial evidence of the kind that a reasonable sentencer might deem relevant to the defendant’s moral culpability’”).

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

When reviewing Applicant’s issues under the above jurisdictional limitations and the standard for review of ineffective assistance of counsel claims, the Record and PCR presentations – including testimony and arguments – together show that Applicant is not entitled to any relief on the claims presented.

This court will address the claims in detail below.

#### **MOTION FOR SUMMARY DISMISSAL**

Grounds (a) and (b) of Ms. Simpson’s application assert ineffective assistance of counsel for failing to request pre-trial notice of the state’s expert, failing to assert due process as a basis for forcing the State to disclose its expert witness(es), and failing to preserve the issue as constituting a violation of constitutional due process. The State filed an Amended Return and moved for summary dismissal of these two claims. The State argued that:

[E]ach of these grounds for relief relies upon a legal premise that is not supported by the law, either via direct consideration of the issues by the Court of Appeals in Applicant direct appeal, or by existing case law.

...

The underlying law for these claims was raised on direct appeal. Therein, appellate counsel Wilkes argued that the trial court erred in admitting the testimony of the State's expert witness because, among other reasons, Applicant's due process rights were violated because the State did not disclose to the defense prior to trial that it would offer the witness as an expert or ask him to provide forensic testimony based on Applicant's medical records. The South Carolina Court of Appeals rejected that argument, finding that Applicant was already in possession of her medical records—which she had, in fact, supplied to other experts to serve as the basis of their testimonies—and that neither Rule 5, SCRCrimP, nor *Brady v. Maryland*, 373 U.S. 83 (1963), required the State to notify the defense of the substance of the witness's testimony because the substance of the witness's testimony was not set down in writing. *Simpson*, at 537-39, 823 S.E.2d at 237-37. The South Carolina Supreme Court declined to review the Court of Appeals' opinion. *State v. Simpson*, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam). The Court of Appeals ruled explicitly that neither Rule 5(a)(1)(D), SCRCrimP, nor *Brady* establishes a basis for which the solicitor was compelled "to notify the defendant of the substance of an expert's testimony that has not been put in the form of a written report, particularly when the expert is relying on information within the defendant's possession." *State v. Simpson*, 425 S.C. 522, 539, 823 S.E.2d 229, 238 (Ct. App. 2019), overruled on other grounds by *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023). The alleged due process right was considered by the court, but the court found the demanded notice to not exist within the applicable rules. Summary judgment is appropriate because the underlying legal basis for these claims is faulty and cannot support a finding of ineffectiveness. The Court should find there is no genuine issue of material fact as to these two claims and that Respondent is entitled to judgment as a matter of law, and dismiss the claims summarily.

The issue was then argued at the outset of the PCR evidentiary hearing. The State noted that during pretrial motions before the trial commenced, Ms. Simpson's attorneys raised dispute over the State's failure to notice their expert witnesses for the case. Though couched in the broad assertion of a directed verdict motion, the arguments presented were clearly asserting that the State's failure constituted a violation of Rule 5 discovery obligations and also constituted a violation of Ms. Simpson's due process rights. (PCR Tr., p. 5; Trial Tr., p. 85-86). Consistent with

its written motion, the State argued that the issue had been taken up and ruled upon by the South Carolina Court of Appeals, wherein it concluded that neither Rule 5 nor *Brady* were implicated in the State not noticing its expert. The State also argued that the Court of Appeals explicitly addressed Ms. Simpson's claim as one sounding in due process and found no such violation. The State argued that in light of the Court of Appeals decision, there can be no basis for ineffective assistance of counsel because the underlying law does not provide an underlying basis for finding deficiency; the alleged violated due process right has been found not to exist. (PCR Tr., p. 5-7). In response, Applicant argued that the nuance of their argument is that counsel failed to raise and preserve the issue as a standalone issue that due process "should" exist, but she conceded that the existing law does not support the claim. Applicant then argued it constitutes ineffective assistance of counsel to not challenge the status of the existing law. (PCR Tr., p. 7-12). The State responded noting that Applicant's argument was addressed as a matter of due process by the Court of Appeals, and that such was preserved as an argument by trial counsel. The Court of Appeals found simply that the existing law for which similar due process rights have been found does not extend to include Applicant's demand for notice. Applicant's claim is essentially a public policy argument, and such does not establish ineffective assistance of counsel; attorneys are not required to be clairvoyant of changes in the law nor are they expected to pursue legal arguments that the law does not presently support. *Pantovich v. State*, 427 S.C. 555, 563, 832 S.E.2d 596, 600 (2019); *United States v. Morris*, 917 F.3d 818, 823 (4th Cir. 2019). Notwithstanding the fact that the law does not support Applicant's argument, the State also noted that the practical end-result of trial counsel's motion was that he learned that the State was considering calling Dr. Smith as its expert, and was only uncertain as to when they might do so. The State argued that even if a due process right

existed, the lack of notice was alleviated because trial counsel was made aware of the State's expected witness and had time to prepare. (PCR Tr., p. 12-14).

At the conclusion of the parties' arguments, this Court took the matter under advisement and proceeded with the hearing. Returning now to these arguments, this Court agrees with the position of the State and finds that Ms. Simpson's argument is not supported as a matter of law. Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. *Mose v. State*, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing *Leamon v. State*, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. *Robertson v. State*, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Though a hearing was held, this is an issue of law. In the light most favorable to Applicant, the record demonstrates that trial counsel argued that the State's failure to provide notice of its expert witness(es) was a violation of the State's Rule 5 discovery obligations and Applicant's due process rights. That matter was raised to and ruled upon by the South Carolina Court of Appeals, wherein they noted Applicant's claim of a due process violation but concluded that neither Rule 5 nor *Brady* bestow the desired right to notice. *State v. Simpson*, 425 S.C. 522, 539, 823 S.E.2d 229, 238 (Ct. App. 2019), overruled by *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023).

Applicant's recognition of the law, and assertion that ineffective assistance of counsel arose in the failure to challenge the existing law all but conceded the issue. There is no legal basis to assert that counsel was ineffective for failing to adequately request a pre-trial notice of the State's expert, nor is there a legal basis for arguing that that counsel failed to raise a violation of due process as a means of forcing the State to disclose its expert. As to Ground (b), wherein Applicant falls back upon the argument that ineffective assistance arises out counsel's failure to challenge the existing law, the application of *Strickland* is clear:

A lawyer does not perform deficiently by failing to raise novel arguments that are unsupported by then-existing precedent. See *United States v. Mason*, 774 F.3d 824, 830 (4th Cir. 2014) ("We have consistently made clear that we do not penalize attorneys for failing to bring novel or long-shot contentions."). Nor does counsel fall below *Strickland's* standard of reasonableness by failing to anticipate changes in the law, or to argue for an extension of precedent.

*United States v. Morris*, 917 F.3d 818, 823 (4th Cir. 2019). This Court therefore finds summary dismissal of Grounds (a) and (b) appropriate. There is no basis for demonstrating deficient performance under the law, and as the State pointed out, even if there were a basis for deficient performance, Applicant cannot demonstrate prejudice because trial counsel was ultimately provided notice of the State's intent to call Dr. Smith with sufficient time allowed for preparation of his cross-examination. Compare *United States v. Smith Grading & Paving, Inc.*, 760 F.2d 527, 532 (4th Cir. 1985) ("No due process violation occurs as long as Brady material is disclosed to a defendant in time for its effective use at trial."). Grounds (a) and (b) are hereby summarily dismissed.

**SUMMARY OF TESTIMONY OFFERED AT THE PCR  
EVIDENTIARY HEARING**

*Dr. Jeffrey Smith*

Dr. Smith began treating Ms. Simpson in March of 2010 and initially diagnosed her with bipolar disorder and anxiety disorder, while confirming her prior diagnosis of attention-deficit/hyperactivity disorder. In August of 2012, he learned shortly after the fact that Ms. Simpson had a mental health episode that required hospitalization at St. Francis and subsequent treatment in the days that followed at the Carolina Center. (PCR Tr., p. 20-22). He had her records from the Carolina Center for review and considered her episode to be a psychotic event. He then engaged in follow-up consultation with one of the treating doctors: Carol Rentz Mitchell. He advised Ms. Simpson to seek psychotherapy in addition to his pharmacotherapy treatment. His understanding was that Ms. Simpson ultimately agreed and participated in an appointment with a therapist, but she did not seek subsequent appointments. (PCR Tr., p. 23). He continued to treat Ms. Simpson through February 26, 2013, her last appointment prior to the crime. (PCR Tr., p. 23).

Dr. Smith was not contacted by Ms. Simpson's lawyers. However, he was contacted by Dr. David Price, one of Ms. Simpson's retained expert witnesses. As a result, he held an after-hours appointment to discuss her case with Dr. Price. (PCR Tr., p. 27). Dr. Smith was subsequently subpoenaed by the State approximately thirteen days before trial. He received the forensic reports from both Dr. Frierson and Dr. Price and noted that Ms. Simpson had told Dr. Smith contradictory things compared to what she had informed Dr. Mitchell. (PCR Tr., p. 28-32). Nevertheless, he would still have offered his opinion that Ms. Simpson was "experiencing a psychotic event." He came to the conclusion that Ms. Simpson was able to distinguish right from wrong but was unable to conform her conduct to the law, i.e. "guilty but mentally ill." (PCR Tr., p. 50; Trial Tr., p. 632).

