

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM
PICKENS COUNTY

The Honorable Patrick C. Fant, III
Circuit Court Judge

Case No. 2020-CP-39-0617

Suzanna Brown Simpson, # 368727

Petitioner,

v.

State of South Carolina

Respondent.

PETITION FOR A WRIT OF CERTIORARI

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Questions Presented

1. Did the PCR Court err in holding that trial counsel was not deficient for failing to investigate, interview, and prepare for Petitioner's treating physician as a witness, where the physician prescribed the medication at the center of the defense theory and counsel had actual notice the State would likely call him as a witness?
2. Did the PCR Court err in holding that trial counsel was not deficient for failing to raise the issue of mismanagement of Petitioner's medical treatment, and specifically, the contribution Petitioner's prescription Adderall had in her psychosis, where all experts agreed Adderall was contraindicated for patients with psychotic symptoms?
3. Did the PCR Court err in holding that trial counsel was not ineffective for failing to present good character evidence and lay witness testimony to counter the State's malice theme, particularly where the defense presented a "clinical, cold" case through expert testimony?

Statement of the Case

I. Introduction

On May 14, 2013, Petitioner Anna Simpson shot her two children and her husband. Her husband survived; her children did not. These facts have never been disputed. The sole issue at trial was whether Anna was criminally competent when she pulled the trigger. The jury found she was, and Anna is now serving life in prison.

All three forensic experts who testified in Anna's trial concluded that she was deeply sick and lacked the capacity to know right from wrong. One expert, a court-appointed forensic psychiatrist, said Anna was among the "less than one percent" of defendants he had ever found not criminally responsible. In anticipation of trial, this expert informed the defense team that Anna's treating psychiatrist, Dr. Jeffrey Smith, should not have prescribed her Adderall because it is contraindicated for psychosis and likely worsened her symptoms. Yet trial counsel never spoke to Dr. Smith about his treatment of Anna, and did not explore the destabilizing effects of her medication as a potential defense strategy.

The defense team's failure to investigate this line of argument was a disastrous error. The State, dissatisfied with the opinion of the Court's independently appointed expert, called Dr. Smith as a rebuttal witness and designated him as an expert. From the moment he learned of the killings, Dr. Smith was nervous. He expected that Anna's family and defense team would question his treatment protocol, and he was aware of the dangers presented by his treatment decisions. Initially, he agreed that Anna was criminally incompetent, but on the stand, he testified Anna was mentally ill but criminally responsible. This was a notable departure from his prior opinion, and the other experts' view that Anna was too sick to know right from wrong.

Dr. Smith's conflict of interest was obvious: acknowledging error could have harmed his reputation and exposed him to potential civil liability. This conflict and source of potential bias was ripe for impeachment on cross examination. However, Anna's counsel failed to impeach Dr. Smith about his shifting views of her criminal responsibility and his decision to continue Anna's Adderall prescription, despite knowing she had psychotic tendencies and often failed to take her mood stabilizer. Their failures were critical to the outcome of the trial because Dr. Smith was the only expert to testify that Anna was criminally responsible, forming the basis of the jury's verdict.

The defense team similarly failed to present testimony from available friends and family who knew and observed Anna's character and her deteriorating mental condition to counter the State's theory that the killings were motivated by Anna's depraved heart malice. The PCR record confirms counsel *knew* of these available defenses and yet neglected them, not as a matter of strategy, but simply because their focus was elsewhere. The PCR judge erred in finding otherwise, and this Court should grant this petition for certiorari and reverse, for the reasons stated fully below.

II. Background and Criminal Trial

In the early hours of May 14, 2013, Anna Simpson shot her husband and two children, left the house, got in her car, and drove it into a tree less than 100 yards away, breaking her back in the ensuing crash. As the jury would later hear, Anna claimed that at the time she believed that she was going to kill herself and family so they could be reunited in heaven. Anna was charged with two counts of murder, one count of attempted murder, and possession of a weapon during the commission of a violent crime.

The case was tried before a Pickens County jury from June 20 - 23, 2016.¹ Attorneys John Maudlin and Teal Johnson represented Anna at trial. At trial, the State contended that Anna intentionally and maliciously murdered her two children and attempted to murder her husband. The State's theory was based on the notion that Anna and her husband Michael were having marital problems. The prosecutors argued that Anna was an "angry woman" who knew right from wrong and was guilty of murder. In support of their case in chief, the State called neighbors, first responders, law enforcement officers, crime scene witnesses and others, including Anna's mother.

From the beginning, Anna's defense team pursued a singular defense: Not Guilty by Reason of Insanity ("NGRI"). Her team presented one lay witness, an Emergency Medical Technician who first arrived at the scene and observed Anna's psychotic mental state. They also presented three expert witnesses: Dr. William Mulbry, the retained defense forensic psychiatrist; Dr. David Price, the retained defense forensic psychologist; and Dr. Richard Frierson, a court-appointed independent forensic psychiatrist. Together, the witnesses described Anna's state of mind, her history of psychotic delusions and hospitalization, and her deteriorating mental condition, concluding that Anna was deeply sick and incapable of knowing right from wrong.

In rebuttal, the State called Dr. Smith, Anna's treating psychiatrist. Dr. Smith's testimony had been the subject of extended legal argument, since the State had been denied another appointed expert and had not notified the defense that Dr. Smith would be testifying in an expert capacity. The trial court nevertheless allowed Dr. Smith to testify as an expert capable of rendering an opinion on Anna's criminal responsibility. In his testimony, Dr. Smith conceded that he had not realized how sick Anna was, but nevertheless opined while she knew right from wrong, she could

¹ A more complete summary of the trial testimony is available in the Court of Appeals' prior decision in the direct appeal, *State v. Simpson*, 425 S.C. 522, 528-35, 823 S.E.2d 229, 232-36 (Ct. App. 2019) (overruled on other grounds by *State v. Wallace*, 440 S.C. 537, 892 S.E.2d 310 (2023)).

not conform her conduct to the law, thereby supporting a finding of Guilty But Mentally Ill (“GBMI”) and refuting Anna’s NGRI defense.

