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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
The Honorable Patrick C. Fant, III

Appellate Case No. 2025-001244
Case No. 2020-CP-3900617

Suzanna Brown Simpson, #368727 Petitioner,

v.

The State of South Carolina Respondent.

Appendix
Vol. II

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12 B E F O R E:
13 The Honorable Brian M. Gibbons, Judge;
and a jury.

15 | A P P E A R A N C E S:

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 Betty C. Strom, Esquire
 17 Attorneys for the State

18 John Mauldin, Esquire
Teal Johnson, Esquire
19 Jacob Goldstein, Esquire
Attorneys for Defendant

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24 Circuit Court Reporter

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For the Defendant:

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:48 a.m.)

4 THE COURT: All right. Anything from the
5 attorneys before we bring the jury in? Okay.

6 (WHEREUPON, the jury entered open court at
7 9:59 a.m.)

8 THE COURT: All right. All members of the jury
9 are present.

10 Good morning, ladies and gentlemen. I hope you
11 had a wonderful evening. We'll jump right into it this
12 morning.

13 The State, as you recall, rested yesterday, and
14 now the defense will put forth witnesses.

15 Ready to proceed, Mr. Mauldin?

16 MR. MAULDIN: Yes, I am. Thank you, Judge.

17 Michael Weight, come around, please.

18 **MICHAEL WEIGHT,**

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE CLERK: If you would have a seat and state
21 your name for the record.

22 THE WITNESS: My name is Michael Weight.

23 **DIRECT EXAMINATION**

24 **BY MR. MAULDIN:**

25 Q Michael, where do you live?

1 A Pardon me?

2 Q Where do you live?

3 A Greenville, South Carolina.

4 Q Okay. And who are you employed by?

5 A Pickens County EMS.

6 Q Were you employed by the Pickens County EMS back
7 in May of 2013?

8 A Yes, I was.

9 Q And what was your role or duties with EMS at that
10 time?

11 A I'm a paramedic. What I do is I handle
12 emergencies, whether it's an injury or illness.

13 Q All right. So you ride around in these EMS trucks
14 and administer emergency care?

15 A Yes, sir.

16 Q Is that fair to say?

17 A Yes, sir.

18 Q All right. And was that your duty or was that a
19 description of what you did for Pickens County EMS back
20 in May of 2013?

21 A Yes, sir.

22 Q Did you, in the early morning hours, have the
23 occasion in that capacity to proceed to Cherokee Trail
24 in Dacusville?

25 A I'm sorry. I didn't understand your question.

1 Q All right. In the capacity as a Pickens County
2 EMS, did you find yourself going to Cherokee Trail in
3 Dacusville for a call?

4 A Yes, sir.

5 Q And do you recall that call?

6 A Yes, very well.

7 Q All right. I want you to tell the jury what your
8 roll was and what you observed when you arrived at the
9 scene.

10 A We were dispatched out for a motor vehicle
11 accident. It was early in the morning. It was pretty
12 close to the station. It was down by Dacusville Middle
13 School.

14 When we arrived on scene, Dacusville fire and
15 rescue was already on scene. There was one vehicle.
16 It was a rollover. They were having a hard time making
17 entry into the vehicle so they did have to use like the
18 Jaws of Life to like pop the door.

19 Q Don't speak too fast. Slow down. Make sure that
20 the jury can hear you. Go ahead.

21 A Sorry. When they made entry into the vehicle, of
22 course, we did our first initial assessment, asked the
23 patient if she was injured. The patient stated that
24 her back hurt. That was her only complaint at the
25 time. So we -- since it was a rollover, of course, we

1 went ahead and put the patient on a long spine board
2 and C-collar and moved the patient to the ambulance.

3 Q All right. Did you participate in taking her out
4 of the vehicle?

5 A Yes. To some degree, yeah. There was several
6 people there.

7 Q All right. And she was laid on a piece of
8 equipment designed for that type of injury?

9 A Yes, sir.

10 Q What then happened?

11 A Well, we got her to the ambulance. Of course, I
12 started my assessment again to make sure that she was
13 okay, checking for further injuries. When we were
14 removing her from the vehicle, the only thing she would
15 tell us was that her back hurt. She didn't really want
16 to talk or explain anything else. I was concerned
17 because it was early in the morning, it was a young
18 woman, and she looked like she was in her pajamas. So
19 I was looking for children. I didn't know. Because
20 the truck rolled over, they could have been ejected.

21 Checking the scene, I noticed that she was running
22 parallel to Cherokee, did not slow down, and she made
23 her way back onto the road and then flipped the
24 vehicle. But after noticing that and there was no
25 children, I went ahead and started doing an evaluation

1 of her psych, make sure she didn't have any head injury
2 or any other broken bones.

3 While doing that, she just didn't want to talk to
4 me. She was very contrary. I was doing my assessment,
5 put an IV in her. I kept asking her questions to
6 evaluate her mentality, you know, her level of
7 consciousness to determine whether or not she did,
8 indeed, have a head injury.

9 And with my questioning, it irritated her, and
10 then she blurted out what she did say.

11 Q And what did she say to you?

12 A "Okay. Okay. I shot my family."

13 Q All right. And was there any attempt at that time
14 to determine where that had happened? I mean, did
15 she -- was there any effort to find out where her
16 family would be?

17 A Well, on scene there was bystanders. Everybody
18 knew each other evidently in that little area, and they
19 said that she lived just a couple doors down.

20 Q All right. Okay. What did you then do?

21 A Then I stopped the ambulance immediately and had
22 the rescue driver at that time driving us return back
23 to the scene which was only maybe a block or two down
24 the road. And when I returned to the scene, I got out
25 of the ambulance and I secured the scene. I told the

1 fire department, "Put up the yellow tape. Nobody goes
2 past this line. This is a possible crime scene."

3 And while returning back to scene, I had called
4 for the sheriff's department, told them we may have a
5 crime, and they were there within a couple minutes. It
6 was very fast. And when they arrived, I picked up the
7 tape, they drove in, they went into the home quickly,
8 secured it, and one officer came out and said, "We have
9 one that's still alive. We need you in here
10 immediately." So then I grabbed my equipment. I went
11 into the house.

12 Q All right. And you discovered Michael Simpson was
13 still alive?

14 A Yes, sir. Yes, sir.

15 Q Did you, after doing that activity, did you then
16 end up back in the ambulance with Anna Simpson?

17 A Yes, sir.

18 Q All right. Did she make statements to you about
19 why -- you know, why she had done this? What did she
20 say to you about why she had done it?

21 A She just said that her family had told her to do
22 it.

23 Q All right.

24 A And we didn't press her, of course, for -- it
25 wasn't my job to ask her questions, but she was very

1 confused. She was crying a little bit, of course. She
2 just didn't understand why -- what was going on.

3 Q She did not understand what was going on?

4 A Not really. She knew what she had did. She knew
5 what she had did. She told us what she had did, but at
6 the same time, she was confused. She really just --

7 Q All right. Did she make any statement to you
8 regarding what she felt she was supposed to do?

9 A She said she was supposed to shoot her family.
10 That's all she would say.

11 Q All right. Now, in preparation for this trial,
12 this occurred three years ago?

13 A Yes, sir.

14 Q In preparation for this trial, I believe you had
15 an opportunity to meet with the prosecutor when he
16 discussed your potential testimony?

17 A Yes.

18 Q All right. Do you recall that meeting?

19 A Yes, sir.

20 Q Do you recall what you informed the prosecutor
21 about -- do you recall what you informed the prosecutor
22 back in May about what she specifically said to you
23 about what she had done?

24 A Yes.

25 Q All right. And would you repeat that? Tell this

1 jury what you told the prosecutor.

2 A I don't know if I can do it word for word, but
3 I'll give it a shot.

4 Q And I will hand you a document.

5 A Sure. That would be great.

6 Q I want you to look at this, and then I'll take it
7 back and let you testify. Just to refresh your memory.
8 Right here and here. Just refresh your memory, and
9 when you've read it, hand it back to me and testify to
10 the jury.

11 All right. Now, is your memory refreshed?

12 A Yes.

13 Q All right.

14 A She had said --

15 Q Okay. Mr. Weight, what did you tell the
16 prosecutor that you recall her saying?

17 A That she was supposed to shoot her family. That
18 she was told to shoot her family. Her family, you
19 know, her family told her to shoot them. Them,
20 basically. I'm sorry. I'm nervous.

21 Q Did she -- and I'll be glad to hand this back to
22 you once again if you wish. Did she say to you, "I
23 didn't do anything wrong"?

24 A Correct.

25 Q Is that what she told you?

1 A Yes, sir.

2 Q "I didn't do anything wrong. I did what my family
3 told me to do"?

4 A Correct.

5 Q Okay.

6 A She said that in the ambulance.

7 Q And is that accurate?

8 A Yes, sir.

9 Q And is that exactly what she told you that day in
10 the ambulance?

11 A Yes, sir.

12 Q Okay. Also in that meeting with Mr. Wilkins, did
13 you -- how did you describe her? And, again, I'll hand
14 you this document if you wish to have that refreshed.

15 A Sure.

16 Q Do you remember how you described --

17 A I would describe her as confused. To me, when I
18 looked at her, it looked like something had broken.
19 She had lost a little bit of reality. She knew what
20 she did at the same time, but on the other aspect of
21 it, she didn't understand, to me, what really happened.

22 Q Did you tell Mr. Wilkins that she just wasn't all
23 there?

24 A Yes, sir.

25 Q Did you tell Mr. Wilkins that you could tell that

1 something about her just wasn't right?

2 A Yes, sir.

3 Q Okay. Thank you, Mr. Weight, for your testimony.
4 Just answer any questions Mr. Wilkins might have for
5 you.

6 MS. STROM: May I have that document, please?

7 THE COURT: All right.

8 Solicitor.

9 MS. STROM: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. STROM:

12 Q First of all, as to this document that he used to
13 refresh your memory, that is a document -- it's, in
14 fact, a letter that Mr. Wilkins, the Solicitor, wrote
15 to Mr. Mauldin explaining to him what you told us?

16 A Yes, sir -- yes, ma'am. Sorry.

17 Q That's all right. Don't worry about it.

18 So it's something -- it's information we provided
19 to the defense?

20 A Yes, ma'am.

21 Q Okay. Now, back when you're in that ambulance,
22 when you first get to Anna Simpson, you said her first
23 comments were about her back, correct?

24 A Yes, ma'am.

25 Q Her back was hurt?

1 A Correct.

2 Q You would ask her other questions and she wouldn't
3 answer you?

4 A Yes, ma'am.

5 Q Okay. And then you said that ultimately she
6 talked about shooting her kids, correct?

7 A Yes.

8 Q What did you tell her right before she told you
9 about shooting her kids?

10 A I told her, I said, "Ma'am, you have to talk to
11 me." Because after I did my assessment, I could find
12 absolutely nothing wrong with her.

13 Q Okay.

14 A All her vital signs were completely normal. Her
15 mentation appeared to be completely normal and intact.
16 There was no injury to her head.

17 Q She had no injury to her head?

18 A Well, she had an abrasion, I believe, but nothing
19 severe.

20 A Nothing severe?

21 A No, ma'am. And I could tell she was just
22 agitated. She just did not want to talk to me. And I
23 started to explain to her, I said, "Ma'am, if you don't
24 talk to me and explain to me what's going on or answer
25 my questions, that you will have to go to a higher

1 level of care." The trauma bay, is what we call it,
2 where there is a great deal more medical attention.
3 And then she shouted out, "Okay. Okay. I shot my
4 family."