Dr. Smith testified that Ms. Simpson was prescribed Adderall for her ADD/ADHD, and that she was also on a critically important mood stabilizer paired with the Adderall to prevent mood swings that can provoke psychosis. (PCR Tr., p. 34). He testified that he advised Ms. Simpson many times of the importance of taking both and the consequences of taking the Adderall without the mood stabilizer. To this point, he noted that on two occasions, Ms. Simpson had self-reported her failure to take her meds appropriately, one such instance being at the time of her hospital admission and care at Carolina Center. (PCR Tr., p. 34-35). He further noted that had Ms. Smith reported any psychotic symptoms he would not have prescribed her Adderall. He agreed that medication noncompliance could result in psychosis within a matter of days to weeks, but that Ms. Simpson was uncharacteristically stabilized after just two doses of the proper medication. (PCR Tr., p. 35-37). Dr. Smith testified that while Ms. Simpson was of course free to invite family to their meetings, he had never requested she do so because he had never witnessed any bizarre or delusional beliefs that made such efforts necessary. (PCR Tr., p. 39).

On cross-examination, Dr. Smith testified he was not a forensic psychiatrist and was voir dired extensively on the distinction. He testified that although he was permitted to testify as to the question of criminal responsibility at trial, he would not expect to be chosen for such an expert witness role over a forensic psychiatrist. (PCR Tr., p. 41-45). He agreed that he keeps regular and reliable records of his treatment of patients, and that any reviewing doctor would have a good understanding of what was discussed, diagnosed, and prescribed based on the contents of his notes. Though Dr. Smith disagreed with the other experts as to Ms. Simpson's level of criminal responsibility, he testified that he told both Dr. Price and Dr. Frierson that he "could understand how they arrived at their opinions, but it was as if we were looking at two distinctly different patients because I had never seen a delusional system as bizarre as what was – they described in

both their reports.” (PCR Tr., p. 48-49). Dr. Smith confirmed that Ms. Simpson had reported missing her Adderall doses on the day prior to the shooting; he added that missing a single dose of either is extremely unlikely to induce a psychosis and agreed that if a patient were to forego taking Adderall they would not succumb to an Adderall-induced psychosis. (PCR Tr., p. 51-54). Dr. Smith also indicated that there was no indication that Ms. Simpson was abusing her Adderall and stands by the care and prescriptions he provided. He did, however, concede that during his testimony before the jury he agreed with counsel’s assertion that “it would appear that he was not aware or did not realize how sick Anna was.” (PCR Tr., p. 56-58).

*Attorney John Mauldin*

Mr. Mauldin testified he immediately recognized that the case would involve extensive psychiatric or psychological expertise pertaining to her criminal responsibility. He contacted attorney Teal Johnson to assist him with the case, and once appointed and funded, he proceeded to engage experts to interview Ms. Simpson and derive their opinions as to her criminal responsibility. (PCR Tr., p. 59-62).

Dr. Mulbury was first retained as a forensic psychiatrist to evaluate Ms. Simpson and review her pertinent records. Mr. Mauldin testified that though he is not qualified to know what precise records a doctor may need, he met with Ms. Simpson’s parents numerous times to discuss the case, during which time they would recommend things that they believed might assist the expert in his review. Once finished, Mr. Mauldin met with Dr. Mulbry and discussed his expert opinion that Ms. Simpson was not able to distinguish legal/moral right from wrong at the time of the crime. He then notified the solicitor of their intent to seek an NGRI affirmative defense. (PCR Tr. p., 62-67).

The State sought to have an independent evaluation performed. Dr. Frierson, with the South Carolina Department of Mental Health, performed an evaluation of Ms. Simpson, and his opinion was consistent with that of Dr. Mulbry. (PCR Tr., p. 67-68). Mr. Mauldin testified that despite having both Dr. Mulbry and Dr. Frierson supporting the NGRI defense, he retained Dr. Price as a forensic psychologist to avoid any “surprises” at trial. After evaluation, Dr. Price also agreed with the diagnosis and conclusion as to criminal responsibility. (PCR Tr., p. 69).

Mr. Mauldin acknowledged that the focus of the case was going to be the mental and forensic psychiatric issues, but they also made sure that the discovery materials from the State were received to ensure that the facts of the case were “examined, reexamined” and “clear.” Mr. Mauldin added that having provided the State with notice of their affirmative defense, they were also cognizant of the need to anticipate what the State might use to counter their case. (PCR Tr., p. 69-71).

Mr. Mauldin testified that Dr. Smith was not pursued by the defense as a witness, in part because there was dissatisfaction with his care in light of Ms. Simpson’s psychotic breakdown. He was also of the opinion that as her treating psychiatrist, Dr. Smith would be prohibited from testifying as a forensic psychiatrist. That matter was addressed alongside his challenge to the State not providing notice of their intention to call Dr. Smith as an expert under Rule 5. In order to address NGRI criminal responsibility, Mr. Mauldin also testified that “forensic” experts were necessary. (PCR Tr., p. 73; 92). For those reasons, Dr. Smith was not pursued as an expert. (PCR Tr., p. 71-74). Nevertheless, Dr. Price was in contact with Dr. Smith as part of his efforts to review records and evaluate Ms. Simpson, and in so doing Dr. Price learned of Dr. Smith’s opinion of their evaluations. He reported back to Mr. Mauldin that Dr. Smith was in agreement with his opinion of the case. Based on the report from Dr. Price, Mr. Mauldin did not harbor concern for

Dr. Smith testifying at trial. Nevertheless, Mr. Mauldin testified that he regretted not conducting an interview with Dr. Smith and noted that he would have asked different questions during cross-examination had he done so. (PCR Tr., p. 75-78).

The defense team was aware of Ms. Simpson's medications and the evidence suggesting she may not have been taking them properly. However, Ms. Simpson's prescriptions and her compliance was never focused on by the defense as a basis for supporting the NGRI defense. He testified that his experts did not raise to his attention the concept that Adderall might be "contraindicated" for someone with psychotic symptoms. (PCR Tr., p. 79). Mr. Mauldin then added: "With regard to the Adderall specifically, I do not recall any consideration of that as a potential defense." (PCR Tr., p. 81). With regard to whether Dr. Smith's treatment of Ms. Simpson "was appropriate regarding psychiatric standards and so forth, that certainly – we did consider that, but did not – we felt like we had three good, solid forensic witnesses prepared to present our defense and that the subject of whether she had been properly treated by a treating psychiatrist beforehand simply kind of – did not raise to the level where I thought it out to be our focus." (PCR Tr., p. 81).

Mr. Mauldin testified that he had multiple conversations with Ms. Simpson's parents and others who were close to Ms. Simpson and concerned for her welfare. He noted that the state presented some lay witnesses who spoke about Ms. Simpson's conduct at the time of the incident, including her mother. He then testified that the "defense did not present any witnesses of that nature."<sup>1</sup> (PCR Tr. p. 82). Mr. Mauldin testified that he could not recall a strategic reason for why he did not ask Mrs. Brown how Ms. Simpson "had been as a mother." (PCR Tr., p. 82).

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<sup>1</sup> As set forth below, this is not entirely accurate. The Defense did present lay witness testimony of EMS respondent Michael Weight; he observed Ms. Simpson shortly after the crime.

PCR counsel asked if, in “looking back at the trial of the case,” whether the defense became too focused on the mental health aspect of not guilty by reason of insanity maybe to the detriment of some other issues that could have presented Anna in a more fulsome way?” Mr. Mauldin responded that such was a matter of “Monday morning quarterback[ing].” He acknowledged that he was directly focused on the forensic psychiatry of the case, and that to the extent that left other things undone, he regreted that “might be the case.” (PCR Tr., p. 84). He acknowledged that he did not consider presenting witnesses for the purpose of demonstrating good character. (PCR Tr., p. 87).

In light of the evidence, Mr. Mauldin agreed that an NGRI defense was their only option, thus presenting a lack of criminal responsibility became their sole strategy and goal for the case. His efforts toward that strategy were met with having all three contacted experts support their NGRI theory, including the court appointed expert, Dr. Frierson. (PCR Tr., p. 88-92). Mr. Mauldin testified that he provided all the records he had for Ms. Simpson to the experts, and instructed them to ask if there was anything else they needed to perform their evaluations. None of the experts asked for anything further. (PCR Tr., p. 94). Mr. Mauldin agreed that their during the testimony, experts not only provided their medical opinions but discussed the factual information that supported their opinions. (PCR Tr., p. 96-97).

Mr. Mauldin agreed that he did not personally possess any medical education or expertise; he therefore relied upon the information provided by his experts. He was aware that Dr. Price had already met with Dr. Smith, and none of the experts indicated that meeting with Dr. Price would be necessary for the case. (PCR Tr., p. 93; 99-101). He further testified that none of his experts indicated that there was any concern that Ms. Simpson’s doses were inappropriate or that she was

abusing her medications, such that it could be argued that her psychosis was chemically induced. (PCR Tr., p. 115).

Mr. Mauldin testified that after learning the State would in fact be calling Dr. Smith in reply, he stayed up all night in order to prepare his cross-examination. That cross-examination included highlighting the shortness of Dr. Smith's meeting with Ms. Simpson, so as to demonstrate his lesser understanding of Ms. Simpson's mental health in comparison to the defenses experts and to impeach the credibility and weight that the jury should give Dr. Smith's testimony in light of his lack of forensic expertise. He confirmed that in his cross-examination he was successful in getting Dr. Smith to admit to being unaware of the severity of Ms. Simpson's mental illness. (PCR Tr., p. 103-104; 110).