The jury found Anna guilty on all charges. The court sentenced her 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.

III. Direct Appeal

Anna filed a direct appeal, and the South Carolina Court of Appeals affirmed her convictions and sentences. *State v. Simpson*, 425 S.C. 522, 823 S.E.2d 229 (Ct. App. 2019). Anna then filed a petition for writ of certiorari to this Court, which granted the writ as to a single issue. Upon further consideration, this Court dismissed the writ as improvidently granted and the remittitur was issued on January 22, 2020. *State v. Simpson*, 429 S.C. 126, 838 S.E.2d 500 (2020).

IV. Post-Conviction Relief

On June 1, 2020, Anna timely filed a *pro se* petition for post-conviction relief (“PCR”). In her second amended petition, Anna alleged that her counsel was ineffective for failing to adequately investigate and prepare for Dr. Smith as a potential witness; failing to adequately investigate and present testimony regarding Adderall-induced psychosis; and failing to call available friends and family as mitigating witnesses.²

An evidentiary hearing was held on October 7 - 8, 2024, before the Honorable Patrick C. Fant. Anna was represented by Jim Bannister, who presented testimony from ten witnesses: Dr. Smith; Dr. Price; Dr. Frierson; defense counsel John Mauldin and Teal Johnson; four lay witnesses,

² Anna’s second amended petition asserted four additional theories not presented in this appeal.

all friends and family of Anna's; and an additional expert, Dr. James Ballenger. The State called Solicitor Walt Wilkins as its only witness.

Dr. Jeffrey Smith

Dr. Smith was Anna's treating psychiatrist from 2010 through the time of the incident. (PCR Day I, Tr. 21:04-06; A. 1155.) He initially diagnosed her with bipolar disorder, anxiety disorder, and confirmed her prior diagnosis of attention-deficit hyperactivity disorder ("ADHD"), prescribing Adderall for her ADHD and mood stabilizers to manage her bipolar disorder. (*Id.* at 21:07-11; 32:10-33:12; A. 1155; 1167.) Dr. Smith knew Anna had experienced psychotic symptoms on Nuvigil, a prescription stimulant, in 2011, and discontinued the medication. (*Id.* at Tr. 32:02-33:07; A. 1166-67.) Dr. Smith testified that if not combined with a mood stabilizer, stimulants like Adderall can cause bipolar patients to experience "severe mood swings and . . . psychosis." (*Id.*) For this reason, Dr. Smith testified it is "absolutely not" appropriate for a bipolar patient to take Adderall without taking a mood stabilizer. (*Id.* at Tr. 34:03-06; A. 1168.) He testified that he informed Anna "many times" about this risk. (*Id.* at Tr. 34:21-23; A. 1168.)

Dr. Smith testified that in 2010 when he first started treating Anna, if she had reported psychotic symptoms, Adderall would have been "off the table." (*Id.* at Tr. 35:13-17; A. 1169.) Yet he continued prescribing her Adderall after learning that she had experienced psychotic symptoms and was not strictly complying with the mood stabilizer. Under his care, Anna had two major psychotic episodes, including an emergency room visit in July 2012, followed by hospitalization for three days in August 2012. In both instances, Anna had failed to take her mood stabilizer, had a psychotic break, and was hospitalized. (*Id.* at Tr. 34:24-35:17; 31:03-15 A. 1168-69; 1165.)

Dr. Smith conceded that Adderall was contraindicated for patients exhibiting psychotic symptoms. (*Id.* at Tr. 33:15-20; A. 1167.) If taking Adderall, failure to take the mood stabilizer

could result in “severe” psychosis within days; prolonged absence of mood stabilizers alongside stimulant use could rapidly destabilize a bipolar patient. (*Id.* at Tr. 36:12-22; A. 1170.) Dr. Smith admitted that without Adderall, Anna would not have been at risk of psychosis and mania, but taking Adderall without her mood stabilizer left her vulnerable to psychosis even at a normal dosage. (*Id.* at Tr. 51:21-53:19; A. 1186-87.)

Critically, Dr. Smith testified that Anna’s defense team never approached him before trial. (*Id.* at Tr. 36:04-11; 36:23-37:01; A. 1170-71.) He expected contact from Simpson’s family and defense team. (*Id.* at Tr. 20:03-07; 23:15-24:06; 30:24-31:02; A. 1153; 1157-58; 1164-65.) He knew they would have questions and would possibly blame him, as Anna’s treating psychiatrist, for failing to adequately manage her prescriptions. (*Id.* at Tr. 20:03-20; A. 1154.) Instead, Dr. Price visited him in March 2016, nearly three years after the incident. (*Id.* at Tr. 28:03-10; A. 1161.) Dr. Smith was ultimately subpoenaed by the State less than two weeks before trial and received critical records just days before his testimony. (*Id.* at Tr. 29:04-22; A. 1163.)

Dr. Smith acknowledged he was not a forensic psychiatrist and lacked the requisite additional training on criminal responsibility. (*Id.* at Tr. 41:03-17; A. 1175.) He agreed that he was “probably not best suited” to testify to criminal responsibility and that the other experts were “in a better position” because they had a lot more time with the relevant records. (*Id.* at Tr. 42:01-07-43:07; A. 1176-77.)

Dr. David Price

Dr. Price, a forensic psychologist who was retained by Anna’s defense, testified to the PCR Court about his evaluation of Anna and his conclusions regarding her mental state at the time of the offense. Based on nine interviews conducted with Anna and a review of extensive medical and forensic records, Dr. Price diagnosed Anna with schizoaffective disorder, bipolar type. (*Id.* at Tr.