5 Q What did you specifically tell her about what
6 would happen to her at trauma bay?

7 A I said that there is a lot of different procedures
8 that's going to happen to you that's not going to be
9 pleasant. When you go to the trauma bay, they, of
10 course, they check rectal, they check -- well,
11 basically, every orifice of your body to make sure
12 there's no fluid, no blood, or any kind of injury. And
13 then that's when she said, "Okay. Okay. I shot my
14 family."

15 Q Thank you. I have no further questions.

16 MR. MAULDIN: All right. Come down, Mr. Weight.
17 Thank you.

18 THE COURT: All right. Thank you, sir. You can
19 step down.

20 Call your next witness.

21 MR. MAULDIN: Call Dr. Mulbry, please, Bill
22 Mulbry.

23 LEONARD WILLIAM MULBRY, JR., M.D.,
24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: If you would have a seat and state

1 your name for the record, please.

2 THE WITNESS: My name is Leonard William Mulbry,
3 M-u-l-b-r-y, Junior.

4 DIRECT EXAMINATION

5 BY MR. MAULDIN:

6 Q Dr. Mulbry, where are you employed?

7 A I'm currently in private practice, primarily in
8 private practice, down in Charleston.

9 Q In Charleston?

10 A Yes, sir.

11 Q All right. Now, I'm going to ask you, make sure
12 you direct your voice to the jurors so that they can
13 hear you. All right.

14 And you're in private medical practice; is that
15 right?

16 A I -- I have primarily a forensic practice. In
17 other words, I do primarily forensic psychiatry. I
18 treat patients about a third of the week, and I
19 evaluate people for the courts about two thirds of the
20 week.

21 Q And are you a doctor?

22 A I'm an MD, a medical doctor, yes.

23 Q Would you please describe your educational
24 background for the jurors.

25 A Yes. I have a bachelor of science from

1 Williamette University in Oregon. I have a master's
2 degree in neuropharmacology from the University of
3 California Davis. I then went to medical school,
4 University of Kentucky. I did an residency in
5 orthopedic surgery at the University of Arizona,
6 followed by a fellowship in hand and microsurgery at
7 the Indiana Hand Center. I practiced hand and
8 microsurgery down in Charleston for about -- well, in a
9 couple cities, San Francisco, Denver, and Charleston,
10 for about 18 years. I went back in 2004 and did a
11 second residency, went back to the medical school at
12 MUSC, and did a residency in general psychiatry
13 followed by a fellowship in forensic psychiatry. And
14 I've been practicing forensic psychiatry since that
15 time.

16 Q And I want you to take just a moment and describe
17 to the jury the distinction between general psychiatry
18 and a speciality of forensic psychiatry. What does the
19 term "forensic" mean at least in your capacity -- in
20 your context?

21 A The word "forensic" really just means legal. And
22 there is a whole branch of psychiatry that's dedicated
23 to applying the principles of psychiatry, the research,
24 the clinical skills, the knowledge base that psychiatry
25 brings to bear to the courts. Turns out the courts

1 have a great deal of use to determine people's states
2 of mind at various times. The bread and butter of the
3 simple everyday stuff is what's called competency to
4 stand trial. In other words, quite often people that
5 are mentally ill commit crimes. And the question is do
6 they have the capacity, the ability, to move through
7 the judicial system in a fair fashion so that they can
8 defend themselves. So that's really a large part of
9 what I do forensically is are people competent to stand
10 trial.

11 Another thing that we do is these kinds of
12 evaluations. We call them criminal responsibility. In
13 other words, what was the state of mind at the time of
14 the charges. We do mitigation reports. In other
15 words, does the mental illness play role in the crime,
16 and if so, should that make a difference in what
17 happens to the person in the court, in the judicial
18 system.

19 And, of course, I don't do much work for the civil
20 courts, but you can. I do a little bit of probate
21 court, evaluating what people need, that being
22 appointed a guardian, conservator, a little bit of
23 work, you know, somebody is in a car accident and
24 somebody says they have a head injury and they can't
25 remember anything anymore, you might evaluate somebody

1 like that. For the most part, we use psychiatric
2 skills and knowledge base to evaluate people and
3 provide information to the court to guide them through
4 cases.

5 Q Dr. Mulbry, do you also participate in teaching
6 responsibilities, educational responsibilities
7 regarding this speciality?

8 A I have two, two teaching responsibilities. I have
9 a half-day clinic at the Medical University of South
10 Carolina where I see regular psychiatric patients.
11 There's some contact with residents there. I also
12 teach the medical students. I teach the ethics -- I'm
13 one of the people that teaches the ethics course. I
14 also help evaluate -- all medical students have to be
15 observed doing a clinical evaluation for about
16 20 minutes. So I help do those evaluations where
17 you're evaluating their ability to sit down and talk to
18 somebody for 20 minutes.

19 I also do -- we have a course called -- where we
20 teach medical students how to approach delirium, which
21 is a rather urgent medical problem, so I participate in
22 that. So I do those three things for the medical
23 university.

24 I also have an appointment as adjunct faculty at
25 the Charleston School of Law. And another one of my

1 colleagues and myself teach a course called Psychiatry
2 and the Law down at the law school.

3 Q Are you a member of any professional organizations
4 that relate directly to the issues before this jury?

5 A I'm a member, of course, of the American Medical
6 Association and the American Psychiatric Association.
7 But my specialty ones are the American Association for
8 Psychiatry and the Law, which is kind of the group for
9 forensic psychiatrists. I'm also a member of ATSA
10 because I do -- I evaluate sex offenders sometimes. So
11 I'm a member of what's called ATSA, the Association for
12 the Treatment of Sexual Abuse. And I'm a member of
13 that. It's kind of an educational thing where it helps
14 you keep track of your skills.

15 Q Are you board certified in forensic psychiatry,
16 and assuming the answer is yes, I want you to explain
17 to the jury the significance of being board certified.

18 A I'm board certified, of course, in general
19 psychiatry and forensic psychiatry. There are two
20 separate boards. The forensic board requires a
21 year-long fellowship, which I did at MUSC. It also
22 requires that you pass a test. They give you a test
23 you have to do. And it requires a certain amount of
24 experience. You get most of that in fellowship. And,
25 again, it's a skill set. It's sort of over and beyond

1 the usual training that most of the psychiatrists get,
2 and it's specifically to be able to answer questions
3 for the courts.

4 Q Are you licensed to practice in South Carolina?

5 A I am, both. I am, yes.

6 Q Have you been qualified as an expert witness in
7 the courts of South Carolina in the area of forensic
8 psychiatry?

9 A In state, federal, and military, actually, about
10 65 times, I would estimate.

11 Q All right.

12 MR. MAULDIN: Your Honor, we offer Dr. William
13 Mulbry as an expert in the field of forensic
14 psychiatry.

15 THE COURT: Any further voir dire from the State?

16 MR. WILKINS: No further voir dire, Your Honor.
17 Without objection.

18 THE COURT: All right. He is qualified as an
19 expert in the field of forensic psychiatry.

20 Ladies and gentlemen of the jury, remember what I
21 told you the past couple days about what an expert
22 witness can do. An expert witness can, in addition to
23 testify about whatever facts he or she may have
24 perceived, they can also testify in the form of an
25 opinion. Okay? And you can use that opinion and give

1 it whatever weight and credibility you believe it
2 deserves with all the evidence in the case when you
3 consider it. Okay? Thank you.

4 MR. MAULDIN: Thank you, Your Honor.

5 Q Dr. Mulbry, did I contact you about Anna Simpson's
6 case?

7 A Yes.

8 Q And do you recall when I made that contact?

9 A I think February 21st, 2014.

10 Q And were you asked at that time by me to examine
11 and evaluate Anna Simpson for criminal responsibility?

12 A Yes, I was asked to do that.

13 Q All right. And before we get into the results of
14 that evaluation, was it your understanding at that time
15 that any fees, costs or otherwise that would be
16 incurred would have to be approved by the circuit judge
17 before being paid by the State of South Carolina?

18 A Yes, sir.

19 Q All right. You understand that?

20 A Yes, sir.

21 Q All right. Can you explain very briefly to the
22 jury what the -- what this examination or evaluation
23 would consist of?

24 A Okay. In this case, we had rather extensive
25 records which is unusual but good. And so I was sent a

1 stack of records, an extensive stack of records, mostly
2 Ms. Simpson's medical, psychiatric, and other
3 associated records.

4 And so the first thing I did is review all of the
5 available records that I could. Once I had done that,
6 I came up and evaluated Ms. Simpson. I went over to
7 the detention center and talked to her. In this case,
8 I actually saw her three times. On March 19, 2014, for
9 about four and a half hours. I came back on May 5,
10 2014, for about one and three quarters hours. And I
11 actually came back on November 30, 2015, and saw her
12 for about an hour and a half. So --

13 Q All right. Before you go into that, you mentioned
14 that you reviewed records in this case?

15 A Yes, sir.

16 Q I want to ask you why it is important for a person
17 that's in your capacity as a forensic evaluator to
18 review records.

19 A Oh. One, it helps establish whether there is a
20 mental illness because you get the records of what
21 other people have seen. Is this person really, truly
22 mentally ill. But more importantly, how are they
23 mentally ill. Does the mental illness they have the
24 kind of mental illness that will play a role in whether
25 someone is thinking clearly. Are they responsible at

1 the time of the charges.

2 So, for instance, certain mental illnesses really
3 don't interfere very much with rational thought, but
4 others do very much so. Once you establish that, you
5 take it a step further. You go back and you look for a
6 history of the kind of behaviors and kind of
7 observations that other doctors, other trained doctors,
8 psychiatrists in this case, have seen about that
9 person. In other words, has -- have other
10 psychiatrists observed irrational behavior, have they
11 seen disturbance of thought, have they seen disturbance
12 of mood because it establishes that it's present, that
13 is has been present in the past. So you look -- that
14 gives you some insight into whether what is alleged to
15 have happened is consistent with those behaviors. And
16 so review -- and is the things that have been said in
17 emergency rooms, said to other doctors, are those
18 things consistent with what you're hearing when you
19 actually interview the individual.

20 Q And then you mentioned that you had met with her
21 for three occasions?

22 A Right.

23 Q And, of course, that is important because of what
24 you just described, right?

25 A Right.

1 Q The consistency?

2 A Very important, consistency, because when people
3 tell the truth, there will be some consistency to it.
4 In other words, not word for word, but people who are
5 kind of making it up on the fly, it's hard to do it
6 over long periods of time and keep your story
7 consistent. So, typically, if it's a significant case,
8 I'll interview people two or three times to make very
9 certain that what they're telling me is consistent
10 between interviews and to assess whether it's
11 consistent between my interviews and the records I
12 reviewed.

13 Q Dr. Mulbry, to a reasonable degree of medical
14 certainty -- to a reasonable degree of medical
15 certainty, did you or were you able to actually
16 diagnose Anna Simpson?

17 A Yes.

18 Q And what was her diagnosis?

19 A The diagnosis I assigned that I thought she had
20 was schizoaffective disorder bipolar type.

21 Q All right. Now, I'm going to have to ask you if
22 you would to explain to the jury what schizoaffective
23 disorder bipolar type means in, you know, language.

24 A The word "affective" is a doctor word for mood.
25 And so the word "affective," is a classification that

1 we have called affective disorders, and they are
2 depression, bipolar disorder, and things like that.
3 That would be called affective disorders. They are
4 people who have an illness that disturbs their mood.

5 Now, most commonly, and in this case we're talking
6 about bipolar disorder, so bipolar disorder, those are
7 people that go through long periods of very severe,
8 usually very severe, depression. People with bipolar
9 affective disorder have some of the most severe
10 depressions that we treat. They have one of the
11 highest suicides rates. It's a very, very serious
12 illness.