Mr. Mauldin agreed that under the rules of evidence character evidence to demonstrate conformity therewith is generally not admissible, and in this case specifically, there is no dispute that Ms. Simpson committed the killings. Upon agreeing that people of both good and bad character can experience mental illness, Mr. Mauldin noted that such evidence for purposes of establishing a medical finding would be subject to the court's discretion to admit it as relevant evidence. As the only means of proving NGRI is to prove medically the inability of determining legal right from legal wrong, he was uncertain as to how a jury might consider character evidence, what weight they would give it, or whether it would be admissible. (PCR Tr., p. 111-114).

On redirect, Mr. Mauldin agreed that character evidence is not medical evidence, and the state attempted to rely on lay witness testimony to demonstrate Ms. Simpson's competency at the time of the incident. On recross, Mr. Mauldin further agreed that in comparison to such lay witnesses, none of Ms. Simpson's friends and family were present at the time of the shooting. (PCR Tr., p., 115-116).

*Dr. David Price*

Dr. Price testified that he was retained to evaluate Ms. Simpson in 2014 and saw her nine times between 2014 and 2016. He diagnosed her with Schizoaffective disorder, bipolar type, that presented with mania, hallucinations, and delusions. He interviewed Dr. Smith and Ms. Simpson's family physician, Dr. Wayne Hanna. After interviewing Dr. Smith, Dr. Price was under the impression that Dr. Smith agreed with his evaluation and findings. He then relayed that conclusion to Mr. Mauldin, discussed with Mr. Mauldin what he needed to know from his interviews, and believed that Dr. Smith's agreement was unequivocal. (PCR Tr., p. 118-121; 126-127).

Dr. Price testified that Adderall is contraindicated for patients with psychotic disorders, but that there was no focus with Mr. Mauldin on how or whether Adderall played a role in her alleged psychotic breaks, and there was no such indication in her medical records. He saw one log note indicating the need for a refill of Adderall after accidentally washing it in the laundry, but saw no indication that she was abusing her medication. Had there been any basis for such a finding, he would have put it in his report. (PCR Tr., p. 122-128).

*Dr. Richard Frierson*

Dr. Frierson was appointed by the circuit court to conduct an evaluation of Ms. Simpson on behalf of the Department of Mental Health. Dr. Frierson testified that he did not believe he received a "robust opportunity" to provide the jury with the full medical and historical narrative needed for the jury to reach a conclusion as to Ms. Simpson's health. He asserted that this was partly due to counsel interrupting him during his testimony. (PCR Tr., p. 133-136). Dr. Frierson would have liked to have discussed aspects of Ms. Simpson's life history in order to demonstrate her normal and positive upbringing. He asserted that she developed psychotic symptoms "that the family sort of pretended was not happening." He believed her treating psychiatrist was only seeing

her for 5-10 minutes to address medication management and was unaware of her psychotic symptoms that he then detailed as part of his testimony. (PCR Tr., p. 136-139; 142). Dr. Frierson testified that Dr. Smith should have taken her off of Adderall, and he did not have an opportunity to explain how Adderall was impacting Ms. Simpson's health.<sup>2</sup> (PCR Tr., p. 141). He then clarified that he was not opining that her Adderall caused her psychosis. He insisted that she had an underlying mental illness and the Adderall worsened the symptoms of that illness. (PCR Tr., p. 141). He also wished to discuss her prescription regiment, counseling, and frequency of visits during his testimony, but did not feel like he received an opportunity to do so. (PCR Tr., p. 151-152):

On cross-examination, Dr. Frierson acknowledged that he was able to discuss his lack of concern for the overuse or abuse of Adderall, the question of whether Ms. Simpson had even taken her Adderall prior to the crime, and that her first psychotic break occurred when she was likewise not taking Adderall. (PCR Tr., p. 156-162). Dr. Frierson admitted that there was ample opportunity to discuss her psychosis, and that the topic of her psychosis was covered "fairly well." However, he does not believe he covered well the "evidence of lack of knowledge of wrongfulness" and her behavior prior to the shooting. (PCR Tr., p. 163). He does, however, concede that he demonstrated her psychosis was putting her into a mental state where she believed she was doing good for her family by killing them and therefore could not distinguish the wrongfulness of her actions. He also conceded that he was only one of three expert witnesses, all of whom were called to testify for the same purpose of explaining Ms. Simpson's lack of criminal responsibility. (PCR Tr., p. 168). He likewise conveyed to the jury that his medical opinion was corroborated by other evidence and information learned from sources other than Ms. Simpson. (PCR Tr., p. 168-170).

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<sup>2</sup> Though not as extensive as Dr. Frierson may have wished, his trial testimony did provide the jury with this explanation. (Tr., p. 560-561).

On redirect, when asked what information he would have added to his testimony he noted: 1) Ms. Simpson told the consulting psychiatrist in the emergency room that she did what she did to set her children free, 2) Ms. Simpson gave statements to Deputy Coroner Kelley that she was trying to help her children, 3) Ms. Simpson disbelief that her kids were dead, 4) that she did not want her children to live in this awful world, and 5) not knowing where her husband was. He conceded, however, that if such information came in through a witness other than him, the jury still heard it. (PCR Tr., p. 178).

*Attorney Teal Johnson*

Ms. Johnson testified that she divided the litigation responsibilities with Mr. Mauldin and that the defense team became very focused on the expert reports that had concluded Ms. Simpson lacked the criminal responsibility for the crime. She agreed that there was not much exploration of other potential defenses or other matters they could put forward. (PCR Tr., p. 181). She testified that Ms. Simpson's family provided them with a list of other people that would have been positive witnesses. She claims that they were laser focused on the mental health defense and regrets not putting forth character evidence. (PCR Tr., p. 183-186).

On cross-examination, Ms. Johnson asserted that she believed lay witness testimony of good character was relevant to their defense. However, she conceded that the defense did not consider Dr. Smith qualified to provide an opinion as to Ms. Simpson's mental health, but nonetheless believed it was "worth a shot" to present character witnesses to demonstrate Ms. Simpson's mental health. (PCR Tr., p. 200). She further conceded that the jury received information through Ms. Brown's testimony that Ms. Simpson was a good mother, a devoted wife, and a caring parent concerned with the safety and welfare of her children. (PCR Tr., p. 201-202).

*Dr. James Ballenger*

Dr. Ballenger testified that he was board certified in the fields of forensic psychiatry and neurology. He was qualified as such at the evidentiary hearing. He agreed with the other experts' diagnosis of Ms. Simpson as suffering from Schizoaffective disorder, bipolar manic type. (PCR Tr., p. 207-210).

Dr. Ballenger offered testimony regarding the theory of "kindling," wherein a patient who is repeatedly exposed to the same sub-threshold stimulus, could after repeated exposure over long periods of time develop an extreme reaction to that same stimulus if exposed again at a later date. However, when asked if he saw any evidence of kindling in Ms. Simpson's records, he responded: "Well, I didn't specifically look there." He ultimately surmised that Adderall is a drug that in his opinion can result in kindling and that she should not have been taking that medication. (PCR Tr., p. 210-214; 221). Although over objection, Dr. Ballenger testified that in his opinion the crime would not have taken place had Ms. Simpson been medicated properly. (PCR Tr., p. 226).

On cross-examination, Dr. Ballenger conceded that he had not personally treated Ms. Simpson and had not prescribed her any medication, adding: "No, I'm a forensic expert. I never treat people." (PCR Tr., p. 227). He further conceded that he had not been in Ms. Simpson's presence after receiving a dose of Adderall to see how she reacts to the drug, nor had he personally interviewed Ms. Simpson. (PCR Tr., p. 228). He conceded that the experts called at trial were permitted to discuss her treatment and medications. He acknowledged that he was familiar with the concept of drug tolerance but argued that over a long enough period of time "reverse tolerance" will occur in drug use, including alcohol.

*Ms. Susan Brown*

On direct examination, Ms. Brown testified that Mr. Mauldin did not bring out any aspects of Ms. Simpson's life. She then provided a thorough characterization of Ms. Simpson as being outgoing, precocious, affectionate, a good student, and a church-raised Christian. (PCR Tr., p. 234-237). She described Ms. Simpson's character traits as a mother as her being: loving, caring, patient, empathetic, supportive, reliable, and affectionate. She did the same for Ms. Simpson's character traits as a wife, describing her as: loving, supportive, self-sacrificing, reliable, committed, hardworking, and loyal. (PCR Tr., p. 241-243).

Ms. Brown discussed Ms. Simpson's admission to the hospital in 2012 and noted that such came about as a result of seeing bizarre behavior from her during a family trip. She testified that she grew concerned again about Ms. Simpson's mental health in the two to three days before the shooting. (PCR Tr., p. 244-246). She admitted however that the State's questioning included a discussion of the numerous phone calls she received from Ms. Simpson over the course of 24 hours, noting that she had a chance to describe such as being bizarre and uncommon for Ms. Simpson. She admitted that her testimony discussed five such phone calls, a total which was quite out of the ordinary, and that Ms. Simpson's mood seemed to fluctuate wildly with each call. (PCR Tr. p. 246-249). She further conceded that her testimony informed the jury as to Ms. Simpson's Christian faith, and that such served as a demonstration of her good character. (PCR Tr., p. 249). She agreed that Ms. Simpson's phone calls demonstrated her excitement that she and her husband were going to seek help to strengthen their marriage, and that such was an earnest demonstration of her care and devotion as a wife. (PCR Tr., p. 250). Ms. Brown then conceded that one of the phone calls involved Ms. Simpson's expressions of doubting her abilities as a mother and that Ms. Brown gave her reassurances that she was in fact a good mother. She did not dispute that her

testimony revealed Ms. Simpson having been adopted, and that she liked to hear the story of her adoption. (PCR Tr., p. 250-251).