118:08-24; A. 1252.) He testified that this disorder manifested in severe psychotic symptoms, including delusions and paranoia, and opined that Anna was NGRI because she lacked the capacity to distinguish legal and moral right from wrong at the time of the offense. (*Id.*)

Dr. Price prepared a forensic report that covered Anna's history of signs of mental illness, her two psychotic breaks in 2012, and Dr. Smith's diagnosis of severe bipolar disorder. (*Id.* at Tr. 122:07-17; A. 1256.) He also interviewed Dr. Smith and Dr. Wayne Hanna, who treated Anna at the hospital following the killings. (*Id.* at Tr. 119:08-13; A. 1253.) Regarding Anna's medications, Dr. Price testified that Adderall is contraindicated for patients with psychotic disorders and is particularly problematic for bipolar patients. (*Id.* at Tr. 122:18-23; A. 1256.) He testified that when he met with Dr. Smith in March 2016, Dr. Smith appeared to concur with his findings and expressed concern about Anna's deteriorating mental health. (*Id.* at Tr. 28:06-10; 119:11-121:04; A. 1162; 1253-55.)

Dr. Richard Frierson

Dr. Frierson was appointed by the court to conduct an independent forensic psychiatric examination of Anna and to opine on her criminal responsibility. Dr. Frierson teaches forensic psychiatry at the University of South Carolina School of Medicine and is on contract with the South Carolina Department of Mental Health to perform forensic criminal evaluations. (*Id.* at Tr. 133:03-16; A. 1267.) In his career, Dr. Frierson has found less than one percent of defendants to be not guilty by reason of insanity. (*Id.* at Tr. 133:17-21; A. 1267.) Anna was in the one percent. (*Id.* at Tr. 133:23-25; A. 1267.)

Dr. Frierson was critical of Dr. Smith's treatment, noting that Dr. Smith saw Anna briefly every few months and continued prescribing Adderall despite her psychotic symptoms. (*Id.* at Tr. 138:03-12; A. 1272.) He emphasized that "if someone is delusional or hallucinating, they should

not be receiving the stimulant medication such as Adderall”. (*Id.* at Tr. 139:12-14; 154:03-09; A. 1273; 1288.) He further testified that if Anna was having trouble taking her mood stabilizer, Dr. Smith could and should have done more to address that issue. (*Id.* at Tr. 154:03-09; 155:11-17:08-24; A. 1288-89.)

Dr. Frierson testified that, no later than Anna’s psychotic break in 2012, Anna should have stopped taking Adderall. (*Id.* at Tr. 141:05-11; A. 1275.) But Dr. Frierson testified that Dr. Smith appeared unaware of the severity of Anna’s psychotic symptoms, despite her records from her psychotic break, and even *increased* her Adderall dosage after her 2012 hospitalization. (*Id.* at Tr. 141:05-145:09; A. 1275-79.) Frierson raised his concerns with the defense team prior to trial but was not given the chance to fully explain them during his testimony. (*Id.* at Tr. 141:12-17; 149:14-25; 135:15-20; A. 1275; 1283; 1269.)

Dr. James Ballenger

Dr. Ballenger, a forensic psychiatrist and expert on bipolar and schizoaffective disorders, reviewed Anna’s medical records and testified at the PCR hearing about the role of medication in Anna’s mental deterioration. (PCR Day II, Tr. 206:10-207:23; 210:03-24; A. 1340-41; 1344.) Dr. Ballenger criticized Dr. Smith’s treatment of Anna, explaining that her diagnosis of schizoaffective disorder, bipolar type, made her highly vulnerable to stimulant-induced psychosis. He testified that Adderall should have been taken “off the table,” noting that her records presented “a sea of red flags” cautioning against stimulants. (*Id.* at 220:22-221:04; A. 1354-55.) Dr. Ballenger emphasized

that Adderall and similar amphetamines are contraindicated for psychotic disorders. (*Id.* at Tr. 210:25-; 213:21-217:05; A. 1347-51.)

Describing “kindling,” he explained that repeated stimulant exposure sensitizes the brain, making psychotic episodes more severe, and opined that proper treatment, could likely have prevented the events of May 2013. (*Id.* at 210:25-215:16; 226:08-227:08; A. 1344-49; 1360-61.)

John Mauldin

John Mauldin was Anna’s lead trial counsel and testified that upon first taking the case, he “formed an opinion immediately that the case would involve extensive psychiatric or psychological involvement. . . .” (PCR Day II, Tr. 59:24-61:05; A. 1193-95.) That opinion led him to focus on expert testimony, to the exclusion of other defenses.

Mauldin first retained Dr. Mulbry, a forensic psychiatrist, who opined that Anna was not capable of distinguishing between right and wrong. (*Id.* at Tr. 63:09-64:19; A.1197-98.) Dr. Frierson, appointed by the court, agreed with Dr. Mulbry’s conclusion. (*Id.* at Tr. 67:12-68:04; A. 1201-02.) Unsatisfied with that result, the State sought another evaluation, but the court disallowed “another bite at the apple.” (*Id.* at Tr. 68:09-19; A. 1202.) Mauldin retained forensic psychologist Dr. Price, who shared Dr. Mulbry and Dr. Frierson’s view. (*Id.* at Tr. 68:20-69:09; A. 1202-03.) After filing notice of a NGRI defense, Mauldin expected the State to “provide us with something that they intended to use from an expert point of view to rebut that testimony,” but received no such notice. (*Id.* at Tr. 71:15-23; A. 1205.)

Mauldin testified that although he was aware that Dr. Smith was Anna’s treating psychiatrist, Mauldin “really did not believe [Dr. Smith] would be involved as the treating psychiatrist.” (*Id.* at Tr. 71:01-11; A. 1205.) Dr. Price told Mauldin that Smith agreed with his opinions, leading Mauldin to conclude he “should not be concerned with the possibility that Dr.

Smith might testify for the State.” (*Id.* at Tr. 75:05-15; A. 1209.) Mauldin never contacted Dr. Smith or prepared for his testimony until trial, when the State named him as a rebuttal witness. (*Id.* at Tr. 75:16-76:13; A. 1209-10.) In his PCR testimony, Mauldin admitted he should have interviewed Dr. Smith and regrets not doing so. (*Id.* at Tr. 77:05-20; A. 1211.)