13 That's the depressive side of it. The word
14 "bipolar" means at least at some point in their lives,
15 and usually more than once, they have had bursts of
16 what are called mania. And if -- and I think
17 depression people you can pretty much can recognize:
18 Slow, quiet, can't talk, tearful, crying, giving up
19 things that they enjoy, not able to function well in
20 life. People describe it as being overtly painful.

21 Mania, just the opposite: Talking a mile a
22 minute, thoughts going a mile a minute, usually happy
23 for no particular reason, sometimes irritable,
24 sometimes happy. Their thoughts speed along, and they
25 become -- they just don't think clearly because they

1 don't link their thoughts very well.

2 These periods last for extended periods of time up
3 to about a week, sometimes longer. When that happens,
4 they don't sleep. And as many of you who have probably
5 stayed awake more than 24 know, when you don't sleep
6 for a couple of days, your thinking begins to
7 increasingly deteriorate, kind of not do well, you
8 can't think clearly. And it feels really bad, too.
9 That first child you had, that first week or two you
10 brought a child home, those kind of experiences.

11 So that's -- that is the affective side of it, the
12 bipolar side of it. And she had been extensively
13 treated for a long time for bipolar disorder with a
14 wide variety of medications.

15 The other half of it comes from the word perhaps
16 "schizophrenia," schizophrenia being another
17 significant mental illness that is marked by loss of
18 reality. You'll hear us drop the word "psychosis."
19 Psychosis means loss of touch with reality. That's the
20 hallmark of schizophrenia. The symptoms come in two
21 forms, what are called positive symptoms, which are
22 hallucinations, hearing voices that aren't there,
23 seeing things that aren't there. Paranoia, the
24 overwhelming fear that people around you, usually most
25 everybody around you is out to harm you or get you for

1 what we call ideas of reference. You know, that guy
2 that was just doing the nightly news said something and
3 it has a special meaning just for me in my life. Or I
4 can read people's minds. Those are ideas of reference.
5 Those are the positive symptoms of schizophrenia where
6 they're losing touch with the reality of what's going
7 on.

8 They can also have what are called negative
9 symptoms, which means their thoughts scatter. They
10 can't link them together very well. They will start
11 talking about something and then it just kind of falls
12 away because they can't keep it in their minds long
13 enough to finish the sentence or the thought. Or the
14 thoughts jump from thing to thing to thing, and you
15 just can't quite follow them. Those are the negative
16 signs of schizophrenia. And people with schizophrenia
17 usually have some combination of the positive symptoms
18 and the negative symptoms.

19 Q Dr. Mulbry, were you able to formulate, looking at
20 the records and with the various interviews, any idea
21 of the length of time that Anna Simpson would have
22 actually had this condition? Can you give us just a
23 judgment on that?

24 A The symptoms started out relatively mild. They
25 started out in college, in the late '90s, with some

1 relatively mild depression. She saw her family doctor.
2 Her family doctor thought -- recognized that she was
3 depressed. Some things had gone on in college that
4 were problematic, and she was a little depressed. And
5 she was known to have significant problems in school
6 due to inattention. He diagnosed her with depression
7 and ADHD -- or ADD in that case, I believe. He gave
8 her the medications, appropriate medications, an
9 antidepressant, and in this case I think Adderall. And
10 she started on those two medications and had pretty
11 good resolution of her symptoms. Pretty common kind of
12 thing to happen. The -- she got better, though she
13 continued the medications when she returned home and
14 went to work in a bank. So after college, I think
15 2001, she returned back to the area, went to work in a
16 bank, but found that at least the Adderall helped keep
17 her concentration up so she can be able to work in the
18 bank. Continued the medications.

19 And all was at least stable, it looks like, until
20 after the birth of her daughter, 2006. And as is not
21 uncommon, she developed what appears to be a fairly
22 significant postpartum depression. Not the blues. Not
23 just kind of being down a little bit for a week or so
24 and then it goes away, but I mean a fairly significant
25 depressive episode, which again her family doctor and

1 her OB-GYN treated. Seemed to at least get better, at
2 least be stable.

3 Unfortunately -- unfortunately about nine months
4 later, she suffered a miscarriage which apparently she
5 took very, very hard. It was very difficult for her.
6 A much more intense depression, much more significant.
7 And when you talk to her friends, they -- most of them
8 and her family will go back and mark that as sort of
9 the beginning of when they began to recognize there was
10 something sort of more serious going on here.

11 Particularly knowing that bipolar disorder is a risk
12 factor for postpartum depression because it is.

13 So as that 2006 goes, things seem to sort of
14 stabilize a little bit, things seem to be pretty okay,
15 sought -- her second child is born in 2008, I believe.
16 Sort of holding her own, still on the Adderall, still
17 on some antidepressants. She's, by the way, though,
18 it's a little complicated. She's got migraines. And
19 all through this period of time she's taking mood
20 stabilizers in small doses as adjuncts for her
21 migraines. So it gets a little -- but those are being
22 given to her by a neurologist for migraines which she's
23 had for years.

24 So where things really begin to take a turn is in
25 2010. There was a -- an incident in a dental office

1 where she, after the fact, concluded that she had a
2 seizure during the dental procedure. I think her mom
3 came and got her. She kind of fell apart, was
4 emotional and very distraught, very upset, was quite
5 sure that something terrible had happened. And
6 everybody around her kind of looked at the situation.
7 They didn't quite see it as being so terrible, but she
8 was very distraught by it.

9 It's about that time that her trouble with sleep
10 is becoming increasingly problematic. She's getting a
11 little more fragmented. Her moods are swinging. She's
12 going through long periods of depression, and then
13 she's going through long periods when she's not
14 sleeping.

15 So she finally consults Dr. Smith, who is a local
16 psychiatrist. He immediately diagnoses her with
17 bipolar disorder type 1, the more severe type. He says
18 this is bipolar disorder, and he immediately starts
19 working with medications to try to bring this under
20 control. And you can see through his notes they tried
21 antipsychotic mood stabilizers, anticonvulsant mood
22 stabilizers, and they tried changing her stimulants to
23 different types of stimulants. And you can see all
24 through his notes he tries to bring these symptoms
25 under control.

1 Q Dr. Mulbry, this treatment you're right now
2 describing, would have begun in 2010 when she -- when
3 the referral was made to a psychiatrist?

4 A He -- I believe he diagnosed her in the first note
5 in March 2010 with bipolar and started treating her
6 right away.

7 Q So prior to that there was no psychiatric
8 treatment?

9 A Correct.

10 Q 2010 marked the time when the psychiatric
11 treatment began?

12 A Right.

13 Q All right. And continued?

14 A Okay.

15 Q All right.

16 A So you can see through his notes where he's trying
17 different medications, he's trying to stabilize her for
18 these mood swings. Her thinking is there's some sort
19 of paranoid ideation going on here that people are out
20 to harm her, bad things are going to happen. Her
21 thinking is very difficult for him to control, to keep
22 together very well. And this goes on until about July
23 of 2012. Kind of cycling. And notably cycling between
24 depression, sleeplessness, confusion, irritability,
25 difficulty with thoughts, sort of concerns that people

1 are out to get her.

2 And then in 2012 it becomes so severe and so bad
3 that her family convinces her to go to St. Francis.
4 And it has to do with her developing this belief that
5 some of the members of her extended family are actually
6 trying to harm her daughter. And she's becoming
7 increasingly withdrawn. And people begin to realize
8 that these thoughts are just not right.

9 Q For clarification, Dr. Mulbry, the reference to
10 the extended family, would that include her in-laws?

11 A She developed the fear that -- her mother-in-law
12 had taught her daughter the game Simon Says. And she
13 got in her mind that that had a sexual purpose, that
14 her daughter was being groomed for some kind of sexual
15 activity. It's kind of a classic paranoia. It's the
16 kind of thing that somebody who's psychotically
17 paranoid would think.

18 Q Was there any real corroborating evidence of any
19 such activity?

20 A Oh, goodness, no. No.

21 Q All right.

22 A Goodness, no. Everything I ever read suggested
23 that her mother-in-law was great.

24 She began to develop beliefs that people were
25 messing with the computers, that there were bugs in her

1 house, that there were people watching her from across
2 the street, that people were out to harm her and her
3 kids. And increasingly just the thoughts began to
4 become increasingly fragmented. She's not sleeping,
5 not sleeping well at all, which fragments her thinking.
6 And, finally, her family convinces her to go over to
7 St. Francis where she's evaluated in the emergency room
8 and felt to be acutely manic and psychotic, i.e., has
9 lost touch with reality.

10 They hold her in the emergency room for a few days
11 and treat her with antipsychotic medication called
12 Seroquel. And you can see the records. Over the next
13 two to three days, she slowly improves and she gets
14 somewhat better, but they're worried about her. That
15 is what we call -- they're worried about her, and so
16 they feel that she really needs an inpatient
17 evaluation. So she remains on the Seroquel, and after
18 a day or so, she then goes into the Carolina Center for
19 Behavioral Health, a local hospital, where she
20 spends -- where she's evaluated, consistent histories
21 are found, she's felt to have at least bipolar disorder
22 with psychosis, and they continue the treatment because
23 the treatment seemed to be working. And she's kept for
24 about three days, I believe, from August 5th to 8th, I
25 believe, and then she's released back home.

1 Q Dr. Mulbry, is there -- and I'll just ask the
2 question this way. Is there a cure that is actually
3 like a -- if you have a cold, I know they say there's
4 no cure for a cold, but you can take something that
5 makes you better and then the cold goes away. Or if
6 you have the flu, they give you the anti-flu stuff and
7 you end up, you know, you don't have the flu anymore.

8 Is there a cure in the world of medicine for the
9 condition that you're describing that Anna Simpson had
10 then and has today? Is there a cure for it?

11 A There is no cure.

12 Q Will she have the same medical condition for the
13 rest of her life?

14 A The condition will be lifelong. It may wax and
15 wane some. And the longer and better it's treated, the
16 better it tends to be, but she'll always have it,
17 likely for the rest of her life.

18 Q Will she require mental health treatment for the
19 rest of her life?

20 A Yes.

21 Q Now, Dr. Mulbry, I want to ask, once again, to a
22 reasonable degree of medical certainty, were you able
23 to make a determination and form an opinion if Anna, on
24 the evening of May 13th and 14th of 2013, could
25 distinguish between right and wrong conduct? Did you

1 form an opinion as to that question?

2 A I did.

3 Q And what is your opinion?

4 A My opinion is that she was, on that evening,
5 unable to distinguish legal and moral right from legal
6 and moral wrong.

7 Q All right. And could you give an explanation for
8 that, the finding?

9 A Okay. I read all the records, came up and talked
10 to her. What she describes -- and then actually
11 interviewed some of her friends. What she describes on
12 that evening is -- is consistent with psychosis, loss
13 of touch with reality, confusion, paranoia, delusional
14 thinking. That paranoia, confusion, disorganized
15 thinking, can't keep your thoughts together, was
16 completely consistent with her prior presentations at
17 the hospital and with notes and with behaviors that
18 three of her friends and her parents had all noted
19 having gone on for quite a long time.

20 She described the events of that evening not with
21 some eloquent story, but just as somebody who has
22 trouble kind of keeping their thoughts together would.
23 Confusion.

24 She had developed over the weeks and months an
25 increasing concern that her children were in danger,

1 that something bad was going to happen. That's the
2 essence of paranoia, something bad is going to happen.
3 And her behaviors over the weeks and months leading up
4 to this are increasingly sort of erratic, and they
5 really begin to get out of control the three or
6 four days prior to the evening of her charges.
7 Increasing paranoia, delusions.