Mrs. Brown agreed that Mr. Mauldin's cross-examination detailed how Ms. Simpson's hospitalization in 2012 came to be, and that he then explored Ms. Simpson's bizarre behavior that preceded the shooting. She agreed that in addressing such behavior of both episodes her testimony provided a clear picture that the type of concerning and bizarre behavior that had required hospitalization for psychosis was taking place again prior to the shooting. (PCR Tr., p. 252-253). On redirect, she agreed that there was nothing within Ms. Simpson's character that would lead her to believe she was capable of harming her children and husband. (PCR Tr., p. 254).

*Nancy Zeigler*

Ms. Zeigler testified that she was the first grade teacher for Ms. Simpson's daughter, Carly. She described how Ms. Simpson volunteered to help as the class's "room parent" and that she did an exceptional job at it. She testified that as a result, she developed a friendship over the course of the year with Ms. Simpson. (PCR Tr., p. 255-258). She testified that she would have been willing to testify had she been called and agreed that Ms. Simpson exhibited the positive character traits of being a loving, caring, and devoted mother. (PCR Tr., p. 265-266).

On cross-examination, Ms. Zeigler testified that she had seen Ms. Simpson fairly frequently through the course of a year and never witnessed any bizarre behaviors, paranoias, or delusions. She did not possess any medical training, but she witnessed nothing that alarmed her and had the opportunity to observe Ms. Simpson up to within a week of the crime. (PCR Tr., p. 267-268).

*Jessica Cummings*

Ms. Cummings testified that she spoke with Teal Johnson and let her know that she was a life-long friend of Ms. Simpson. However, she was not interviewed by the defense team or called as a witness. She testified that she had grown up with Ms. Simpson since early childhood and described Ms. Simpson as being outgoing, fun, sweet, giving, loving, and genuine. She also knew Ms. Simpson's husband, and believed they were in a committed, loving relationship. (PCR Tr., p. 269-273). She acknowledged that she moved away from the area, and that her friendship with Ms. Simpson became more reliant upon phone calls. She was in contact with Ms. Simpson prior to her 2012 hospitalization and noticed the bizarre behavior that led to such. She spoke with Ms. Simpson on the Friday before the crime and could tell that Ms. Simpson was experiencing some paranoia again. She confirmed the same good character traits of being loving, caring, empathetic, supportive, and devoted mother and wife. (PCR Tr., p. 275-281).

*Beth Simmons*

Ms. Simmons testified that she was college friends with Ms. Simpson and kept in touch with her, despite periodic geographical restrictions. She attested to Ms. Simpson's good character traits. She testified that she noticed behavioral changes in Ms. Simpson around the time of her 2012 hospitalization. She did not have much communication afterward though, due to having a third child, and recalls speaking with Ms. Simpson once during the period between August 2012 and May 2013. She too testified on cross-examination that she did not possess any medical expertise and that she had not spoken with Ms. Simpson in the days preceding or following the crime. (PCR Tr., p. 283-292).

*Solicitor Walt Wilkins, III*

Solicitor Wilkins testified that the State's theory of the case was simple: Ms. Simpson's actions before, during, and after the crime demonstrated that she was legally sane and therefore criminally responsible. (PCR Tr., p. 297). Solicitor Wilkins testified that he recalled the testimony at trial demonstrating Ms. Simpson's Christian faith, her being a good mother (her expressions of doubt and need for reassurance to that point), her efforts to work on her marriage with her husband, and the reassurance she gained by the story of her adoption. (PCR Tr., p. 295-296). However, he agreed that despite these details coming into the record, they were not admitted as "good character evidence" pursuant to Rule 404. Had the defense taken the additional step of actively putting forth evidence of good character traits he would have raised an objection based on a lack of relevance to the case, given that her mental state at the time of the murder was the critical issue that had to be proven. (PCR Tr., p. 296-297). If the good character evidence had come in at trial over his objection, he agreed that it would have opened the door for the State to introduce "bad character" evidence against Ms. Simpson, and the State was in possession of such evidence that they could have used for purposes of cross-examination. This evidence would have addressed her character as it pertained to being a mother and wife, such as methods of punishment for her children and indications that her marriage was in the beginning stages of dissolution. The State possessed emails and internet search histories from Mr. Simpson indicating that he was planning on leaving her, and that such posed a threat to Ms. Simpson becoming an abandoned spouse and losing her kids. The State would have argued that such evidence would have portrayed Ms. Simpson as being angry, possessing a motive for violence, and would have detracted from her claim of insanity. He further testified that he has an open file policy and that the defense would have had all the evidence he was in possession of prior to trial. None of this evidence was introduced because the defense never

opened the door to its admission under Rule 404, but had the defense chosen to steer into matters of good character, he would have responded with all the evidence he had to the contrary. Solicitor Wilkins testified that had the defense opened the door to questions of character, it would have absolutely helped the State in challenging their insanity defense. (PCR Tr., p. 297-299).

Solicitor Wilkins also testified that he would have cross-examined a witness like Ms. Zeigler on the fact that despite seeing Ms. Simpson frequently over the course of a year and as recent as a week before the crime, she did not see any paranoid or delusional behavior from Ms. Simpson. He believed that such cross-examination would have bolstered the State's position that she was sane. (PCR Tr. p. 299-300). In consideration of the case as a whole, Solicitor Wilkins testified that he would have considered a venture into character evidence by the defense to be a risky decision and believed that such is the reason why character evidence was not introduced. He testified that he was "prepared, hoping, almost, that they would open those doors" for the prosecution, and that such evidence from the defense would have risked confusing or distracting the jury away from the issue of proving a lack of criminal responsibility through medical expertise. By contrast, he acknowledged that the defense had three "extremely strong" expert witnesses ready to testify to her mental capacity at the time of the crime. (PCR Tr., p. 300-301).

On cross-examination, Solicitor Wilkins agreed that the defense did not present "character evidence," he further agreed that they did not present any expert witnesses in the State's case-in-chief, but used lay witnesses who could testify as to Ms. Simpson's actions leading up to and after the crime. He introduced expert testimony in Reply once the affirmative defense had been raised. (PCR Tr., p. 301-303).

### Ineffective Assistance of Counsel Claims

***Applicant's Claim (c): Failure to ask questions so as to introduce a prior inconsistent statement.***

Under claim (c), Applicant asserts that counsel “fail[ed] to follow Rule 613(b), SCRE, as to State’s expert testimony and the admission of a prior inconsistent statement made to Petitioner’s expert.” Applicant’s assertions continue by claiming “Trial Counsel failed to ask the State’s expert witness all of the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner’s expert witness.” (2<sup>nd</sup> Amended Application, p. 2-3). Applicant’s allegation does not assert precisely what experts and inconsistent statements she is referring to, and this Court notes the inadequacy of the pleading in and of itself to state a basis for relief. Nevertheless, through the content and context of the testimony offered from witnesses, this Court presumes that the claim is in reference to Dr. Smith offering a guilty but mentally ill opinion at trial, while Dr. Price had reported to counsel that he and Dr. Smith agreed with their medical opinion that she could not distinguish between legal and moral wrong and right.<sup>3</sup> In consideration of the facts related to Dr. Smith’s testimony, this Court finds that the claim is abandoned, and that Applicant has otherwise wholly failed to present evidence sufficient to satisfy her burden under *Strickland*.

As there was no mention or references to Rule 613 by Applicant during the hearing, nor references to the admissibility of a prior inconsistent statement at trial, nor references to counsel’s alleged decisions or omissions regarding a failure to pursue the admission of a prior inconsistent statement from Dr. Smith, the Court finds that this claim is abandoned.<sup>4</sup> Nevertheless, an

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<sup>3</sup> Appellant counsel challenged the trial court’s exclusion of testimony from Dr. Price as to Dr. Smith’s statements on the grounds of hearsay, but the decision of the trial court was affirmed.

<sup>4</sup> The content of Dr. Smith’s opinion of Dr. Price’s analysis, and the content of his opinion offered at trial were clearly discussed during the hearing. However, the nature and purpose of such questioning appears related only to the allegation that counsel were ineffective for failing to interview Dr. Smith before proceeding to trial and assess for themselves his medical opinion. Any contrary inferential use of the testimony at the PCR evidentiary hearing would certainly need *some* reference to Rule 613 or the introduction of extrinsic evidence of a prior inconsistent statement.

evaluation of the record demonstrates that, if not abandoned, the underlying facts could not support the claim.

At trial, Dr. Smith ultimately offered his opinion that Ms. Simpson could distinguish between legal/moral right and wrong, but could not conform her actions. However, *prior* to offering that professional medical opinion, Dr. Smith testified that he had discussions with Dr. Price approximately three years after the crime, and that during the meeting he was allowed to “briefly look over the report from Dr. Frierson.” Dr. Smith further testified that Dr. Price informed him of what his medical opinion was, but that he did not recall Dr. Price having dictated his official report at the time.<sup>5</sup> *On direct examination at trial*, Dr. Smith admitted that he told Dr. Price that, “[w]ell, based upon what you were seeing at that time, I can see how you arrived at your decision.” (Tr., p. 649). To the extent that Applicant believes such a statement was inconsistent with Dr. Smith’s own opinion, the supposed inconsistent statement was admitted at trial. Therefore, Rule 613 would not be triggered. *State v. Blalock*, 357 S.C. 74, 80, 591 S.E.2d 632, 635 (Ct. App. 2003) (“In determining whether a witness has admitted making a prior inconsistent statement and thereby obviated the need for extrinsic proof, the courts of our state and other jurisdictions have held that the witness must admit making the prior statement unequivocally and without qualification.”).