Mauldin acknowledged he was aware of Anna’s prescriptions and that Adderall is contraindicated for someone with psychiatric symptoms, but he “never focused . . . on the contribution that the taking or not taking particular medicines could really be part of the root of the problem.” (*Id.* at Tr. 78:14-79:11; A. 1212-13.) He offered no specific explanation other than that his focus was elsewhere, and he “never took that direction.” (*Id.* at Tr. 79:10-18; 81:02-17; A. 1213; 1215.) During cross-examination, Mauldin challenged Dr. Smith in several areas but did not question his treatment decisions. (*Id.* at Tr. 80:14-21; A. 1214.) Mauldin also conceded that his singular focus on expert testimony caused him to overlook the benefit of additional character testimony to counter the State’s portrayal of Anna as a malicious killer and that he failed to ask certain questions on cross without any strategic reason. (*Id.* at Tr. 82:24-84:11; A. 1216-18.)

Teal Johnson

Teal Johnson, who served as co-counsel, testified that the defense heavily relied on expert reports concluding Anna was not criminally responsible, a strategy she later admitted was “obviously not effective.” (*Id.* at Tr. 180:22-181:23; 197:21-22; A. 1314-15; 1331.) Regarding Dr. Smith, Johnson agreed they did not expect him to testify but had him on a “list of possibilities.” (*Id.* at Tr. 188:22-189:08; A. 1322-23.) She regretted “that we didn’t at least go talk to him.” (*Id.* at Tr. 188:07-189:19; A. 1322-23.) Johnson conceded it is “better to at least make the attempt to speak with every potential witness regardless of whether you think they’re good or bad”. (*Id.* at Tr. 188:07-21; 197:23-198:07; A. 1322; 1331-32.)

Johnson also expressed regret for not presenting testimony from Anna’s family and friends, admitting she did not know why they failed to offer character evidence that would have humanized Anna, calling this failure “detrimental to [Anna’s] defense.” (*Id.* at Tr. 182:11-183:22; 186:04-14; A. 1316-17; 1320.) Johnson testified that lay witnesses could have shown Anna’s actions were “more of a medical issue than somebody who just decided all of a sudden that they were going to kill their children.” (*Id.* at Tr. 198:02-07; A. 1332.) She emphasized that in Pickens County, jurors would trust friends and family over a “big-city doctor,” noting the experts’ testimony was “very clinical” and “cold” whereas “real people, not doctors . . . may have made a difference.” (*Id.* at Tr. 200:17-201:17; A. 1334-35.)

Anna’s Family and Friends

At the PCR hearing, lay witnesses Susan Brown, Nancy Zeigler, Jessica Cummings, and Beth Simmons testified about Anna’s good nature and mental decline. (PCR Day II, Tr. 234:05-293:10; A. 1368-427.) Collectively, they described Anna as a loving mother, devoted wife, and responsible community member prior to the onset of her severe mental illness. (*Id.*) Susan Brown, Anna’s mother, testified that Anna was adopted into a stable, nurturing home and was deeply committed to her children and family. (*Id.* at Tr. 234:25-243:23; A. 1368-77.) Brown observed Anna becoming increasingly delusional in 2012 and 2013 and agreed trial counsel failed to present Anna’s good character and behavioral changes, leaving these aspects undeveloped before the jury. (*Id.* at 234:18-21; 243:2-246:24; A. 1368; 1377-80.) Jessica Cummings, a longtime friend, described Anna as warm and dependable. (*Id.* at 270:04-18; 271:17-276:24; 279:04-280:24; A. 1404-10; 1413-14.) She noticed increasingly bizarre behavior from Anna in 2012 and 2013 and stated that she was willing to testify but was not contacted by trial counsel. (*Id.* at 270:04-18; 277:04-279:03; A. 1404; 1411-13.) Beth Simmons, another close friend, echoed these

observations, calling Anna kind and responsible. (*Id.* at 282:25-288:06; 291:05-292:05; A. 1416-22; 1425-26.) Simmons testified that in 2012 and 2013, Anna’s conversations became hard to follow and “there was something off, definitely.” (*Id.* at 288:23-290:21; A. 1422-24.) Although Simmons attended Anna’s criminal trial, she was not asked to testify. (*Id.* at 282:20-23; A. 1416.)

Solicitor Walt Wilkins

Solicitor Walt Wilkins, the State’s sole PCR witness, testified that defense counsel never attempted to formally introduce character evidence. (*Id.* at 296:13-20; A. 1430.) He stated that if they had, the State would have introduced evidence of bad character. Pressed to give an example, Wilkins mentioned Facebook posts about Anna “punish[ing] her children” by “giving them hot sauce.” (*Id.* at 297:17-299:10; A. 1431-33.) Wilkins added that testimony from a witness who knew Anna as good, but never saw her ill, would have been used to the State’s advantage as evidence that Anna was capable of conforming her behavior. (*Id.* at 299:18-300:23; A. 1433-34.)

V. The PCR Court’s Order

On February 1, 2023, the PCR court issued an order denying Anna’s PCR application, finding that none of Anna’s asserted grounds for relief established that trial counsel was ineffective or that Anna suffered prejudice under *Strickland*. (Order Den. PCR; A. 1494-1550.)

In relevant part, the PCR court rejected Anna’s claim that trial counsel was ineffective regarding Dr. Smith’s testimony by concluding that counsel reasonably relied on Dr. Price’s assurance that Dr. Smith agreed with his assessment. (*Id.* at 49-51; A. 1542-44.) The court further held that, once learning Dr. Smith would testify for the State, counsel adequately prepared and delivered an effective cross-examination. (*Id.*)

Second, the PCR court rejected Anna’s claim that trial counsel was ineffective for not investigating or presenting expert testimony on Adderall-induced psychosis, finding counsel

prepared a reasonable defense, based on other theories presented by their experts. (*Id.* at 51-57; A. 1544-50.) It further held that Dr. Ballenger’s “new theories” regarding “kindling” in his PCR testimony were too speculative to show ineffective assistance or prejudice. (*Id.* at 55; A. 1548.)