8 She pulls her kids out of school -- her daughter
9 out of school one day because there is a correlation in
10 her mind between that date and the day that the Newtown
11 shootings took place. So she goes and takes her
12 daughter out of school. She won't go to the Mother's
13 Day luncheon at the church because she's got a bad vibe
14 about the people at church and what they're up to.

15 She's increasingly sort of confused. The things
16 that her kids are saying to her don't always make much
17 sense and lead her to believe that they are in danger.
18 That -- she's increasingly not thinking clearly.

19 That leads up to the night of the charges when she
20 has a number of conversations with her mother, a phone
21 call that has to do with whether or not people are in a
22 better place once they're dead, about whether or not
23 death is permanent. All of these couched in sort of
24 very heavy religious beliefs. And that's in the early
25 part of the evening.

1 She then sleeps. She goes to bed. She's
2 sleeping. She wakes up at 4 o'clock in the morning
3 confused, fearful, afraid something bad is happening.
4 And if you've ever really, really been afraid, you know
5 what that feels like. You're not thinking real
6 clearly. It's really difficult. She wakes up fearful,
7 frightened. Something bad is going to happen to the
8 kids. She's in the context of beliefs about them not
9 really dying and being in a better place.

10 She shoots her husband and children and then tries
11 to shoot herself. Why? So that she can join them in
12 this better place where it's safe and where it's okay.
13 She fails. She's not able to load the weapon properly.
14 She goes out and gets in the car. Why? She's going to
15 Nate's house. I didn't bring up Nate, but Nate is a
16 family friend who stopped by the day before. Scared
17 her to death because he was wearing dark glasses. And
18 for the last couple of months she's been believing if
19 you can't see people's eyes, if they're wearing dark
20 glasses, you can't see their core. And if you can't
21 see their core, they're probably up to something.

22 So she gets in the car. Why? To go to Nate's
23 house to check the garage because Nate had been over
24 buying something or doing something about fixing his
25 garage. So she went to meet her husband and kids at

1 the garage. She got to Nate's house. There's all
2 these cars there. She realizes the family is not there
3 and she goes and drives back home and decides to wreck
4 the car.

5 Based on that, she tells the EMT what she did.
6 You've heard that. She's seen in the emergency room,
7 recognized to be psychotic. Everybody recognizes
8 immediately that she's psychotic. She's delusional.
9 And they put her back on medications fairly quickly.

10 Based on that, I don't believe that she understood
11 legal and moral right from legal and moral wrong on the
12 evening of those charges, and that's the basis of my
13 opinion.

14 Q While the things that you've described we know are
15 not real, are not really what was happening, but were
16 they real to her? Was -- while unrealistic and there
17 were no bugs and there was nothing to be paranoid
18 about, was that feeling or those emotions real to her
19 as a result of her mental impairment?

20 A Absolutely. And her description is so consistent
21 with patients that come into the hospital -- sorry --
22 and are treated on a fairly regular basis, that
23 pervasive fear that there's somebody under the house,
24 there's somebody watching me from the across the
25 street, there's satellites. It sounds kind of, you

1 know, it's kind of cliché. But in point of fact they
2 really believe that, and they are scared. That's the
3 real thing.

4 Paranoia means they're truly afraid. And think
5 about the times you momentarily thought your life was
6 in danger. Everybody has probably been through that.
7 That's how they feel most of the time. That fear, that
8 pervasive fear that something bad is going to happen to
9 them, that's psychotic paranoia.

10 Q I'm going to ask you, Dr. Mulbry, I'm going to
11 hand you Defendant's Exhibit Number 12 ask you to take
12 a look at that. There's testimony in this record that
13 that photograph was taken on Sunday evening, the Sunday
14 evening before the Monday night, Tuesday morning
15 incident. So that was 24 hours or plus.

16 A Yes, sir.

17 Q All right. Does that picture demonstrate the
18 state of mind of Anna Simpson?

19 A I think it does. What you see is somebody who is
20 distracted. In other words, they're fearful. They're
21 watching what goes on around them because they sense
22 danger. Not sure where it's coming from. And keeping
23 in mind that they're having a hard time telling what is
24 real and what is not because their mind plays tricks on
25 them. And so we call it responding to unseen thoughts

1 or unseen others. They appeared distracted. And it's
2 because they are. Their thoughts are going a mile a
3 minute in there. Not about what's going on in the
4 room, but about what their fears and disorganized
5 thinking are doing in their heads.

6 Q Answer any questions the prosecutor might have for
7 you, please.

8 MR. WILKINS: Your Honor, may it please the court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. WILKINS:

12 Q Good morning, Dr. Mulbry.

13 A Good morning.

14 Q You've never met me before, have you?

15 A No, sir. We talked very briefly on the phone but
16 never met.

17 Q Did I try to call you on Friday or so to talk to
18 you?

19 A You did.

20 Q But we never had a conversation about anything,
21 did we?

22 A That is correct.

23 Q In your experience as a forensic psychiatrist, do
24 you typically write reports on patients when requested
25 to do evaluations?

1 A I write reports when the reports are requested.
2 Not typically, no. A fair percentage of my evaluations
3 do not -- I don't write reports.

4 Q Okay. So people ask you to -- do people pay you
5 to evaluate patients?

6 A Well, yes. I'm a little careful about the word
7 "patient" because when I evaluate them forensically,
8 they're really not my patient, but I'll use the word
9 "patient." But people do pay me to do evaluations for
10 a variety of reasons other than treatment, and they
11 sometimes don't want a report. They just want to know
12 is this guy okay to go to court.

13 Q So you're referring to competency?

14 A That could be one.

15 Q Okay.

16 A But I'm oftentimes asked to evaluate people. They
17 don't want -- honestly, I think they either don't need
18 a report, they just want my opinion. And that's not at
19 all uncommon.

20 Q Notwithstanding competency, because you would
21 agree that your opinion you just gave this jury has
22 nothing to do with competency, correct?

23 A Correct. It was for criminal responsibility.

24 Q This is not a competency hearing, is it?

25 A No, sir.

1 Q This has to do with criminal responsibility?

2 A Yes, sir.

3 Q So when you see an individual and they pay you to
4 see that individual, you sometimes write a report?

5 A If they ask me to write a report, I write a
6 report.

7 Q Because you have to tell whoever pays you that
8 money what the results of your analysis is, correct?

9 A One way or the other. Usually -- sometimes they
10 just want it on the phone, sometimes they want it in
11 writing.

12 Q So in this case, you just relayed to Mr. Mauldin
13 your opinion over the phone?

14 A Perhaps a little more lengthy than that, but yes.

15 Q Are you familiar with the rules of discovery in
16 criminal cases in forensic psychiatry?

17 A Probably not as much as you.

18 Q No -- I'm not trying to -- I will concede you know
19 more about psychiatry than I do. But are you familiar
20 with the rules of discovery?

21 A I hate to say yes because it implies that -- I'm
22 certain that you can ask me a question that I'm not
23 going to know.

24 Q If you don't know the answer, that's perfectly
25 okay.

1 A I don't consider myself much of an expert in
2 discovery, no.

3 Q Do you know if you write a report, that has to be
4 turned over to the other side?

5 A I knew that was true in civil cases.

6 MR. MAULDIN: Your Honor, I'm going -- the witness
7 has said he did not write a report so I think the
8 follow-up question on that regarding the court rules is
9 irrelevant on the facts of this case. It may be
10 relevant to the court about conduct, but it has nothing
11 to do with the facts of case or the testimony of the
12 witness.

13 THE COURT: What's the relevancy?

14 MR. WILKINS: The relevance is that he
15 intentionally did not provide a report so we wouldn't
16 have the information before trial.

17 THE COURT: Ask the questions and then the jury
18 can make their determination about whether he withheld
19 the report or whether the lawyer withheld the report.
20 The jury can decide that.

21 To the extent of my ruling, it's overruled, then
22 we'll go from there.

23 BY MR. WILKINS:

24 Q So you never provided a report to Mr. Mauldin?

25 A I did not.

1 Q So how much do you charge for these types of
2 evaluations?

3 A \$250 an hour.

4 Q And so how much in this particular case is your
5 bill, just curious?

6 MR. MAULDIN: Your Honor, again, that would be
7 irrelevant. He's described what he did. It's
8 irrelevant what he's going to send to the court for
9 approval.

10 MR. WILKINS: Your Honor, his --

11 THE COURT: Overruled.

12 THE WITNESS: Based on my review of the records,
13 interviewing five or six people and three evaluations
14 up here in Pickens, I charged \$5,637.

15 BY MR. WILKINS:

16 Q \$5,600?

17 A Yes, sir.

18 Q And do you get paid for mileage to and from
19 Charleston, I assume?

20 A No. That includes all of the travel time and
21 everything. That's everything I've been paid.

22 Q Did you consult with any other psychiatrists or
23 forensic psychiatrists in this case?

24 A No.

25 Q You did not?

1 A I did not.

2 Q Now, Dr. Mulbry, did -- are you familiar with the
3 legal -- you've opined as to her moral or legal right
4 from wrong, whether she had knowledge of moral or legal
5 right from wrong.

6 A Yes, sir.

7 Q Are you familiar with guilty but mentally ill?

8 A I am familiar with it, yes.

9 Q Have you ever written a report which finds
10 somebody guilty but mentally ill?

11 A Yes.

12 Q Can you tell this jury what guilty but mentally
13 ill means?

14 MR. MAULDIN: Your Honor, I object if the question
15 is for this witness to define it. If Mr. Wilkins wants
16 to ask him if he did an evaluation on it, that's fine.
17 But defining a legal term is for the judge to do, not
18 some witness to do.

19 MR. WILKINS: He's a forensic psychiatrist, Your
20 Honor.

21 MR. MAULDIN: So I object to that.

22 THE COURT: Objection noted. Objection overruled.
23 He's a forensic psychiatrist. He can give his opinion
24 as to what he thinks guilty but mentally ill is.

25 But, ladies and gentlemen of the jury, I will

1 charge you the law as it pertains to guilty but
2 mentally ill. Again, this goes to the credibility and
3 the weight of the evidence for you to consider, so I
4 will allow the doctor to answer the question.

5 THE WITNESS: In South Carolina, this state and a
6 number of other states have a second -- have a second
7 way to evaluate people. If you determine that they did
8 not -- that they did know right from wrong, in other
9 words, I opined it's my opinion she did not know right
10 from wrong. She did not. But there have been other
11 people in other situations that did know right from
12 wrong, but their mental illness interfered with their
13 ability to conform their behaviors. And in South
14 Carolina, there is a classification for that. It's
15 called GBMI or guilty but mentally ill. But it assumes
16 from the outset that they recognize right from wrong,
17 that they understand right from wrong, which is not the
18 case here. She did not know right from wrong, so I did
19 not do an evaluation for GBMI.

20 BY MR. WILKINS:

21 Q So guilty but mentally ill means they have a
22 mental illness. And in this case she was diagnosed
23 with bipolar disorder, according to her treating
24 psychiatrist --

25 A Correct.

1 Q -- Dr. Jeff Smith?

2 A Right.

3 Q She was seen at St. Francis and diagnosed with
4 bipolar disorder in 2012?

5 A Correct.

6 Q And then Dr. Jeff Smith continued to treat her
7 subsequent to that?

8 A Correct.

9 Q She was treated for bipolar disorder at the
10 Carolina Center for Behavioral Health in August of 2012
11 as well?

12 A Yes.

13 Q So she has a diagnosis of bipolar disorder?

14 A No. In my opinion she has --

15 Q In 2012 --

16 MR. MAULDIN: Objection. He's interrupting.

17 THE COURT: Let him answer the question.

18 Go ahead, sir. Answer the question.

19 THE WITNESS: I think if you talk to her friends
20 and you talk to her family, they're going to describe
21 to you that even in periods during that year, from 2012
22 to early 2013, that even when she was calm and not
23 depressed and not manic, she was having significant
24 thought disturbance. She was paranoid and delusional.
25 People repeatedly, repeatedly describe it. Now --

1 BY MR. WILKINS:

2 Q Dr. Mulbry, if I could just stop you right there.
3 If you could just answer my questions, I would
4 appreciate it. And you can explain your answer once I
5 ask you the question.