To the extent that Applicant is instead relying upon Dr. Smith’s assertion, either independently or as an equivocation, that he told Dr. Price that Ms. Simpson was presenting as “an entirely different individual that the one I saw for 34 visits”, Applicant has failed to prove the existence of any inconsistent statement. The relevant transcript reads as follows:

Q Did Dr. Smith offer any contrary opinion of his own about Ms. Smith -- I mean Ms. Simpson?

A No. I left his office thinking he agreed with me.

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The absence of such required this Court to formulate Applicant’s arguments for her, an endeavor only undertaken to demonstrate the folly of her claim.

<sup>5</sup> Which report Dr. Smith had is disputed, but not critically relevant.

Q Did you ultimately relay to Mr. Mauldin -- well, let me ask it this way. What did you relay to Mr. Mauldin relevant to your meeting with Dr. Smith?

A I basically relayed to John Mauldin that Dr. Smith concurred with my findings and my report.

Q And to your mind, was there any hesitation or was there any footnoting to that concurrence from Dr. Smith?

A None at all.

Q Did it -- at least the way you took it, did it appear to be unequivocal?

A That's correct.

Q And is that the way you relayed that to Mr. Mauldin?

A That is correct.

Q All right. So I'm going to represent to you that at trial, Mr. Smith testified that he had told you that he agreed with your report to the extent that he was looking at what you had relied on, but that was a different patient than he had seen, or words to that effect. Did he ever relay anything like that to you when you were talking with him?

A I don't remember that specifically, but I doubt it because his last diagnosis he had given her before this event was that she had a bipolar disorder, mixed, severe without a sign of psychosis but that she had a severe disorder.

(PCR Tr., p. 120-121). In order for there to be an applicable Rule 613 issue, Applicant's theory would have to be one of two factual assertions: 1) that Dr. Smith informed Dr. Price of his disagreement with Dr. Price's findings, or 2) there was an explicit admission by Dr. Smith that Ms. Simpson presented to Dr. Price in the same way that she had presented to him during his treatments. Applicant has demonstrated neither position.

Here, there is at best a dispute as to *whether or not* Dr. Smith offered commentary on the differences in how Ms. Simpson presented her mental health to her litigation experts, compared to how she presented her mental health during his own clinical treatment and within her past records. Such is not a matter of competing inconsistent statements, but the existence or absence of a *subsequent* explanatory portion to the original statement. It might well have been a topic for cross

examination and impeachment, but it does not trigger Rule 613, because Rule 613 does not contemplate the admission of the supposed absence of a statement. As a final point to the issue, Dr. Price's testimony regarding whether Dr. Smith offered some explanatory qualification as to Ms. Smith's differing presentations is both weak and lacking credibility. First and foremost, Dr. Price testified that he does not remember such, as opposed to affirmatively denying it occurred. Second, Dr. Price's alleged basis for doubting the additional context of Dr. Smith's original statement lacks credibility. Dr. Price cites to Dr. Smith's last diagnosis *lacking* a finding of psychosis while possessing a severe disorder. (See also, PCR Tr., p. 139-140). This Court struggles to find how such a consideration is dissimilar to the general testimony offered by Dr. Smith, or why such a diagnosis would be contrary to Dr. Smith offering a qualification to his agreement with Dr. Price's findings.

In review of the record, trial counsel were not deficient for allegedly failing to ask further foundational questions. "Under Rule 613(b), extrinsic evidence of the statement is not admissible unless the witness is advised of the substance of the statement, the time and place it was allegedly made, and the person to whom it was made. Rule 613(b) explicates the procedure for impeachment by a prior inconsistent statement and requires laying the foundation." *State v. McLeod*, 362 S.C. 73, 81, 606 S.E.2d 215, 219 (Ct. App. 2004). Even if these questions had been asked, there was no "statement" by Dr. Smith contrary to his testimony at trial that could have been offered. Additionally, as Mr. Mauldin was not questioned about Rule 613, this Court cannot determine whether the alleged failure to consider Rule 613 was neglectfully, purposeful, or deemed unworthy of pursuit by counsel at trial. More simply put, proving deficient conduct cannot be established by simply showing that something did not occur at trial. This is especially so when Dr. Smith had already admitted his agreement with Dr. Price's analysis, admitted that he had never offered a

forensic evaluation in a criminal trial, and admitted that Ms. Simpson was sicker than he realized. Such is a clear demonstration that *Strickland* prejudice does not arise under this issue. Consequently, Applicant has failed to satisfy either prong under *Strickland* and relief is hereby denied.

***Applicant's Claim (d): Failure to provide a sur-reply to the State's expert***

Applicant asserts ineffective assistance of counsel for failing “to offer any evidence in Sur-Reply to the State’s introduction of mental capacity evidence in the State’s Reply.” There is no reference in any fashion by Applicant to the topic of counsel failing to seek a sur-reply at trial. Nor is there testimony regarding a consideration, or lack thereof, by trial counsel to pursue a sur-reply. Applicant’s allegation alone cannot serve as a basis for the claim. This Court considers this claim abandoned, and Applicant has otherwise wholly failed to present evidence sufficient to satisfy her burden under *Strickland*.

In review of both local and state court rules, there is no affirmative right to a sur-reply. This Court can find no rule allowing or disallowing a sur-reply, as such the decision to provide one would be left solely to the discretion of the trial court. Applicant has failed to present any basis for why a sur-reply was warranted in this case, nor does this Court find a compelling basis for one in consideration of the record. The defense called three forensic experts and each set forth their concurring opinions as to Ms. Simpson’s criminal responsibility, diagnosis, and mental health history. The State called its own expert who acknowledged the propriety of those experts’ opinions, given the information they were provided in their evaluations, but offered a differing opinion as to criminal responsibility based upon his own long-term treatment of Ms. Simpson and her existing medical records. He was then effectively cross-examined and impeached, both to his qualifications and to his underestimation of Ms. Simpson’s mental health. In the absence of a detailed testimony and explanation as to what content the defense team would have presented in sur-reply, this Court

cannot speculate as to what purpose a sur-reply would have served, or the supposed prejudice of its absence.

Trial counsel were not deficient for failing to seek a sur-reply at trial. In applying an objective standard of reasonableness to the actions of counsel, this Court cannot find deficiency in failing to seek a stage of trial that is almost entirely absent from South Carolina jurisprudence.<sup>6</sup> Applicant likewise fails to demonstrate prejudice, as it is unclear what testimony Applicant wished to present in sur-reply, and that in light of the testimony already provided, how such unidentified evidence would have created a reasonable probability of differing result at trial. As such, Applicant has failed to satisfy either prong under *Strickland* and relief is hereby denied as to claim (d).

**Applicant's Claim (e): Ineffective assistance of counsel for failing to call mitigating witnesses including friends and family**

Applicant asserts ineffective assistance of counsel for “failing to call friends and family as mitigating witnesses.” PCR counsel’s efforts at the hearing demonstrated that Ms. Simpson wished to provide good character evidence at trial through such witnesses and that her trial counsels’ failure to do so rendered their representation constitutionally ineffective. This Court finds that Applicant has failed to satisfy her burden of proof for post-conviction relief. As set forth below,

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<sup>6</sup> This Court can find only three cases that mention sur-reply. *State v. Patterson*, 299 S.C. 280, 281, 384 S.E.2d 699, 700 (1989), *cert. granted, judgment vacated*, 493 U.S. 1013, 110 S. Ct. 709, 107 L. Ed. 2d 730 (1990); *Protopapas v. Wall, Templeton & Haldrup, P.A.*, 442 S.C. 217, 898 S.E.2d 150, 151 (Ct. App. 2023), *reh'g denied* (Mar. 18, 2024), *cert. denied* (Feb. 12, 2025); *Cunningham v. Anderson Cnty.*, 402 S.C. 434, 741 S.E.2d 545 (Ct. App. 2013), *aff'd in part, rev'd in part*, 414 S.C. 298, 778 S.E.2d 884 (2015). The only guidance provided is that the trial court in *Patterson* did not commit reversible error in excluding the proffered sur-reply, finding such constituted cumulative evidence.

trial counsel were not deficient for failing to call witnesses to testify as to Ms. Simpson's good character and Applicant has not demonstrated prejudice related to the issue.

Before considering whether counsel were deficient under *Strickland*, this Court finds it necessary to consider whether Applicant's desired evidence is even relevant and admissible. This requires the Court to address the two different types of lay witness testimony, as it appears from the record that there was an improper inclination to wrap all lay witness testimony into one category. (PCR Tr., p. 113; 194).

Lay witness testimony was offered and relied upon by the State in its case-in-chief *to demonstrate to the jury Ms. Simpson's behavior and statements exhibited in the time just prior to and immediately after the crime*. Such was highly relevant evidence in demonstrating how Ms. Simpson appeared as it related to her mental health. See *State v. Smith*, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989). Notwithstanding Mr. Mauldin's statement that he did not present "nonprofessional" witnesses "to describe Ms. Simpson's conduct and presentation *prior* to the incident" the defense also effectively utilized lay witness testimony in its case-in-chief, to an equally relevant and probative benefit. (See Trial Tr., p. 420-424, where Pickens County EMS responder Michael Weight testified that Ms. Simpson claimed her family told her to commit the shooting and that she was confused, crying, and did not understand what was going on, and asserted that she had not done anything wrong). This Court is not convinced by Applicant's insinuations and assertions that counsel focused solely on presenting forensic expert testimony and neglected to present any other form of evidence to the jury.