Third, the PCR court rejected Anna’s claim that trial counsel was ineffective for not calling friends and family as mitigating witnesses. (*Id.* at 40-49; A. 1533-42.) It found that evidence of Anna’s behavior around the incident was already presented by the State’s witnesses and additional good character evidence under Rule 404(a)(1) would have been irrelevant and inadmissible. (*Id.*)

Standard of Review

“A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution.” *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101-02 (2013). “[C]ourts evaluate allegations of ineffective assistance of counsel using a two-pronged test.” *Id.*; *see also Strickland v. Washington*, 466 U.S. 668 (1984). First, the petitioner must demonstrate counsel’s representation was deficient, which is measured by an objective standard of reasonableness. *Id.* “Under this prong, ‘[t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.’” *Id.* (quoting *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989)). “Second, the applicant must demonstrate he was prejudiced by counsel’s performance in such a manner that, but for counsel’s error, there is a reasonable probability the result of the proceedings would have been different.” *Id.* In a criminal trial, this means “whether there is a reasonable probability that, absent the errors, the factfinder would have had reasonable doubt respecting guilt.” *Strickland*, 466 U.S. at 695.

Argument

I. Counsel was ineffective for failing to investigate, interview, and prepare for Dr. Smith as a witness.

A. The PCR court erred in finding that trial counsel was not deficient for failing to investigate Dr. Smith.

The PCR Court's finding that trial counsel was not deficient for failing to investigate Dr. Smith represents a fundamental misunderstanding of counsel's Sixth Amendment obligations. Under *Strickland v. Washington*, strategic choices are reasonable only if based on adequate investigation, and counsel must either conduct reasonable, complete inquiries or make informed decisions to forgo them. 466 U.S. 668, 690-91 (1984).

The law is well-established that failure to adequately investigate expert witnesses and mitigating evidence constitutes deficient performance. In *Hinton v. Alabama*, the Supreme Court found that counsel was ineffective for failing to adequately prepare critical expert testimony. 571 U.S. 263, 274-75 (2014). The Court held this duty extends not just to presenting expert testimony, but to understanding and preparing for the expert issues in the case. *Id.* In *Von Dohlen v. State*, this Court found counsel ineffective for failing to obtain medical records essential to diagnosing the petitioner's mental condition. 360 S.C. 598, 606, 602 S.E.2d 738, 742 (2004). The Court emphasized that although counsel had presented some psychiatric testimony, their failure to conduct a complete investigation deprived the jury of critical mitigating evidence. *Id.* Similarly, in *Council v. State*, this Court found deficient performance where counsel's investigation of the petitioner's medical and social history was delayed and incomplete, contrary to recognized professional standards. 380 S.C. 159, 170, 670 S.E.2d 356, 362 (2008); *see also Williams v. Taylor*, 529 U.S. 362, 397-98 (2000) (finding deficient performance where trial counsel failed to investigate and present mitigating evidence during the sentencing phase given the defendant's history of mental illness).

Here, counsel made no effort to interview Dr. Smith, despite knowing that he was the only available witness who had treated Anna and that his treatment decisions may have contributed to

Anna's psychotic tendencies. Counsel acknowledged knowing Dr. Smith was Anna's treating psychiatrist, aware of the State's dissatisfaction with Dr. Frierson, and even included Dr. Smith "on a list of possibilities." (PCR Day I; Tr. 189:05-08; A. 1323.) Given South Carolina's limited discovery rules, which do not require advance notice of expert testimony unless memorialized in discoverable materials, competent counsel should have investigated *any* potential State witnesses, including Dr. Smith.

However, the PCR court erred by fixating on whether counsel foresaw Dr. Smith as an *adverse* State witness. Counsel had a duty to investigate Dr. Smith's testimony, not because he might be adverse, but because – as the treating psychiatrist in a case involving Anna's psychiatric state – he was *a critical and material witness to Anna's psychiatric condition*. For that reason, it made no difference that Dr. Price related that Dr. Smith seemed agreeable. Counsel's failure to investigate was an abdication of duty, not a strategic choice. At the PCR hearing, Mauldin admitted he regretted not investigating Dr. Smith. Counsel's failure to interview the key witness to Anna's psychiatric decline – the case's *sole contested issue* – is inexplicable, and deficient.

The Fourth Circuit's decision in *Hoots v. Allsbrook* is instructive. There, counsel failed to interview identified eyewitnesses to a crime based on assumptions drawn from a review of police reports. 785 F.2d 1214, 1219-20 (4th Cir. 1986). The court held that failing "to interview available eyewitnesses to a crime simply cannot be ascribed to trial strategy and tactics." *Id.* The same logic applies here, where the sole issue contested issue was Anna's mental health. Counsel never interviewed Dr. Smith, the key eyewitness to that single issue. They instead relied on secondhand impressions and medical notes. In doing so, their performance fell far below reasonable diligence.

B. The PCR Court erred in finding no prejudice from counsel's failure to investigate.

Counsel's failure to investigate Dr. Smith permeates every aspect of this case. Under *Strickland*, a petitioner must show "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." 466 U.S. at 694. A reasonable probability is "a probability sufficient to undermine confidence in the outcome." *Id.*

Here, three experts, including a court-appointed psychiatrist, unanimously found Anna legally insane. (PCR Day I, Tr. 42:04-14; A. 1176). Yet the jury rejected this consensus largely due to Dr. Smith's surprise testimony. As Anna's longtime treating psychiatrist, his opinion carried unique weight, and counsel failed to anticipate his testimony, challenge his credibility, or expose his conflicts of interest, leaving the jury with an unrefuted medical basis for guilt.

Even minimal investigation would have allowed counsel to impeach Dr. Smith with his prior statements, expose his prescribing practices as a cause of Anna's psychosis, and show bias from potential malpractice liability. Dr. Smith's PCR testimony confirms that he continued prescribing Anna Adderall despite her psychotic symptoms and non-compliance with mood stabilizers. (*Id.* at 34:03-06; A. 1168.) These admissions, along with evidence that proper treatment could have prevented the tragedy, would have cast Dr. Smith's testimony in a completely different light. Counsel's failure to investigate allowed his testimony to devastate the case, creating overwhelming prejudice under *Strickland*.