6 A Okay.

7 Q Is that okay with you?

8 A Yes, sir.

9 Q All right.

10 In 2012, when she went to the St. Francis ER, she
11 was diagnosed with bipolar disorder?

12 A I believe that's true.

13 Q Okay. Would you like me to refer to the records?

14 A I believe it's true.

15 Q You agree with that, okay. Guilty but mentally
16 ill means that somebody has a mental illness, correct?

17 A Yes.

18 Q And it means that they can have attributes of that
19 mental illness, correct?

20 MR. MAULDIN: Your Honor, let me object.

21 THE COURT: Sustained.

22 Move on.

23 MR. WILKINS: Your Honor, what was the improper --
24 I don't know what the objection was.

25 THE COURT: Y'all approach.

1 (WHEREUPON, a bench conference was held off the
2 record in the presence of the jury, but out of the
3 hearing of the jury.)

4 THE COURT: Okay.

5 MR. WILKINS: All right.

6 Q All right. Dr. Mulbry, your job as a
7 psychiatrist, forensic psychiatrist, was to evaluate
8 Ms. Simpson, correct? And you were contacted in
9 February of 2014?

10 A That's correct.

11 Q Okay. So that would be, what -- and when did you
12 actually see Ms. Simpson?

13 A First time was on March 19, 2014.

14 Q So in March, so about nine months after -- after
15 the incident?

16 A Yes, sir.

17 Q So you meet with her nine months later after all
18 this has happened?

19 A Yes, sir.

20 Q And then it's your job to talk with her and review
21 records and then come to a conclusion about your
22 opinion?

23 A Yes, sir.

24 Q And you have to do that well after the fact, nine
25 months later?

1 A That's how it works in this case, yes.

2 Q When you met with her, was she delusional when you
3 met with her in March of 2014?

4 A Subtly. She still had some paranoid concerns. I
5 was sort of struck with it. Not bad, not bad. They
6 have been largely treated. They were largely under
7 control. But, no, she had some kind of residual
8 paranoid beliefs.

9 Q You were able to speak with her, weren't you?

10 A Oh, yes.

11 Q You were able to have a conversation with her?

12 A Absolutely, yes.

13 Q Was she able to respond to your questions?

14 A Yes.

15 Q Did you -- and you met with her a total of three
16 or four hours over three days, three different days?

17 A No, sir. I met with her a total of about nine.

18 Q Nine hours?

19 A Eight or nine hours.

20 Q Over three days?

21 A Over three days.

22 Q And during that time, you never had any problem
23 getting her to explain things to you? She was able to
24 respond to your questions?

25 A No, that's not true. She's a little -- I mean, I

1 can give you examples if you want. She's a little bit
2 disorganized. Again, trying to -- when you're asking
3 questions about what happened nine months ago. If I
4 ask her how she feels today, she's pretty okay. I
5 mean, that was not an issue. Trying to get sort of a
6 historical narrative about what happened in and around
7 those weeks and months leading up to the charges and on
8 the evening of the charges actually took a little bit
9 of work because she still jumps a little bit.

10 Something that she'll say will remind her of
11 something else that happened. And so, no, it was
12 not -- it was still a little disorganized, still a
13 little paranoid. I noticed it particularly in June. A
14 little bit in May. I thought it was much better when I
15 saw her a year later.

16 Q She was not legally insane when you met with her
17 in March of 2014?

18 A I -- I can't answer that question.

19 MR. MAULDIN: I'm not sure, Your Honor, if he's
20 asking this doctor to define legal insanity or mental
21 insanity.

22 THE COURT: Rephrase your question.

23 I understand the question.

24 BY MR. WILKINS:

25 Q Did she know right from wrong on March 2014?

1 A I didn't assess for that.

2 Q All right. Fair enough.

3 A I did ask her -- I did ask her if she thought that
4 harming her children was wrong, and she later, at the
5 time I evaluated her, she did recognize that it was
6 wrong.

7 Q So -- okay. So it's fair to say she did know
8 right from wrong March of 2014?

9 A Yes.

10 Q And in subsequent meetings that you had with her?

11 A Yes.

12 Q When she was -- did you ever contact her treating
13 psychiatrist, Jeff Smith?

14 A I did not.

15 Q Did you not think that it would be a good idea to
16 talk to the person who was actively treating her during
17 this time?

18 A I had all of his office notes to go by. I used
19 those.

20 Q At no time did Dr. Jeff Smith find her in a state
21 of delusion or psychosis, did he?

22 A He did not find that, no.

23 Q And he was meeting with her on a regular basis?

24 A Yes.

25 Q And, in fact, he met with her February of 2013?

1 A February 16th, I believe.

2 Q Three months before -- approximately three months
3 before the incident?

4 A Approximately.

5 Q Okay. And there's no notation of any homicidal
6 thoughts or suicidal thoughts by him?

7 A Not in the notes, that's correct.

8 Q Not in the notes. If someone is diagnosed
9 bipolar, that doesn't necessarily mean they don't know
10 right from wrong, correct?

11 A Who? They're all different things. Bipolar is a
12 clinical diagnosis. People who are bipolar can not
13 know right from wrong.

14 Q Sure.

15 A But it's a separate -- it's a separate assessment.

16 Q But you can very easily be bipolar and know right
17 from wrong?

18 A Yes.

19 Q All right. Dr. Mulbry, when she went to
20 St. Francis in 2012, she voluntarily went there,
21 correct?

22 A With her family, yes, I believe so.

23 Q With her mother?

24 A Yes.

25 Q And then her husband joined her --

1 A Yes.

2 Q -- there?

3 All right. And she was assessed while in the ER
4 by a treating psychiatrist?

5 A Yes, sir.

6 Q And they noted a number of delusions that she was
7 having. There's no notation of any hallucinations in
8 there?

9 A That's correct. It was mostly delusions and
10 paranoia.

11 Q And her delusions were basically limited to fear
12 for her children; is that correct?

13 A Yes -- not limited to. But that was the one, that
14 was a prominent one.

15 Q The prominent delusion was fear of her children
16 being molested by her mother-in-law?

17 A That was.

18 Q Or being groomed for a sex act by her
19 mother-in-law?

20 A That's correct.

21 Q And that was -- that was her paranoia emanating
22 out to the doctors, that was what she was describing to
23 the doctors?

24 A Her family mostly described, but yes, she also
25 talked about it, yes.

1 Q She -- Dr. Mulbry, she specifically described it
2 to the registered nurse on two separate occasions
3 regarding that prominent delusion; is that correct?

4 A That's the most prominent one, correct.

5 Q And, in fact, Dr. Craddock, who saw her, said that
6 she was stabilized and improving significantly during
7 her stay?

8 A I'm sorry. Repeat that.

9 Q Dr. Craddock, who discharged her, said she was
10 stabilized and improving during her stay?

11 A After -- right. At the end of three or four days,
12 yes.

13 Q And, again, I think you would agree she went in on
14 July 31st --

15 A 29th.

16 Q 29th and discharged on?

17 A August 5th, I believe.

18 Q 3rd.

19 A 3rd, I'm sorry. It is August 3rd. August 5th she
20 went into the hospital.

21 Q That's right. And her husband was at the
22 emergency room with her some of that time, wasn't he?

23 A Yes.

24 Q And then she went home for two days?

25 A I believe -- yeah, that's correct.

1 Q And then voluntarily went to the Carolina Center
2 for Behavioral Health?

3 A Yes.

4 Q For follow-up treatment. And she went there for
5 follow-up treatment for bipolar disorder; is that
6 correct?

7 A She went to the hospital -- wouldn't be follow-up
8 treatment. The hospital.

9 Q Continued treatment?

10 A Continued treatment, yes, sir.

11 Q That's fair. She went to -- she voluntarily went
12 to the Carolina Center for Behavioral Health for
13 continued treatment for bipolar disorder?

14 A Correct.

15 Q And at the Carolina Center for Behavioral Health
16 she was treated for three days for bipolar disorder?

17 A Correct.

18 Q And while there, she went over, and they did a
19 family member assessment of the patient while she was
20 there in 2012, correct?

21 A Yes.

22 Q Okay. They did a family assessment. They had
23 Mike Simpson do a family assessment as well?

24 A Yes, sir.

25 Q And then they do a pain -- treatment plan for her

1 as well. They do an after care education plan for her
2 as well. So she's educated on her bipolar disorder at
3 this time?

4 A Yes.

5 Q And she's taught how to deal with her bipolar
6 disorder?

7 A Yes.

8 Q You previously testified that you can't cure it
9 with a shot like the flu, correct?

10 A Correct.

11 Q But you can treat bipolar disorder?

12 A Yes.

13 Q And, in fact, there are millions of people in this
14 country that are treated for bipolar disorder every
15 single day?

16 A Yes.

17 Q And, in fact, she received after care education on
18 her bipolar disorder at the Carolina Center for
19 Behavioral Health?

20 A Yes.

21 Q And that would -- you would agree that would
22 include going to group sessions, managing your
23 medication, talking with your family about your
24 disease?

25 A I'm not sure about the group sessions, but it

1 would typically involve taking your medications,
2 talking to your family, the latter things would
3 typically -- I don't know -- my memory is not with
4 that. I don't remember what that treatment thing said.
5 I just can't remember off the top of my head. But,
6 typically, they would say that. They would say take
7 your medications, talk to your psychiatrist, talk to
8 your family. I don't know about groups.

9 Q And real quick. She's also diagnosed with
10 attention deficit disorder?

11 A She has been in the past. I believe that once --
12 the current diagnoses probably preclude the older
13 diagnosis of ADHD.

14 Q She was on Adderall at the time of this incident?

15 A Yes.

16 Q And she had been on Adderall for many years prior
17 to this incident?

18 A Yes.

19 Q So she was being treated for attention deficit
20 disorder for many years?

21 A Yes, sir. Yes.

22 Q And she constantly -- constantly. But when she
23 would meet with her physicians or her doctors, the
24 family -- Pelham family practice doctor who put her on
25 Adderall, as well as Psychiatrist Jeff Smith who

1 continued her on Adderall, complained of her inability
2 to keep her thoughts, keep her focus, and get things
3 done; is that correct?

4 A Correct.

5 Q And, now, those are symptoms of attention deficit
6 disorder, are they not?

7 A They can be, yes.

8 Q They can be, okay. And she -- her attention
9 deficit disorder required her to take 20 milligrams of
10 Adderall in the morning; is that correct?

11 A She was on a variety of different doses, but that
12 would be a typical dose that might be used.

13 Q 20 milligrams in the afternoon, and ten milligrams
14 at night. So 50 milligrams total throughout the day.

15 A Yes, sir.

16 Q And Adderall, what is Adderall?

17 A Adderall is a, if memory serves me correctly, is a
18 mixture of amphetamine salts. It's long acting. Most
19 stimulants are short acting. Adderall is designed
20 specifically to last longer. So it was a long-acting
21 stimulant.

22 Q Is it amphetamine?

23 A Amphetamine.

24 Q And individuals who have attention definition
25 disorder, is it akin to their brains firing in

1 different areas of their head at the same time and they
2 need something to kind of calm it down so they can
3 focus on something?