Though not admitted through Rule 404(a)(1), some of the lay witness testimony presented at trial had the *additional* effect of giving the jury various indications of Ms. Simpson's good character. This primarily came through Ms. Brown's discussion of the numerous phone calls she

shared with Ms. Simpson in the day and/or hours prior the crime being committed. This Court finds that Ms. Brown's testimony demonstrated to the jury Ms. Simpson's Christian faith, her desire and excitement to strengthen her marriage with her husband, her desire to be caring and loving mother to her children, and her desire for reassurance that she was "wanted", having been adopted at birth.<sup>7</sup> Ms. Brown's testimony further demonstrated Ms. Simpson's good character by noting the reassurances she gave Ms. Simpson on these matters. (Trial Tr., p. 364-368). In review of the record, the jury was also informed that Ms. Simpson did not have any criminal record, which spoke broadly to good character, also without implicating Rule 404(a)(1).<sup>8</sup> (Trial Tr., p. 513). Regardless of its relevance, this Court cannot fairly read the record and conclude that the jury was not provided an indication of Ms. Simpson's alleged good character, and consequently her allegation for relief becomes whether trial counsel were ineffective for not presenting *more* good character evidence through "mitigating witnesses," pursuant to Rule 404(a)(1). While this Court's analysis is not yet complete, it is important to note that generally, counsel are not ineffective for failing to present cumulative evidence. *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) ("We previously have held where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel's failure to bring it forward."); *Fulks v. United States*, 875 F. Supp. 2d 535, 572 (D.S.C. 2010), order clarified, No. CA 4:08-70072-JFA, 2010 WL 8987255 (D.S.C. Aug. 25, 2010).

Having established that lay witness testimony concerning behavior and statements at or near the time of the crime is relevant to demonstrating sanity and insanity. This court now addresses

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<sup>7</sup> As was appropriate, given Ms. Simpson's burden of proof, trial counsel focused on these phone calls on cross-examination in order to demonstrate the wild mood swings that Ms. Simpson appeared to be demonstrating. He then linked that testimony by having Ms. Brown compare it to Ms. Simpson's behavior just prior to her previous hospitalization for psychosis.

<sup>8</sup> This Court is cognizant of the fact that much of that testimony came by way of direct examination by the State. That fact does not detract from the nature of the evidence, and having come from the prosecution, it can be fairly argued that it actually made the indications of good character *more* convincing.

whether lay witness “good character” evidence is relevant to demonstrating sanity or insanity. In short, it is not.

“Evidence of a defendant's character is generally not admissible to show a propensity to act accordingly. Rule 404(a)(1), SCRE. However, when the accused offers evidence of his good character regarding *specific character traits relevant to the crime charged*, the solicitor has the right to cross-examine him as to particular bad acts or conduct.” *State v. Young*, 378 S.C. 101, 106, 661 S.E.2d 387, 389 (2008) (citing *State v. Major*, 301 S.C. 181, 391 S.E.2d 235 (1990) (emphasis added)). Relevant evidence is evidence “having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Rule 401, SCRE. Ms. Simpson’s argument here presents a multifaceted problem of relevance.

In pleading the affirmative defense not guilty for reason of insanity, Applicant assumed the burden of proving by a preponderance of the evidence that “at the time of the commission of the act constituting the offense, [she], as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. S.C. Code Ann. § 17-24-10(A) – (B); *State v. Jones*, 440 S.C. 214, 227, 891 S.E.2d 347, 354 (2023), *cert. denied*, 144 S. Ct. 1012, 218 L. Ed. 2d 176 (2024). Such demonstrates the absence of the necessary *mens rea* for the crime. *State v. Hornsby*, 326 S.C. 121, 129, 484 S.E.2d 869, 873 (1997). The suggestion that prior history of good character, when not comported with, is indicative of insanity later, is to do no more than rely upon the nature of the crime itself as evidence of insanity. That is not a logically sound argument, and would suggest that anyone who has not previously committed a violent act could only have been insane when they

committed their first.<sup>9</sup> Consequently, demonstrating one's character over previous years does not make it more or less likely that, at the time of the crime, they could not distinguish between legal and moral right from wrong. Stated another way, one cannot argue in the same breath, that he was insane at the time of the crime and then point to his prior history of being sane and good person as proof. Applicant's desired evidence is not relevant toward proving insanity.

That conclusion then begets the next question: If character evidence is not a basis for proving insanity, is there any other purpose for which it could be properly relevant and admissible? There is not.

The NGRI defense creates a unique circumstance where the *only* question before the jury is if the defendant lacked the ability to distinguish legal/moral right from wrong at the time of the crime. The NGRI defense "relieves" the defendant "*of responsibility* for his acts" – it does not diminish the crime itself. *Davenport v. State*, 301 S.C. 39, 40, 389 S.E.2d 649, 649 (1990). The questions of malice, or heat of passion, or criminal negligence are not in dispute, as they are all based on a presumption of sanity. And, indicative of Applicant's misunderstanding here, is her own characterization of her desired witnesses as being "mitigating": *There is nothing to mitigate*. The state's burden to prove guilt beyond a reasonable doubt was relieved, and as Solicitor Wilkins

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<sup>9</sup> It is important to distinguish the manner in which the character evidence is being used. In cases where the defense seeks to draw doubt that the state has proven identity, character evidence would be relevant as there remains a question of whether the defendant is in fact the culprit. In cases where the defense seeks to draw doubt to intent in favor of mistake, good character of prior conduct can be relevant because it draws a distinction between willful conduct and the unbeknownst harm of the willful conduct. In either circumstance, the relevance of the "good character" evidence is reliant upon the presumption of sanity attributed to the actor across *both* their established character and the crime charged. When the foundation of "sanity" is removed, the relevance is lost because one is now presenting the actions of a sane actor as a juxtaposition to their later disconformity being presumptively insane. Applicant's argument is a presumptively circular one: Applicant was insane, because she acted insanely. Stated another way, while Applicant attempts to point to "character traits" of being loving, caring, and devoted, what she is really attempting to argue is that any subsequent disconformity with those traits is somehow a demarcation of insanity. That simply is not true, one has no bearing on the other because you are no longer comparing like for like sane conduct. When the presumption of sanity is challenged, one's long-term history of sane behavior is no longer relevant.

testified – the State’s only theory was, appropriately, that Ms. Simpson was sane at the time of the crime. (PCR Tr., p. 297). By attempting to present good character evidence, Ms. Simpson is attempting to reinstate the State’s burden to prove malice beyond a reasonable doubt in the minds of the jury. She cannot invoke NGRI as an affirmative defense and force the State to prove its former burden. Proving character mitigates nothing in the context of NGRI and it distracts the jury with improper considerations.

This Court finds that character evidence was not relevant to Ms. Simpson’s case, and in the absence of relevance, trial counsel cannot be deficient for failing to present such evidence. However, had the issue been raised and relevancy found existing by the trial court, there would then be a strong argument for exclusion of the evidence under Rule 403. As previously mentioned, the sole burden of proof lies upon the defendant to show the absence of criminal responsibility. Turning the jury’s focus to questions of Ms. Simpson’s character and prior history of sane conduct hits upon all warnings set forth under Rule 403.

If somehow deemed relevant, the probative value of how someone behaved while sane is extremely minimal, and it is substantially outweighed by the danger of unfair prejudice that the jury will reach a verdict akin to jury nullification – i.e. “even though we are not certain on the topic of her mental health at the time of the crime, Ms. Simpson appears to have been a good person and should not be convicted.” Similar to the argument above, under Rule 403 introduction of character evidence would mislead or confuse the issues for the jury, and risk reimposing a burden upon the state that no longer exists. Lastly, as this Court has already found that Ms. Simpson’s good character was portrayed to the jury as a by-product of other appropriate testimony, introduction of further character evidence would be unnecessarily cumulative. The jury has heard from the witnesses at trial that Ms. Simpson was a loving and caring mother, and a spouse devoted to her

marriage. Having other witnesses repeat the same would not have provided further benefit to Applicant. As Solicitor Wilkins was clear in his mindset to challenge the admissibility of character evidence, this Court finds that even if relevant, Applicant's desired evidence would have been properly excluded under Rule 403. If the evidence would not have been admissible, there can be no basis for deficient performance for failing to offer it.

Notwithstanding the lack of underlying support for relevance and admissibility, Applicant has also failed to satisfy his burden of proof under *Strickland*. Counsel were not deficient and prejudice does not arise from the alleged omission of good character evidence.

Addressing first, deficient performance, both attorneys acknowledged that either 1) good character evidence admitted solely under Rule 401(a)(1) was of questionable relevance and admissibility, and/or 2) that only in hindsight did they consider this evidence worthy of presentation to the jury in light of the case they had ready to present and *the ultimate result at trial*. Mr. Mauldin's initial reaction to the topic was that it constituted "Monday morning quarterback[ing]." (PCR Tr., p. 84). He agreed that his focus was directly on the forensic psychiatry in the case. The record demonstrates that such was an appropriate focus. Mr. Mauldin also conceded that he had to prove, medically, that Ms. Simpson could not distinguish between legal/moral right and wrong, and that in consideration of "good character evidence" he "[did] not know how a jury would take that into consideration" and did not know "what weight they would give to it." (PCR Tr., p. 114). Such is a concession that he harbored no affirmative opinion that such evidence would have aided him in satisfying the defense's burden of proof, and deficiency under *Strickland* requires more than demonstrating counsel failed to put forward nonprobative evidence.