This Court's decision in *McKnight v. State* found counsel ineffective for calling an expert whose methodology "bolster[ed] the State's theory of the case." 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008). The Court stressed that failure to prepare for expert testimony is not strategy, but deficient performance that prejudiced the defendant. *Id.* Here, the prejudice is even clearer.

The PCR court's finding of no prejudice rests solely on Dr. Smith's concession on cross-examination that Anna was sicker than he believed her to be, which the court described as "impactful." (Order Den. PCR at 51; A. 1542.) But this misapprehends both the harm his testimony caused and the measure of counsel's duty. When three experts support a not guilty verdict and the treating physician (whose testimony is compromised) supports a guilty verdict, counsel must investigate and attack the witness's credibility. The probability that proper preparation would have changed the outcome is not just reasonable, but overwhelming.

II. Counsel was ineffective for failing to raise the issue of mismanagement of Anna's medical treatment, and specifically, the effect of Adderall had on Anna's psychosis.

The PCR court erred in finding that counsel was not deficient for failing to develop evidence of medication mismanagement. The record shows Dr. Smith's decision to prescribe Anna Adderall violated basic psychiatric standards and likely contributed to Anna's psychosis. Indeed, every witness – Price, Frierson, Ballenger, *and even Smith* – agreed Anna should not have been prescribed Adderall given her history of psychotic symptoms. This concern is not hindsight; the defense knew this theory prior to trial and did nothing to develop it, despite its critical relevance to Anna's mental state and Dr. Smith's potential bias.

A. The PCR court erred in finding counsel was not deficient for failing to develop the medication mismanagement theory.

Dr. Frierson unequivocally testified that the standard of care requires a physician to cease prescribing Adderall if a patient develops any sort of psychotic or manic symptoms, noting that the risk of psychosis far outweighs the risk of not taking Adderall and "simply having ADHD or having difficulty concentrating." (PCR Day I, Tr. 139:05-20; A. 1273.) Dr. Price corroborated the standard, testifying that Adderall is contraindicated for patients with psychiatric disorders and "particularly problematic for bipolar patients." (*Id.* at Tr. 122:18-23; A. 1256.) Even Dr. Smith

admitted it is “absolutely not” appropriate to prescribe Adderall to a bipolar patient without mood stabilizer compliance, as this can result in “severe mood swings and . . . psychosis.” (*Id.* at Tr. 33:12-34:06; A. 1167-68.) He further acknowledged that Anna’s Adderall prescription – when she failed to take her mood stabilizer – put her at risk of psychosis, even at a therapeutic dosage. (*Id.* at Tr. 52:03-19; A. 1186-87.) Dr. Smith acknowledged that Anna presented multiple risks that heightened her susceptibility to Adderall-induced psychosis: prior psychotic symptoms on medication as early as 2011, regular mood stabilizer non-compliance, and a psychotic break requiring hospitalization in August 2012. (*Id.* at Tr. 32:02-33:11; 34:24-35:12; A. 1166-69.)

Dr. Smith saw Anna shortly after her 2012 hospitalization. Despite the risks he later identified in his PCR testimony, Dr. Smith continued prescribing and *even increased* Anna’s dosage of Adderall. (*Id.* at Tr. 143:12-145:10; A. 1277-79.) As Dr. Frierson explained, this reflected a misdiagnosis, since Anna’s concentration issues likely stemmed from intrusive thoughts caused by psychosis, not ADHD, making the increased dosage especially dangerous. (*Id.* at Tr. 145:11-24; A. 1279.)

Dr. Ballenger’s testified that the medical records presented a “sea of red flags” and that her Adderall prescription heightened her risk of psychosis. (*Id.* at Tr. 220:04-222:03; A. 1354-56.) He testified that with proper treatment, Anna would have been able to resume a “normal life,” and that this tragedy may have been averted. (*Id.* at Tr. 226:08-227:08; A. 1360-61.)

Despite having access to this evidence, trial counsel failed to develop it. Mauldin admitted that although all three experts had identified drugs Anna “was or wasn’t taking properly,” he never focused on the issue and didn’t recall discussing the dangers of Adderall treatment, “other than [what was] in their records.” (*Id.* at Tr. 79:05-18; A. 1213.) Dr. Frierson testified he raised the Adderall problem with counsel before trial and attempted to share this information with the jury,

only to be cut short by Mauldin in his direct examination. (*Id.* at Tr. 135:11-136:12; 148:19-149:21; A. 1269-70; 1282-83.) Mauldin mentioned possible malpractice briefly in closing, but without laying any foundation during Dr. Smith’s cross, it was too little, too late. (*Id.* at Tr. 80:14-281:17; A. 1214-15.)

In addressing this ground for relief, the PCR court made two reversible errors. First, despite uncontroverted testimony, it focused solely on Dr. Ballenger’s testimony and characterized the “theory” that Adderall exacerbated Anna’s psychosis as “new” and “lacking merit.” But the record clearly reflects that this theory was not new; it was presented to the defense team by Dr. Frierson before trial. Further, it is not without merit. The testimony is undisputed: Adderall is contraindicated for psychiatric symptoms, and without daily mood stabilizers, can worsen psychosis.

Second, the court misapplied the *Strickland* standard by requiring Anna to bear the burden of demonstrating “proof” that she “actually suffered an induced psychosis” (Order Den. PCR at 55; A. 1548). But *Strickland* focuses on counsel’s duty to investigate and pursue reasonable defenses. Defense counsel’s Sixth Amendment obligation at trial was to present theories that could have raised reasonable doubt in the minds of the jurors that Anna may not have been able to know right from wrong. Anna need only show that competent counsel would have pursued a theory which would have provided a medical justification for why Anna may not have known right from wrong. Nothing requires Anna to “prove” Adderall-induced psychosis at the time of the killings.