4 A Not very well understood. I hesitate just to say
5 that empirically stimulants appear to be an effective
6 treatment for ADHD.

7 Q Millions of Americans are on stimulants?

8 A Many, many, many, yes.

9 Q It's not an uncommon drug to be prescribed by
10 family practice doctors or psychiatrists?

11 A Correct.

12 Q Now, back to the Carolina Center for Behavioral
13 Health. I'm going to show you and you have reviewed
14 these records, correct?

15 A I have.

16 Q And I'm going to show you a document, and you can
17 read this document and then you can -- this is -- I
18 need to mark it.

19 (WHEREUPON, State's Exhibit Number 89 was marked
20 for identification.)

21 MR. WILKINS: State's Exhibit 89 for
22 identification purposes only.

23 Q Do you recognize this document? Is this one of
24 the documents that you reviewed?

25 A Yes. I believe I remember this.

1 Q All right. And what is that document?

2 A This is a physician progress note.

3 Q And what is her progress while at the Carolina
4 Center for Behavioral Health?

5 A This is dated August 8, 2012, so this would be on
6 the date of her discharge, and it indicates -- the part
7 you've marked here?

8 Q Sure.

9 A "In good spirits. Not as hypervertbal. Mood good.
10 Affect bright. No mention of concerns regarding kids.
11 No SI, HI, AVH."

12 Q What does that mean?

13 A SI, suicidal ideation. HI is homicidal ideation.
14 And AVH is auditory or visual hallucinations.

15 Q So it's fair to say she's not having any suicidal
16 ideations, homicidal ideations, or any visual
17 ideations?

18 A It's fair to say she denied them at that time,
19 yes.

20 Q Are you suggesting that she would lie?

21 A No.

22 Q Okay. All right. So in 2012, when she leaves the
23 Carolina Center for Behavioral Health, it's fair to say
24 that she has -- she was successfully treating her
25 bipolar disorder based on the physician's report?

1 A She was improving in the treatment of her
2 schizoaffective disorder, yes.

3 Q Dr. Mulbry, at this time, in 2013, had anybody
4 diagnosed her with schizoaffective disorder?

5 A No, not to my knowledge.

6 Q So in 2012 she leaves the hospital, and she
7 continues to be under the care of a psychiatrist?

8 A Yes.

9 Q And that psychiatrist is Dr. Jeff Smith?

10 A Correct.

11 Q And he sees her throughout, until March of 2013?

12 A February 16th.

13 Q February of 2013. All right. Dr. Mulbry, you
14 explained to this jury the story -- not the story, the
15 statement of Anna Smith -- Anna Simpson on the day of
16 May 13th and 14th. You told this jury what she told
17 you happened on May 13th and May 14th of 2013?

18 A Yes, correct.

19 Q On May 13th, 2013, you said she went and got her
20 kids out of school?

21 A That day or the day before. I want to be careful.

22 Q Yeah, May 13th.

23 A Okay.

24 Q You said she got her kids out of school?

25 A I think one had stayed home ill. She became

1 concerned, I believe, is when she went and got Carly,
2 if memory serves me correctly.

3 Q That's correct. That's what you testified.

4 A Right.

5 Q But you were testifying in terms of that she was
6 in a psychosis?

7 A She was -- she did that based on false -- on
8 delusional thinking, paranoid delusional thinking.

9 Q And she did that through lying to the school about
10 why she was getting her child out, correct?

11 A I believe -- yes. I believe she told them -- yes,
12 I believe that's true.

13 Q So you believe she manipulated the school in an
14 effort to get her child out? She lied to the school
15 about the reason she got her children out?

16 A She -- correct.

17 Q And she came home and she saw Nate Stegall?

18 A Yes.

19 Q And was with him for about 30 minutes that
20 afternoon?

21 A Correct.

22 Q And then she proceeded to have phone conversations
23 with her mother-in-law and her mother that night?

24 A Yes.

25 Q And she has a phone conversation with her

1 mother-in-law about why do they not come over more?

2 Why are they not around more?

3 A Right.

4 Q And is it your opinion she -- does she know right
5 from wrong at that point in time?

6 A I didn't assess that.

7 Q Okay. So you just assessed it 12 hours later?

8 A Correct. It is that, yes. I --

9 Q So you assess it at a specific moment. You can't
10 assess it six hours earlier or six hours later, just
11 that specific moment?

12 A Yeah. It is most likely that at that time she
13 would not have. But, no, it is that specific, and it's
14 that specific because it all happened at 4 o'clock in
15 the morning. In other words, the timing, the timing
16 here may be fairly critical. What -- eight hours
17 earlier her mood may have been different. It is
18 entirely possible that how we are at 6 o'clock in the
19 evening is not the same as we are at 4 o'clock in the
20 morning. And so I do think time matters here. It is a
21 significant factor in this case.

22 Q Did she know right from wrong when she called --
23 so you can't say whether she knew right from wrong --

24 A I don't know.

25 Q -- when she called her mother and asked -- her

1 mother-in-law and asked her why she is not around as
2 much?

3 A I can't.

4 Q Did she know right from wrong when she called her
5 mother and said John -- "Michael and I are doing great.
6 We're going to talk to his parents"?

7 A That's the earlier phone call.

8 Q That's the earlier phone call.

9 A I -- again, I -- I don't know.

10 Q Did she know right from wrong when she called her
11 mother-in-law -- I mean her mother back and said,
12 John -- "Michael and I are through. He's through with
13 me. He says I can't take care of the kids"?

14 A There's -- in one of those phone calls, there was
15 a long discussion -- there are a couple of discussions
16 that are really germane --

17 Q Dr. Mulbry, if you could just answer my question.

18 A Which is?

19 Q Did she know right from wrong when she --

20 A Based on information that you're not providing, I
21 think I'm not sure she did, but I probably would have a
22 difficult time saying. There are other parts of that
23 conversation that lead me to believe that her thinking
24 was disturbed at that time. And so I have concerns
25 about it. But I'm talking about what happened at

1 4 o'clock in the morning that morning.

2 Q Did she know right from wrong when she woke up and
3 obtained a .22 pistol and loaded it?

4 A I don't believe she knew right from wrong at that
5 point.

6 Q Did she know right from wrong when she walked past
7 both her children and into her husband's room and shot
8 him?

9 A No.

10 Q Did she know right from wrong when she cut the
11 alarm off to leave the house?

12 A No.

13 Q Now, if she didn't cut the alarm off, what would
14 happen?

15 A I assume the alarm will go off.

16 Q Logical conclusion.

17 A Yes.

18 Q When she is met by -- you read the report. You
19 read the statements of Scott and Amber Hart, correct?

20 A The neighbors?

21 Q The neighbors.

22 A Yes. My memory is a little unclear about them,
23 but --

24 Q Okay. Did she know right from wrong when she
25 recognized Scott Hart?

1 A No.

2 Q Did she know right from wrong when she said, "My
3 back hurts. Don't leave me"?

4 A No.

5 Q Did she know right from wrong when she was
6 concerned about her own well-being?

7 A No.

8 Q Did she know right from wrong --

9 MR. MAULDIN: All right. Your Honor, at this
10 point I would object because now it becomes irrelevant
11 as to this case. The question is right, wrong at the
12 time of the event. And we could go on with another
13 right or wrong questions for the rest of the month, and
14 it's not relevant.

15 THE COURT: Okay.

16 Solicitor.

17 MR. WILKINS: Okay. One more question, then I'm
18 going to move on, Your Honor.

19 THE COURT: Okay.

20 BY MR. WILKINS:

21 Q When she cuts that alarm off, is that not
22 suggestive that she does not want to be detected by
23 anybody?

24 A Or that she simply doesn't want the alarm to go
25 off. It could suggest that. I guess it could suggest

1 that.

2 Q That suggests she's avoiding detection?

3 A There are a variety -- it could also be habit. It
4 could also be sheer habit of shutting the alarm off
5 when you walk out of the house. I'm not sure I'm
6 willing to make the jump to that being a purposeful,
7 thought-out avoid detection. That has implications
8 that I don't think I agree with.

9 Q All right. Dr. Mulbry, have you read the notes of
10 Dr. Wade Harris, the ER doctor?

11 A Carolina -- yeah.

12 Q And you would agree that Ms. Simpson remediated
13 relatively quickly once she was arrived to the ER?

14 A No, I don't know that I would agree with that. I
15 think it took two -- at least two to three -- it took
16 two or three days and her delusionality didn't resolve
17 until at least over in the hospital. It didn't for a
18 week. She was still delusional at Carolina Behavioral
19 Health.

20 Q No, no. I'm talking the day of the incident.

21 A Oh, I'm sorry.

22 Q Yeah, the day of the incident, yeah. So on
23 May 14th, she goes to Greenville Hospital System.

24 A Okay.

25 Q She's seen by Dr. Wade Harris, and he's the ER

1 psychiatrist?

2 A Yes.

3 Q Along with she has an orthopedist doctor, and she
4 remediated within 48 hours of her psychosis?

5 A Give me one second. I just don't have anything
6 from -- maybe I didn't write that down. But I don't
7 have that in my notes. I'd have to go back through the
8 ER -- the records from Dr. Harris. I'm not saying that
9 it isn't true, I just don't that have in my notes and
10 so I don't know that I --

11 Q And you would agree it is very atypical for an
12 individual to remediate that quickly if they are in a
13 full-blown true psychosis?

14 A No. I'm not sure that I would agree with that. I
15 think it is a little on the -- it is relatively rapid,
16 but keeping in mind that "remediate" simply means you
17 don't see the external symptoms, and so it doesn't tell
18 you what's going on in people's minds and particularly
19 when they are keeping their bizarre thoughts to
20 themselves. So I'm not comfortable saying she
21 remediated quickly. It could be somewhere in the
22 records that I'm just not aware of, but that was not
23 the impression I came away with when I read the records
24 at all.

25 Q Can Adderall, overuse of Adderall, cause a

1 psychotic episode?

2 A Gross overuse, yes.

3 Q No further questions.

4 MR. MAULDIN: Just a couple, Your Honor. Very
5 short.

6 THE COURT: Okay.

7 REDIRECT EXAMINATION

8 BY MR. MAULDIN:

9 Q Dr. Mulbry, Mr. Wilkins asked you extensively
10 about a report. I just simply want to make sure this
11 jury understands. When I contacted you and asked you
12 to evaluate my client, did I ask you to create a
13 written report to me about that evaluation?

14 A No, sir.

15 Q Did I ever, during the time you have been working
16 on this matter, ever ask you to produce to me for any
17 purpose a written report about this evaluation?

18 A No, sir.

19 Q I did meet with you personally and discuss your
20 findings?

21 A Yes, sir.

22 Q Did we have numerous telephone conversations with
23 your findings?

24 A Yes, sir.

25 Q All right. Mr. Wilkins asked you about the money

1 in this case. When you -- you're a professional. You
2 work for a living, right?

3 A Yes, sir.

4 Q All right. When somebody asks you, you expect to
5 be compensated, do you not?

6 A Yes, sir.

7 Q Does your compensation have anything to do with
8 the outcome of this -- the results of this case?

9 A Absolutely not.

10 Q And do you understand that when you send a bill or
11 an invoice, the circuit judge has to review it and
12 approve it before it is submitted to the State of South
13 Carolina for payment?

14 A Yes, sir.

15 Q And did you understand that from the beginning?

16 A Absolutely.

17 Q All right. Now, Mr. Wilkins asked you whether
18 Anna was essentially psychotic in March of 2014,
19 nine months after the incident when you first met with
20 her. He asked you about her condition?