Similarly, Ms. Teal Johnson stated that presenting character evidence from individuals who had no opportunity to view Ms. Simpson, prior to, during, or after the crime, was in her words, merely “worth a shot.” She then further weakened her assertion by suggest that the EMS workers and policemen likewise lacked such proximity, but were still permitted to testify. Such, oddly, appears to be a concession as to the lack of relevance of *all* lay witness testimony. This Court is wholly unpersuaded by such an argument; as discussed above there is a substantial difference between the individuals who witnessed Ms. Simpson’s behavior near the time of the crime and those called solely to say how good of a person they have known her to be. Ms. Johnson’s testimony was similarly lacking credibility when she conceded that she believed Dr. Smith was not qualified to offer an opinion as to Ms. Simpson’s criminal responsibility (despite his profession and treatment of Ms. Simpson), but that Applicant’s friends and family would have effectively done so because: “with a Pickens County jury, yes, . . . they might have believed friends and family over a big-city doctor. So yes. It’s worth a shot.” (PCR Tr., p. 194; 200).

Both trial attorneys’ resolve in claiming the importance and/or efficacy of “good character evidence” waned under cross-examination, and their testimony overall carried the aura of hindsight second guessing for a case they simply did not expect to lose. *Strickland’s* guidance to lower courts is excellent.

Judicial scrutiny of counsel's performance must be highly deferential. It is all too tempting for a defendant to second-guess counsel's assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. Cf. *Engle v. Isaac*, 456 U.S. 107, 133–134, 102 S.Ct. 1558, 1574–1575, 71 L.Ed.2d 783 (1982). A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Because of the difficulties inherent in making the evaluation, a court must indulge

a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action "might be considered sound trial strategy." See *Michel v. Louisiana*, *supra*, 350 U.S., at 101, 76 S.Ct., at 164.

*Strickland v. Washington*, 466 U.S. 668, 689, 104 S. Ct. 2052, 2065, 80 L. Ed. 2d 674 (1984). In consideration of the need for deferential scrutiny, this Court will not entertain deficiency under the premise of a hindsight failure to present questionably probative evidence in an otherwise excellently tried case. Counsel possessed a *strong* case based on expert witness testimony, they thoroughly reviewed, they accurately assessed the facts, and they appropriately directed their strategy toward their burden of proving insanity. Presenting character evidence would not have been a relevant and beneficial endeavor. This is especially so in light of the fact that the jury was already told of Ms. Simpson's character traits through Ms. Brown's testimony, and the recognition that utilizing 404(a) evidence opens the door to 404(b) evidence. Offering evidence of, at best questionable relevance, admissibility, and value, would have been a distraction from the strengths of their case. Counsels' decision to focus on the highly probative and relevant testimony of multiple medical experts as a means of proving a medically determinative burden of proof, and not expound into explicit questions of character, was certainly objectively reasonable under the established professional norms. This Court finds it not only reasonable, but proper.

For similar reasons, Applicant has failed to demonstrate prejudice. First, the desired character traits of being a loving, caring, and devoted mother and spouse were already presented to the jury. Applicant's claim attempts to show deficiency for failing to present cumulative evidence. See *Wong v. Belmontes*, 558 U.S. 15, 20, 130 S. Ct. 383, 386, 175 L. Ed. 2d 328 (2009). Likewise, in evaluating that issue, "it is necessary to consider all the relevant evidence that the jury would have had before it if [the defendant] had pursued the different path." *Id.* The Solicitor

testified credibly that 1) the State was in possession of a considerable amount of bad character evidence; 2) the introduction of such evidence would have changed the nature of the case away from the sole question of mental health; 3) such an opportunity would have been welcomed by the prosecution as it would have provided additional evidence of sanity, anger, and motive; and 4) Solicitor Wilkins testified credibly that the defense was aware of such evidence. This Court finds credible the Solicitor's estimation that opening the door to bad character evidence, even in exchange for the additional evidence of good character presented during the evidentiary hearing, would have been to the ultimate benefit of the State. In short, for the above mentioned reasons Applicant has failed to demonstrate that, if not for counsels' alleged failure to present additional good character evidence under Rule 401(a), there would have been a reasonable probability of a differing result at trial.

**Applicant's Claim (f): Failure to meet with, investigate, or prepare for the treating physician**

Applicant asserts under claim (f) that counsel were ineffective for failing to investigate and prepare for the testimony that Dr. Smith would provide at trial. The record demonstrates facts that are soundly contrary to the claim. Applicant has failed his burden of proof under *Strickland* and relief is unwarranted.

The record unequivocally demonstrates that Ms. Simpson and her family were not happy with Dr. Smith, due to a perception that his standard of treatment in effect led to her crime. Counsel also testified that given their burden of proving NGRI, they needed forensic experts that were qualified to speak to Ms. Simpson's criminal responsibility at trial; Dr. Smith did not possess a forensic specialization. They instead provided Dr. Smith's and others' records to their retained forensic experts to aid in their formulation of their medical opinions; Dr. Smith was not "needed" for their experts to effectuate their purpose. Nevertheless, both Dr. Price and Dr. Frierson "met with" or "spoke with" Dr. Smith prior to trial, and Dr. Price actively informed Mr. Mauldin of Dr.

Smith's concurrence with his analysis. Such is tantamount to an investigation of Dr. Smith prior to trial.

By Mr. Mauldin's own admission, he believed he possessed an understanding of Dr. Smith's potential testimony, was not concerned with it, and did not pursue further investigation. In any case, counsel took additional efforts to try and exclude the State from presenting expert testimony through Dr. Smith, and after learning of Dr. Smith's involvement as a rebuttal witness, spent the entire night preparing his cross-examination of Dr. Smith. The facts demonstrate that the defense team did "meet with," "investigate," and "prepare for" Dr. Smith's testimony, and those facts flatly defeat any argument of deficient performance. Moreover, *Strickland* asserts that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." *Strickland*, at U.S. 691. In concluding that they did not want or need Dr. Smith for medical testimony at trial, and in concluding that Dr. Smith concurred with Dr. Price's analysis, counsel did not conduct further investigations into Dr. Smith as a potential witness and admitted he was not worried about Dr. Smith's testimony at trial. Under *Strickland*, this was a reasonable conclusion as counsel are permitted to rely upon the information they receive from their experts. See *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003). While counsel now may assert that he wishes he had conducted further investigation of Dr. Smith, such is entirely based upon hindsight and does not support a basis for deficiency under the law.

As to the question of prejudice, this Court finds Applicant's argument likewise lacking. Dr. Smith was effectively cross-examined on his qualifications to provide a forensic opinion, and he even went so far as to concede that he "[was] not aware or did not realize how sick Anna Simpson

was.” Whether trial counsel had investigated further or not, it is difficult to imagine a more impactful end to a cross-examination.

**Applicant’s Claim (g): Ineffective assistance of counsel for failing to investigate or offer expert testimony on Adderall Induced Psychosis**

Applicant asserts under claim (g) that counsel “failed to investigate or offer expert testimony on Adderall Induced Psychosis. In presenting this argument, Applicant relied upon the PCR testimony of expert witness, Dr. James Ballenger. In light of the facts presented, both by Dr. Ballenger *and by the other witnesses*, this Court finds that Applicant has failed to satisfy either prong under *Strickland* and she has therefore failed her burden of proof for post-conviction relief.

After hearing Dr. Ballenger’s testimony, for which much of Applicant’s claim relies, this Court is wholly unconvinced that relief should be granted under ground (g). However, a thorough articulation as to the lack of merit to this claim first requires a focus upon the testimony offered at trial and at the PCR hearing by witnesses other than Dr. Ballenger.

Dr. Smith began treating Ms. Simpson in March of 2010. He testified that he diagnosed Ms. Simpson with bipolar disorder and anxiety disorder, and confirmed her previous diagnosis of attention-deficit/hyper activity disorder. (PCR Tr., p. 21). He prescribed her Adderall for treatment of her ADHD which Ms. Simpson had already been using for years prior. He also prescribed a mood stabilizer for the treatment of her bipolar disorder and testified that the mood stabilizer is essential because the Adderall and/or the bipolar condition itself can result in psychosis. Ms. Simpson was warned of the necessity of her mood stabilizer to safely treat both of her conditions. (PCR Tr., p. 33-34). Nevertheless, Ms. Simpson reported that she failed to take her mood stabilizer in the time preceding her admission to St. Francis Hospital in 2012.<sup>10</sup> (PCR Tr., p. 34-35). Dr.

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<sup>10</sup> Of note, it is also made clear in the record that Ms. Simpson was not taking her Adderall as well, prior to her admission at St. Francis. (*Supra*).

Smith testified that missing a single dose of either medication is extremely unlikely to result in any psychosis, and that “Adderall Induced Psychosis” does not take place from a patient failing to take their prescribed Adderall. (PCR Tr., p. 51-52). He further testified that Dr. Frierson’s report bore out that Ms. Simpson had not taken either of her medications on the day prior to the crime, but that her drug screening after the crime showed positive for amphetamines. (PCR Tr., p. 52-53; 54). In his opinion the time lapse would make for a possible, but not probable positive test in Ms. Simpson’s case. (PCR Tr., p. 56).