Mauldin’s justification for failing to pursue this theory is that he believed whether Anna was “properly treated by a treating psychiatrist beforehand” was irrelevant, since the defense had three forensic experts who could testify to her insanity. (PCR Day I, Tr. 81:04-12; A. 1213.) But the presence of experts did not obviate the need to develop factual evidence supporting their

conclusions. Indeed, expert opinions are only as strong as their factual predicates. By failing to establish that Anna’s psychosis may have been exacerbated by her psychiatrist’s prescribing decisions, counsel left those opinions weak to the State’s attack through Dr. Smith. This was simply a failure of attention, not strategy, and the court erred in finding otherwise.

B. Counsel was additionally deficient for failing to impeach Dr. Smith for bias based on this theory.

Beyond failing to develop the medication mismanagement theory, counsel compounded the error by not impeaching Dr. Smith for bias arising from his potential malpractice exposure. The Supreme Court recognizes that exposing a witness’s motive to lie is a core function of the constitutional right to confrontation. *See United States v. Abel*, 469 U.S. 45, 52 (1984) (“Bias is a term used in the ‘common law of evidence’ to describe the relationship between a party and a witness which might lead the witness to slant, unconsciously or otherwise, his testimony in favor of or against a party”); *Smalls v. State*, 422 S.C. 174, 182–83, 810 S.E.2d 836, 840 (2018) (“Our courts have followed the general rule that anything having a legitimate tendency to throw light on the accuracy, truthfulness, and sincerity of a witness may be shown and considered in determining the credit to be accorded his testimony, so that on cross-examination, any fact may be elicited which tends to show interest, bias, or partiality of the witness.”) (cleaned up); Rule 608(c), SCRE (“Bias, prejudice or any motive to misrepresent may be shown to impeach the witness either by examination of the witness or by evidence otherwise adduced.”).

Dr. Smith’s potential for bias was obvious. He admitted that after the killings, he expected Anna’s family and attorneys to contact him with questions and “possibly direct anger at him as treating psychiatrist.” (PCR Day I, Tr. 20:14-20; A. 1154.) The PCR record confirms Dr. Smith’s exposure: he was aware he had prescribed a stimulant to a patient with documented psychotic symptoms, in direct violation of established psychiatric standards; ignored repeated non-

compliance, prior psychotic episodes, and hospitalization; and even increased Anna's Adderall dosage after her psychotic break. Any competent malpractice attorney would recognize these facts as establishing a prima facie case of psychiatric malpractice. Yet counsel never asked if he feared liability, consulted an attorney or malpractice carrier, or whether his opinion that Anna was criminally responsible was influenced by his desire to minimize his own role in the tragedy.

This Court's decision in *State v. Brown* confirms that the Confrontation Clause guarantees the opportunity to cross-examine a witness for bias, explaining that "considerable latitude is allowed in the cross-examination of an adverse witness for the purpose of testing bias." 303 S.C. 169, 171, 399 S.E.2d 593, 594 (1991); *see also Smalls*, 422 S.C. at 181–85, 810 S.E.2d at 840–41 (finding counsel was ineffective for failing to impeach witness on credibility and bias of where witness admitted his testimony was based on solicitor's promise to dismiss charges). These principles apply with particular force to expert witnesses, whose opinions may be shaped by interests beyond truthfulness. Similarly, *Reeves v. State* illustrates the duty to challenge medical testimony when grounds exist. 415 S.C. 366, 377, 782 S.E.2d 747, 752 (Ct. App. 2015). The court found counsel deficient for failing to consult with or call a medical expert to rebut the State's evidence, emphasizing that the absence of any legitimate trial strategy for not challenging the medical evidence constituted ineffective assistance. *Id.* Here, the failure is even more glaring because counsel had the ammunition for impeachment but simply failed to use it.

C. The prejudice from counsel's failures regarding the medication issue is overwhelming.

Counsel's failure to develop the medication mismanagement evidence and to impeach for bias fundamentally altered this case. Had the jury heard the evidence developed at the PCR hearing, which was available prior to trial, the jury would have received a completely different narrative: not of a mother acting with malice, but of a patient whose psychiatrist's malpractice

increased the likelihood that she would experience a psychotic break and suffer tragic consequences.

As Dr. Ballenger testified, proper treatment could have prevented the tragedy entirely. (PCR Day II, Tr. 226:08-227:08; A. 1360-61.) This single statement underscores why counsel's failure was so prejudicial. The jury's task was to determine whether Anna acted with malice or was legally insane. Evidence that her psychosis stemmed from medical negligence would have powerfully supported the insanity defense undermined the credibility of the sole dissenting expert. Furthermore, the medication mismanagement evidence would have reinforced the other experts' conclusions that Anna was legally insane. Evidence showing that her psychiatrist violated basic standards by prescribing contraindicated medication would have given those opinions far greater weight. The jury would not have been asked to excuse criminal conduct but to recognize the medical reality of Anna's psychosis.

The same is true of bias impeachment. Once the jury understood that Dr. Smith faced potential malpractice liability, his opinion attributing Anna's conduct to criminal responsibility rather than medical error would have appeared self-serving. Instead of viewing him as an objective treating physician, the jury would have recognized his incentive to minimize his own responsibility.

Under *Strickland*, prejudice exists when counsel's errors undermine confidence in the outcome. 466 U.S. at 694. Here, counsel's failure to develop and present evidence central to the defense theory that psychosis, rather than malice, caused Anna's actions, destroys any confidence in the verdict. The probability of a different result is not speculative, but likely.

III. Counsel was ineffective for failing to present good character evidence and lay witness testimony to counter the State's malice theme.

A. The PCR Court's failure to apply *Pantovich* constitutes reversible error.

The PCR court erred in rejecting Anna’s claim regarding the failure to present character evidence, misapplying this Court’s precedent in *Pantovich v. State*, 427 S.C. 555, 832 S.E.2d 596 (2019).³ *Pantovich* holds that character evidence is critical when a defendant’s mental state is disputed. The PCR court’s failure to recognize the applicability of *Pantovich* to a case where the entire defense turned on Anna’s mental state at the time of the offense constitutes reversible error.