21 A That's correct.

22 Q Do you understand or is it your understanding that
23 from almost immediately after this incident, Anna began
24 to be provided psychiatric treatment every day in the
25 jail, in the county jail, and that that psychiatric

1 treatment has continued until this very day?

2 A Yes, sir.

3 Q Is that your understanding?

4 A Yes, sir.

5 Q During the entire time this matter has been
6 pending, she has been under constant psychiatric
7 treatment including appropriate medications?

8 A Absolutely.

9 Q And you actually had access and reviewed those
10 medications?

11 A That's correct.

12 Q Mr. Wilkins asked you about the St. Francis
13 hospitalization. And I'm going to ask you, talking
14 about progress notes, I'm going to show you one of the
15 progress notes and just ask you if you had an
16 opportunity -- and I will point out this highlighted
17 section. That's the section I'm going to read.

18 A Yes, sir. This is the consult note by
19 Dr. Craddock dated August 2nd. She went in on the
20 29th. This is the date of August 2nd. It says,
21 "Patient has continued to be psychotic. She is
22 paranoid. Her associations are loose. She was able to
23 sleep last night. She's not agitated. Continues
24 Seroquel and commitment." In other words, she was held
25 involuntarily.

1 Q All right. So this progress note from those
2 records indicates that Anna was psychotic?

3 A And I've got in my notes that someone said because
4 of her psychosis, she's dangerous, considered
5 dangerous.

6 Q That she was dangerous?

7 A I've got that in my notes.

8 Q Out of those same records, right?

9 A Yes, sir.

10 Q All right.

11 Hang on. My boss is over here signaling me.

12 MR. MAULDIN: All right. I think that's it.

13 Thank you, sir.

14 THE COURT: Any recross based upon redirect?

15 MR. WILKINS: Just briefly.

16 RECROSS-EXAMINATION

17 BY MR. WILKINS:

18 Q In those St. Francis notes, it specifically states
19 on a number of occasions she has no suicidal ideations
20 or homicidal ideations, does it not?

21 A Yes, it does.

22 Q That's contrary to her being dangerous, correct?

23 A No. No, not at all.

24 Q You said --

25 No further questions.

1 THE COURT: All right. Thank you, sir. You can
2 step down.

3 Ladies and gentlemen of the jury, let's take our
4 midmorning recess. Do not talk about the case, okay.

5 (WHEREUPON, the jury exited the courtroom
6 at 11:34 a.m.)

7 THE COURT: Do y'all need him anymore?

8 MR. WILKINS: No, I don't need him.

9 MR. MAULDIN: He can be excused.

10 THE COURT: You're excused. Thank you, sir.

11 (WHEREUPON, recess taken from 11:34 a.m.
12 to 11:52 a.m.)

13 THE COURT: Anything before we bring the jury in?

14 MS. STROM: Not from the State.

15 THE COURT: You think about 1 o'clock?

16 MR. MAULDIN: This witness, I would say just for
17 protection, is probably going to be about the same
18 length as the previous.

19 THE COURT: So we can take a lunch break, then,
20 after this witness. Okay.

21 (WHEREUPON, the jury entered open court at
22 11:53 a.m.)

23 THE COURT: All right. All members of the jury
24 are present.

25 Mr. Mauldin, you may call your next witness.

1 MR. MAULDIN: Thank you, Judge.

2 Dr. David Price.

3 DAVID PRICE, Ph.D.,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: If you would have a seat and state
6 your name for the record, please.

7 THE WITNESS: David Price, P-r-i-c-e.

8 And, Your Honor, before I get started, could I get
9 a glass of water?

10 THE COURT: Absolutely. How about a bottle?

11 THE WITNESS: That's even better. Thank you, sir.

12 DIRECT EXAMINATION

13 BY MR. MAULDIN:

14 Q Dr. Price, where are you from?

15 A I currently live in Greenville, South Carolina.

16 Q And are you planning for that to change?

17 A I recently purchased the old Bill Farm on Jones
18 Mill Road in Central.

19 Q Is that Pickens County?

20 A That is in Pickens County.

21 Q All right. You intend to move there, build a
22 house there, or what's your plan?

23 A That will be the last place I live.

24 Q What kind of work do you do?

25 A I am a forensic psychologist, clinical

1 psychologist, and neuropsychologist.

2 Q Are you licensed to practice in South Carolina in
3 those fields?

4 A In South Carolina we just license psychologists.
5 So I am licensed to practice in those fields, but I
6 have just one license.

7 Q I want you to describe your educational background
8 to the jury.

9 A I received my undergraduate degree from Clemson
10 University. I have since paid for four other Clemson
11 degrees since then. I received my master's and
12 doctoral degree from Auburn University. I did my
13 internship at the University of Pittsburgh, University
14 Drive VA Hospital in Pittsburgh, Pennsylvania.

15 Q And, once again, your degrees are?

16 A I have a bachelor's degree in psychology and a
17 master's and doctoral degree in clinical psychology.

18 Q And can you describe to the jury your work
19 experience, just kind of in a nutshell, not everything
20 you have ever done, but in a nutshell, give an idea of
21 what kind of work you do.

22 A After my training, I was employed by the South
23 Carolina Department of Mental Health before joining a
24 private practice in Greenville, South Carolina, which
25 was a general treatment practice. And then beginning

1 in 1990, I reduced my practice to forensic issues.

2 Q And the jury, by a previous witness, Dr. Price,
3 has been brought to speed on what it means -- what
4 "forensic" means, but I want you to just very, very
5 briefly please just mention to the jury when you say
6 you have a forensic practice, what does that mean?

7 A Well, my practice is a little bit different from
8 Dr. Mulbry's. I -- basically, forensic means whether
9 it's forensic accounting or forensic psychology, that
10 you take the knowledge and research of that field and
11 apply it to legal questions. My practice, while I have
12 a significant criminal practice, I also have a
13 significant civil practice in which I evaluate people
14 with mental injuries or brain injuries or things of
15 that nature. And I also consult with business and
16 industry by doing fitness for duty evaluations in which
17 an industry field, they have an employee that's a
18 danger to themselves or others, they will refer them to
19 me for an evaluation. And then I do consult some with
20 probate court and family court. That's a very minor
21 part of my practice. I evaluate people for
22 disabilities, things of that nature.

23 Q Do you find yourself making presentations to
24 various audiences, and if so, could you describe the
25 types of audiences you might be speaking to?

1 A I lecture nationally, and I lecture on topics of
2 some criminal issues, psychological injuries, brain
3 injuries, posttraumatic stress disorders, and on the
4 evaluation of malingering which means the feigning of
5 disorders. And, basically, I have lectured to
6 everybody from the NAACP to State Farm to the Justice
7 Department. I've got like, I don't know, 28 pages of
8 presentations on my CV.

9 Q With regard to your CV, I want to ask you to
10 identify -- well, I haven't got a number here.

11 (WHEREUPON, Defendant's Exhibit Number 14
12 was marked for identification.)

13 BY MR. MAULDIN:

14 Q I'm going to ask you if you can identify what's
15 been marked as Defendant's Exhibit 14.

16 A That's a copy of my current CV, or some people
17 would know of it as a résumé.

18 Q This is a summary of education and so forth?

19 A Summary of education, work experience,
20 presentations, and publications.

21 Q All right.

22 MR. MAULDIN: Offer this.

23 MR. WILKINS: Without objection, Your Honor.

24 THE COURT: Without objection, introduced as
25 Defendant's Exhibit next in order.

1 (WHEREUPON, Defendant's Exhibit Number 14 was
2 admitted into evidence.)

3 BY MR. MAULDIN:

4 Q Have you been qualified to testify in the courts
5 of South Carolina for both the prosecution and the
6 defense as an expert in the field of forensic
7 psychology, clinical psychology, and neuropsychology?

8 A Yes, sir, I have.

9 Q All right.

10 MR. MAULDIN: Your Honor, we would offer --

11 Q Or how many times, Dr. Price? Can you estimate?

12 A I've been qualified to testify in probate court,
13 family court, civil court, general sessions court,
14 federal court hundreds of times. I've never not been
15 qualified.

16 MR. MAULDIN: I offer Dr. Price as an expert in
17 the fields of forensic psychology, clinical psychology,
18 and neuropsychology.

19 THE COURT: Any further voir dire by the State?

20 MR. WILKINS: No voir dire, Your Honor.

21 THE COURT: All right. Thank you. He's so
22 qualified, then, as an expert in the field of forensic
23 psychology, neuropsychology, and clinical psychology.

24 And, ladies and gentlemen, remember what an expert
25 can do.

1 BY MR. MAULDIN:

2 Q Dr. Price, did I contact you about Anna Simpson's
3 case?

4 A Yes, sir, you did.

5 Q And before we speak specifically about her case, I
6 want to ask you if it was your understanding that any
7 fees, costs, or expenses incurred regarding your
8 involvement in this case had to be submitted to the
9 circuit judge for approval before being submitted to
10 the State for payment? You understood that?

11 A Yes, sir.

12 Q All right. And that that payment had no
13 connection with win, lose, or draw in this case?

14 A That's correct. It was payment for my time.

15 Q All right. When I contacted you about Anna's
16 case, did I ask you to meet with Anna and evaluate her
17 on the matter of criminal responsibility in this
18 matter?

19 A Yes, sir, you did.

20 Q And that would be her ability to distinguish right
21 from wrong on May 13th and 14th of 2013; is that
22 correct?

23 A That's correct.

24 Q All right. When you were asked by me to do that,
25 what does that evaluation entail from your work point

1 of view?

2 A You know, it's an important question that takes a
3 lot of attention to detail to answer. What that
4 requires is I was -- I think you contacted me in May of
5 2014, which is basically a year after this happened.
6 So to evaluate her, you have to evaluate her
7 historically, meaning prior to May 2013, and then
8 evaluate her after that, and then try to do an
9 evaluation using all that information on what occurred
10 on May 13th, 2013.

11 Q Did you have the opportunity in that evaluation to
12 review records?

13 A I reviewed hundreds if not thousands of pages of
14 records. I've got a summary, a ten-page summary, that
15 lists every record or anything I did in this case. So
16 I reviewed endless records.

17 Q All right. And why is it important that you have
18 an opportunity to evaluate and look at the history
19 records of an individual when you're asked to do an
20 evaluation like this?

21 A One of the reasons we look at the history of
22 records is to see if a mental health -- a mental
23 illness had been present before an incident in
24 question, how long it had been present, how it
25 manifested itself, and also the track it takes over

1 time. Does the injury -- does the illness follow a
2 pattern we would expect that illness to have?

3 And to put that in contrast, if you've been
4 diagnosed with an adjustment disorder with depressed
5 mood, for example, very common mental disorder, it
6 occurs within three months of the onset of a stressor
7 and remits within six months, so we would not expect to
8 see that. If you have a diagnosis such as
9 schizophrenia that was made, say, in 1998, we would
10 expect to still see some signs of that from the
11 18 years since then. Because they do wax and wane, but
12 you would certainly see signs of that, and you look for
13 its development.

14 Q So in the review of the records, it to some extent
15 depends upon what the records reflect and whether they
16 are consistent and ongoing depending upon what the
17 condition is?

18 A That's correct. When we look at a significant
19 mental disorder, one of the things we look for is that
20 generally they have their onset or they start showing
21 signs between the ages of 18 and 28. Sometimes 30.
22 But we look in that range. So I would not expect a
23 35-year-old to walk into my office with a diagnosis of
24 schizophrenia with no history of mental illness prior
25 to that. If that's the case, then there's probably

1 another explanation for those symptoms.

2 Q Did you have an opportunity in this evaluation to
3 not only -- not only review records but also meet with
4 Anna personally?