Mr. Mauldin testified that in his investigation and preparation of the case, he and his experts were aware of Ms. Simpson’s medications and the possibility she had not been taking them properly. However, they never focused on the medication as a contribution to the root problem of her mental health. He further testified that he does not recall any of their experts discussing the “contraindication” of Adderall for someone with psychotic symptoms, and that a potential strategy based on Dr. Smith’s treatments was not brought to his attention. (PCR Tr., p. 78-79). Dr. Price’s testimony echoes Mr. Mauldin’s assertions. (PCR Tr., p. 123-128; 131). Though Mr. Mauldin did not utilize such as a specific defense, he noted that he did address Dr. Smith’s standard of treatment during cross-examination at trial. (PCR Tr., p. 80). He followed this testimony by stating:

[w]ith regard to whether Dr. Smith’s treatment of her was appropriate regarding psychiatric standards and so forth, that certainly – we did consider that, but did not – we felt like we had three good, solid forensic witnesses prepared to present our defense and that the subject of whether she had been properly treated by a treating psychiatrist beforehand just simply kind of – did not raise to the level where I thought it ought to be our focus.

(PCR Tr., p. 81). On cross-examination, Mr. Mauldin agreed that he did not personally possess any medical education or expertise and that he relied upon the information that his experts provided him. (PCR Tr., p. 99-100).

The testimony offered at trial is also telling as to this issue. Dr. Mulbry, in discussing schizophrenia, was asked if he was able to formulate how long Ms. Simpson may have been suffering from the condition. His answer indicated that her symptoms began with mild depression and ADHD in the late 90's. He noted that in treatment of those conditions: "[Ms. Simpson's doctor] gave her the medications, appropriate medications, an antidepressant, and in this case I think Adderall. And she started on those two medications and had pretty good resolution of her symptoms." He further testified that the effectiveness of this treatment continued into the late 2000s. (Tr., p. 441-442). Her treatment with Dr. Smith began in 2010 following a seizure in the dentist's office, with the added symptoms of mood swings. Dr. Smith diagnosed her with "bi-polar disorder, type 1, the more severe type." Dr. Mulbry then testified to Dr. Smith's effort to treat her symptoms, which included paranoid ideation and mood swings, but there is no relevant mention of psychosis until 2012 when she was admitted to St. Francis.<sup>11</sup> (Tr., p. 444-445). Despite, Dr. Mulbry's opportunity for extended discussion of Ms. Simpson's condition and its treatment, he never once mentioned the contraindication of Adderall, that her care was inappropriate, or that her treatment caused her psychosis. In fact, on cross-examination, her Adderall prescription was discussed and he noted it to be a "typical dose," agreed that "stimulants (Adderall)" are a common and appropriate treatment, and that only "gross overuse" of Adderall can cause a psychotic episode. (Tr., p. 472-473; 482-483).

Later, Dr. Frierson also testified regarding Adderall, noting that Ms. Simpson had reported not taking Adderall on the day of the crime, while also noting that "it didn't surprise him" to see her urinalysis show a positive test for Adderall when taken at the hospital due either to confusion of which day she missed or her long-term use of the drug. Dr. Frierson testified that Ms. Simpson

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<sup>11</sup> As Dr. Smith's testimony demonstrates, this event followed from a period of time where Ms. Simpson was not taking her medications.

had been forthcoming about occasionally taking a second Adderall to help complete particularly important tasks, but that her records did not indicate any concerning requests for prescription refills and nothing concerned him regarding potential Adderall abuse. (Tr., p. 553-555). Most telling was this exchange between Solicitor Wilkins and Dr. Frierson:

Q. And, then, you would agree psychotic episodes can be caused by excessive use or overuse of Adderall?

A. Overuse of any amphetamine or abusing like methamphetamine, I'm sure everybody had heard of that, over use of amphetamines can cause worsening of psychotic symptoms. *We know in this particular case, however, that it is not the cause of her psychosis because when she was admitted to the St. Francis Hospital psychotic, she had no amphetamines in her system.*

(Tr., p. 554)(emphasis added). On redirect, notwithstanding Dr. Frierson's explicit assertion that Adderall did not cause Ms. Simpson's psychosis, he still received an opportunity to inform the jury that he harbored concern that Ms. Simpson was still being prescribed Adderall after her 2012 psychosis and paranoia, noting that it is "a relative contraindication to prescribing Adderall because Adderall can make those symptoms worse. . ." (Tr. p. 560-561).

With that testimony in mind, Dr. Ballenger's testimony is cast in the proper light. Dr. Ballenger testified that he is board certified in forensic psychiatry and neurology, and that he spearheaded the use of anticonvulsants and antiseizure mediations for the treatment of bipolar disorders. Dr. Ballenger reviewed Ms. Simpson's records and concurred with the defense experts' diagnosis of schizoaffective disorder, bipolar manic type, and characterizes them as the most complicated disorders to treat in psychiatry. (PCR Tr., p. 207-210). Dr. Ballenger then began his discussion of a theory called "kindling," which this Court summarizes as being a hypersensitive reaction to even a small amount of a drug, following prolonged use of that drug. As Dr. Ballenger suggested, kindling is supposedly a phase of drug interaction that, after a long enough period of

time, can replace “drug tolerance” where increasingly large amounts of the substance in question are needed to reach the same level of effect. (PCR Tr., p. 211-214; 229).

Dr. Ballenger’s testimony represents a compounding of new theories from Applicant that are not just lacking merit, but actively run counter to the defense’s existing trial strategy. While first attempting to lay the groundwork that, in contradiction to the testimony offered at trial, the Adderall was essentially *responsible* for Ms. Simpson’s psychosis and therefore responsible for her criminal actions, Applicant adds to the mix the premise that the *induced* psychosis in her case can come from Dr. Ballenger’s theory of “kindling.” However, what is noticeably absent from Dr. Ballenger’s testimony is whether his theory of kindling has any diagnostic relevance to Ms. Simpson. Dr. Ballenger admitted that 1) he has not personally treated Ms. Simpson, 2) he has not prescribed Ms. Simpson any medications, 3) he has never interviewed Ms. Simpson, and 4) he has never administered any Adderall to Ms. Simpson or observed Ms. Simpson after she receives a dose of Adderall to observe her reactions to the drug. Dr. Ballenger even went so far as to state: “I’m a forensic expert. I never treat people.” Also, when asked if he saw any evidence of kindling in Ms. Simpson’s records, he testified: “Well, I didn’t specifically look there.” (PCR Tr., p. 227-230). As a result, Applicant’s allegation that counsel was constitutionally ineffective for not pursuing a theory of Adderall Induced Psychosis is 1) a theory that is contrary to the expert testimony they had available in preparation and trial, and 2) further based upon a theory of kindling that is *entirely speculative* as it relates to Ms. Simpson. Absent any proof that Ms. Simpson actually suffered an induced psychosis through “kindling,” Dr. Ballenger’s testimony provides no factual basis that this theory is applicable to her case.

The combined testimony from trial and the PCR evidentiary hearing demonstrate that Applicant has failed to prove deficient performance or prejudice as it relates to her claim that

counsel were ineffective for not investigating and offering at trial a defense theory of “Adderall Induced Psychosis.” There are five separate reasons for this conclusion.

First and foremost, the issue itself was raised and refuted by the defense’s existing experts at trial. (Tr., p. 482-483; 554-555). Second, trial counsel are permitted to rely upon the information and expertise they received from experts when it comes to decisions regarding the defense’s trial strategy. *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003). Counsel were not under a duty to shop for experts that would provide differing viewpoints than the expertise already retained. *Id.* Third, the urinalysis forensic evidence available draws into question whether Ms. Simpson was even using Adderall at the time of the crime, creating a foundational hurdle for any theory that seeks to claim that Adderall induced a psychosis on the day of the crime. Fourth, since Dr. Ballenger’s testimony lacks any confirmation or facts demonstrating Ms. Simpson experienced the kindling phenomenon, this Court cannot fairly consider such a theory as having been overlooked by counsel in preparation for trial. Fifth, *even if* Dr. Ballenger had presented some evidence that Ms. Simpson experienced kindling as a basis for her psychosis, there is no basis for deficiency. Counsel hired multiple experts to evaluate Ms. Simpson and establish the case for insanity, counsel is permitted to rely upon those experts in flushing out what theories exist for the defense and counsel has not failed in his duty to investigate and provide reasonable objective representation simply because a different expert posits a different theory. *Id.* Each of these points demonstrates Applicant’s failure to prove deficient performance.

A demonstration of prejudice is likewise lacking because of the inability to show the alternative theory of “Adderall Induced Psychosis” has any basis in fact. Dr. Ballenger’s testimony fails to prove Ms. Simpson actually suffered from kindling, and this Court cannot find resulting prejudice absent such proof. An alternative theory does not necessarily mean a better theory, even

when a case is lost, and this Court finds no indication that there would be reasonable probability of differing result at trial under Applicant's alternate theory for the defense.

Applicant received excellent representation throughout her trial, she simply did not get the result she desired. Her theories for relief all seem to contain a veiled assertion that counsel were ineffective *because* they were not successful. As demonstrated above, such is an improper presumption and such is simply not true in this case. Applicant has failed to satisfy her burden of proof for post-conviction relief in this case.

**Applicant's claim (h): reservation of right to amend the Petition**

This Court is not aware of any other amendments or arguments raised by counsel that require consideration and a ruling.


**CONCLUSION**

For all the foregoing reasons, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that require this Court to grant any relief. This application for post-conviction relief must be denied and dismissed with prejudice.

**IT IS THEREFORE ORDERED:**

1. That this application for post-conviction relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the South Carolina Department of Correction.

IT IS SO ORDERED this 2<sup>nd</sup> day of June, 2025

  
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Patrick C. Fant, III, Circuit Court Judge

Pickens, South Carolina.