Character evidence and lay witness testimony in mental health cases provides essential context, helping a jury understand how mental illness, not moral failing, can drive inexplicable acts. A defendant may rely on lay witness testimony to establish insanity. *See State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997); *see also State v. Hinson*, 253 S.C. 607, 172 S.E.2d 548 (1970); *see also Von Dohln*, 360 S.C. 598 (emphasizing the importance of investigating and presenting mental health evidence, including lay witness testimony, when such evidence is reasonably available and could influence the outcome of the trial). Without this context, juries default to the State’s narrative rather than medical causation. That occurred here: counsel’s failure to humanize Anna left the jury with only the State’s narrative of a malicious mother.

Both trial attorneys admitted the omission was error without a strategic justification. (PCR Day I, Tr. 186:08-14; A.1320.) Johnson acknowledged that friends and family could have explained how Anna “snapped.” (*Id.* at Tr. 196:03-197:03; A. 1330-31.) Mauldin likewise conceded there was no strategic reason for their failure.⁴ (*Id.* at Tr. 83:03-05; 83:14-17; A. 1217.)

³ The PCR Court’s order incorrectly states that because Anna invoked NGRI as an affirmative defense, the State no longer had the “burden to prove malice beyond a reasonable doubt in the minds of the jury.” (Order Den. PCR at 44-45; A. 1537-38.) Under well-settled law, the State is required to prove every element of a crime beyond a reasonable doubt, and any affirmative defense, including NGRI, does not negate this requirement. *See Smart v. Leeke*, 873 F.2d 1558, 1562 (4th Cir. 1989) (holding that even when a defendant pleads an affirmative defense, the State cannot return a guilty verdict unless it has proven every element beyond a reasonable doubt).

⁴ The PCR Court also erred in finding that good character witness would have opened the door to “bad character” evidence. Although good character evidence can open the door to cross-examination as to particular bad acts or conduct, testimony merely recounting a witness’s version of events does not open the door for the State. *See State v. Young*, 378 S.C. 101, 661 S.E.2d 387 (2008) (holding that defendant’s testimony that he hated to see a woman cry did not open the door” because it “was simply part of his narrative recounting his version of the events that occurred on

This Court has recognized that “[c]ounsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness.” *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002). Both trial attorneys acknowledged they had no strategic reason for omitting character evidence and regretted the decision, making the PCR court’s finding that their performance was not deficient untenable. The failure was critical because, in a case where a mother was charged with killing her own children, counsel’s failure to present testimony showing Anna’s loving, nonviolent nature before mental illness destroyed her life left the jury with unanswered questions that undermined the insanity defense and deprived Anna of a fair trial.

In *Weik v. State*, this court found counsel ineffective for failing to present readily available social history mitigation evidence during capital sentencing. 409 S.C. 214, 223, 761 S.E.2d 757, 762 (2014). Although counsel introduced psychological testimony, evidence of the defendant’s chaotic upbringing and dysfunctional family was omitted. *Id.* The Court emphasized that decisions made in ignorance of relevant, available information cannot be deemed strategic. *Id.*

The failure here is even more pronounced because counsel knew of the available character evidence yet present none. Johnson acknowledged that friends and family could have testified that Anna was a good mother before her psychotic break and that such lay testimony would have “further bolstered that it was more of a medical issue than someone who just decided all of a sudden that they were going to kill their children.” (PCR Day I, Tr. 198:02-07; A. 1332.)

The PCR court also overlooked the challenge of presenting a mental health defense to a rural jury. Johnson testified that in Pickens County, having friends and family testify was

the night in question”). Here, lay witness testimony regarding the witnesses’ version of events surrounding Anna’s behaviors and mental state would not have necessarily opened the door for the State to introduce “bad” character evidence. Even if it had, the State’s failure to present its “bad character” evidence at PCR indicates that the State had nothing to offer but an alleged Facebook post involving Anna giving her children hot sauce, something the defense would have known through discovery.

particularly important, because “[r]eal people, not doctors, may have made a difference.” (*Id.* at Tr. 201:07-17; A. 1335.) Such testimony would have powerfully corroborated expert evidence that Anna’s actions stemmed from mental illness, not malice.

B. The prejudice from presenting a “clinical, cold” defense with no character witnesses was devastating.

The prejudice from counsel’s failure to present character evidence was substantial. By presenting a “clinical, cold” defense through expert testimony, defense counsel left the jury without any emotional connection to Anna or understanding of the tragedy that her mental illness had wrought. This failure deprived the jury of evidence essential to understanding and accepting the insanity defense.

The State painted Anna as an “angry woman” who killed with malice, an inherently emotional narrative. To counter it, the defense needed to provide an alternative story equally grounded in human understanding. Expert diagnoses alone could not provide this; only testimony from those who knew Anna, and could describe her as a loving mother before her dramatic decline into mental illness, could effectively rebut the State’s portrayal.

The absence of character evidence left the jury without context for the insanity defense. Experts offered clinical diagnoses, but without testimony showing how mental illness transformed Anna from a loving person into someone capable of tragedy, the jury was asked to apply abstract principles rather than understand a concrete human reality. Failing to present character evidence also undermined the experts’ credibility. When three experts testify to legal insanity without evidence of who Anna was as a person, their opinions appear detached and purely clinical. Jurors naturally question whether the experts really understood Anna. Character witnesses would have provided the human context needed to make those opinions persuasive.

Under *Strickland*, the relevant question is whether there is a “reasonable probability” that character evidence would have changed the outcome. 466 U.S. at 694. Given the emotional nature of the charges, and that three out of four experts testified in support of insanity, character evidence could easily have tipped the balance. The PCR court’s failure to recognize this prejudice reflects a misunderstanding of the law and the role of character evidence in mental illness cases. The prejudice here was concrete: both attorneys admitted the omission harmed the defense, and the State exploited it by portraying Anna as malicious while the defense offered no alternative narrative. In a case where mental state was everything, the lack of human context for expert testimony fundamentally undermined the defense.

Conclusion

Based on the above, certiorari should be granted, the order of the PCR Court reversed, and the case remanded for a new trial.

Respectfully submitted,

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