5 A I met with Anna on nine different occasions, so
6 I've spent a number of hours with Anna. I would
7 estimate somewhere between 18 and 24.

8 Q And why do you feel like that is important for
9 your -- and understanding that people, different people
10 do it different ways, but why is it that you feel like
11 that type of exposure to the individual is important
12 for your opinion?

13 A Well, mental disorders tend to wax and wane, so if
14 you see them over a number of times, you're likely to
15 see a difference in their functioning. Also in complex
16 cases -- and this is a case of somebody that was known
17 to have paranoia and has often been assessed with
18 having paranoid ideation, paranoid psychosis -- it
19 takes a while to develop their trust and get them to
20 open up to you and talk. The other reason you do it is
21 one of the things that's important to everybody in this
22 courtroom is the veracity of what she says and what the
23 records say. And the best way to assess for that is to
24 see them over time and get a good example or good feel
25 for their honesty and how what they say matches up with

1 the records that you know and things of nature.

2 Q After -- did you have what you believed to be an
3 adequate opportunity to meet with the client and review
4 the records to form an opinion?

5 A I actually did more than that. I met with the
6 client, I reviewed the records, I interviewed her
7 parents together and individually, I interviewed her
8 treatment providers, Jeff Smith and Wayne Hanna, so I
9 had a very good feel.

10 Q All right. Now, within your field of expertise,
11 to a reasonable degree of medical certainty, were you
12 able to form an opinion as to Anna's ability to
13 distinguish between right and wrong conduct at the time
14 of this incident?

15 A I did.

16 Q And what was your opinion?

17 A I felt that she was not able to differentiate
18 between right and wrong, moral right and wrong, or
19 legal right and wrong on the night in question.

20 Q All right. I want you to take a few moments and
21 explain to the jury why you believe that opinion is
22 correct.

23 A Anna Simpson began to have mental symptoms while
24 she was at Winthrop. And what we look for when we look
25 at a significant disorder is oftentimes we have what's

1 called a prodromal period. And that means the person
2 starts deviating from their baseline and gradually gets
3 worse over time until they have a psychotic episode or
4 major episode.

5 So one of the things you look for is that. And,
6 generally, once they have had a psychotic episode, then
7 they stay in what we call a residual phase, meaning
8 they never get back to who they were. They can improve
9 in functioning. They never get back to where they
10 were, and those disorders tend to wax and wane until
11 when you'll have another episode.

12 So in looking at her, I felt that there was no
13 question about her psychosis. There's no question
14 about her delusions. There was no question about her
15 paranoia, and that she was acting under the presence of
16 a significant delusion on the night in question when
17 she shot her husband and killed her two children.

18 Q Was there -- and you were describing how you would
19 be on a certain level and then you would drop and then
20 you'd stay on that level and drop. Was there a
21 noticeable and consistent pattern in your opinion from
22 your review and your interviews with her, her
23 psychiatrist, and others that there was a noticeable
24 disintegration of her capability? And I don't know if
25 that's a noticeable decline in and an increase in the

1 psychotic side of Anna Simpson.

2 A It was. You know, in talking with her, she began
3 to show signs of the bipolar disorder when she was at
4 Winthrop when she had a pretty significant depressive
5 episode. She also indicated at that time that she
6 started having some racing thoughts, some difficulties
7 financially with spending sprees and some voices.

8 Now, that continued. She was receiving treatment.
9 She's receiving treatment from her family practitioner,
10 Dr. Wayne Hanna, who was treating her for attention
11 deficit hyperactivity disorder, which she brought to
12 the attention of herself when she was at Winthrop
13 because she was just disintegrating. Started getting
14 treated for that, and then started getting treated for
15 depression.

16 And by the time in 2008 she starts being diagnosed
17 with a panic disorder and an obsessive compulsive
18 disorder. Sort of interesting, in a lot of times in
19 bipolar disorders, particularly when they're manic,
20 there's some obsessive compulsiveness to them. I think
21 the panic disorder was related to the fearfulness and
22 the paranoia. A lot of times when people are paranoid,
23 they can have some anxiety.

24 I think Dr. Smith wound up, when she made her way
25 over to see him in 2010, he diagnosed her with bipolar

1 disorder mixed type, meaning she's showing signs of
2 both mania and depression, but also diagnosed her with
3 the ADD and the anxiety disorder not otherwise
4 specified.

5 Q Did you have an opportunity to review Dr. Smith's
6 records and also have an interview with Dr. Smith about
7 this patient?

8 A I had time to meet with Dr. Smith, I have reviewed
9 all of his records and had time to talk about Anna, his
10 treatment, things that happened. And as part of
11 reaching my opinion and actually, well, within that
12 meeting, Dr. Smith agreed with my opinion.

13 MR. WILKINS: Objection, Your Honor. He's about
14 to opine as to what another doctor has -- diagnosis
15 or --

16 THE COURT: Objection as to hearsay.

17 MR. MAULDIN: Well, the evaluator obviously talked
18 to tens of people, that he is relating what they told
19 him about the person being evaluated. I don't know
20 how --

21 THE COURT: Is this something that was contained
22 in the records?

23 THE WITNESS: It's what he told me directly, Your
24 Honor.

25 MR. WILKINS: It's not in his medical records.

1 It's what he told him.

2 THE COURT: All right. Objection sustained.

3 BY MR. MAULDIN:

4 Q Don't say what Dr. Smith told you unless it
5 actually is contained in Dr. Smith's records. Okay?

6 That continuation of that treatment was from 2010
7 until essentially she was still a patient of his when
8 this incident occurred; is that right?

9 A That's correct.

10 Q All right. I want you to go forward to the date
11 of or the dates of late July 2012. Was she a patient
12 of Dr. Smith at that time? This would have been the
13 time of the St. Francis hospitalization.

14 A Yes, sir.

15 Q All right. What can you tell us about what your
16 evaluation indicated caused that hospitalization and
17 whether it was voluntary, involuntary, or whatever, and
18 for what?

19 A Well, actually, what had happened, to lead into
20 that, is that she had gone to Asheville with her
21 family. It was clear that she was manic. She was
22 having these illogical discussions about various
23 things. They wanted her to spend the night with them.
24 She said no. She went home, then about midnight called
25 them and said put the lights on, she was going to come

1 over there. It was obvious that she was having
2 problems.

3 They called Dr. Smith's office. Dr. Goodbar was
4 on call, who told them to take her to the emergency
5 room. They took her to the emergency room at Bon
6 Secours St. Francis which led to her being hospitalized
7 for five days at St. Francis.

8 Q All right. And so the actual initiation of the
9 hospitalization was that Anna's family called her
10 treating psychiatrist, Dr. Smith?

11 A That's correct.

12 Q And the doctor that was on call told her family to
13 take Anna to the emergency room immediately; is that
14 right?

15 A That's correct.

16 Q Is that what the records reflect?

17 A I didn't --

18 Q And the interviews?

19 A The records and interviews reflected that, but
20 there's no reflection in Dr. Smith's records about the
21 St. Francis hospitalization. The only reference I saw
22 in his records related to the Carolina Center for
23 Behavioral Health. Subsequent admission was the
24 admitting doctor at Carolina Center for Behavioral
25 Health called his office to refer Anna back to a

1 therapist.

2 Q So there's no reference to the St. Francis
3 hospital directive that they take her to the emergency
4 room. That's -- you didn't see that in there?

5 A I didn't see that.

6 Q All right. Then what happened with her while she
7 was at St. Francis?

8 A While she was at St. Francis, she actually saw
9 three different psychiatrists. She saw Dr. Mario
10 Galvarino, I think she saw Dr. Rick Myers, and she saw
11 Dr. Jeffrey Craddock. They had -- they were so
12 concerned about her at St. Francis, St. Francis kept a
13 security guard in her room the whole time they were
14 there.

15 The interesting thing about that is I'm not sure
16 why they just didn't enact an involuntary commitment at
17 that point if they felt the need to have her under that
18 supervision. But she was delusional, had paranoid
19 ideation, she had flight of ideas, which is real common
20 in bipolar. The ideas are real jumbled up and they are
21 hard to differentiate them. She had delusions, as we
22 heard from Dr. Mulbry of her children being molested.
23 She thought that she had some special powers, delusions
24 of grandeur about being able to sense others. You've
25 seen some of that with she didn't like people to wear

1 sunglass because she needed to see their eyes so she
2 could see their core and then she felt she could
3 evaluate who they were, good and evil, by being able to
4 do that.

5 You know, while she was there, she had diagnoses
6 of the bipolar disorder, but they also diagnosed her
7 with a psychotic disorder. It's sort of interesting,
8 and there's a number of ways to do diagnoses. When we
9 talk about a schizoaffective disorder, which is what I
10 ended up diagnosing her with as did Dr. Mulbry, we're
11 saying that she has symptoms of schizophrenia and of a
12 mood disorder, in this case a bipolar disorder. She's
13 psychotic. Well, you could diagnose her as bipolar
14 disorder and then psychosis, which is what Dr. -- what
15 is what they did on her admission at St. Francis.
16 Dr. Galvarino referred she needed -- that she was
17 overtly psychotic and referral to inpatient
18 hospitalization. And then, ultimately, when she went
19 to Carolina Center for Behavioral Health, they
20 diagnosed her with bipolar disorder with psychotic
21 features. So people were seeing that she had this
22 psychosis going on during that period.

23 Q And, you know, I'm going to ask to break just a
24 moment and let's kind of define. When you're using a
25 term like "psychosis" or "psychotic," can you give the

1 jury just a two-sentence -- and it may be impossible --
2 but just a little two-sentence definition of kind of
3 what that reference to that term would mean?

4 A It's a broad term. In a nutshell, being psychotic
5 is having a break with reality. No perception of
6 reality. It can come as a number of things. You could
7 have hallucinations, you could have delusions, you
8 could be engaging in aberrant behavior. You know, it
9 is a broad term. But it really means that the person
10 mentally is in significant trouble and doesn't see the
11 world like everyone else would see it.

12 Q So a person can be bipolar and not have psychotic
13 or psychosis, right?

14 A That's correct.

15 Q And a person can be bipolar with psychosis in
16 almost like a combined status, right?

17 A That's correct.

18 Q Okay.

19 A You can have more than one mental illness. So
20 it's -- you know, that's actually not uncommon. And as
21 we've seen with her, she's had multiple diagnoses over
22 the past 20 years reflecting different mental
23 illnesses.

24 So you could -- when someone is really manic, it's
25 certainly possible for them to be psychotic. I felt

1 that she had two disorders, really. I felt that she
2 had significant schizophrenic symptoms and disorder and
3 then a mood disorder, the bipolar disorder.

4 Q And is that why you particularly diagnosed her as
5 you did?

6 A Yes, sir.

7 Q And your diagnosis was specifically what?

8 A Schizoaffective disorder bipolar type.

9 Q All right. So that would be an example of when a
10 person would have multiple types of conditions?

11 A That's correct.

12 Q Now, once again, briefly describe from the time
13 she was released from the care -- she went from
14 St. Francis to the Carolina Center?

15 A That's correct.

16 Q And when she was then released from the Carolina
17 Center in August of 2012, give us a brief synopsis,
18 please, of between that time and the first of May of
19 2013 leading up to the incident.

20 A She continued to believe in evil conspiracies
21 against her. She -- you know, it's a number of
22 different significant things, actually. Her paranoid
23 ideation actually goes back to 2010 when she felt her
24 computer was tapped and there's issues with her phone.
25 She actually had a friend she worked with at the bank

1 who was a computer expert, Will Traxler, that she
2 finally called too much about her computer that he just
3 wouldn't return any more of her calls.

4 She tended to believe that she was being watched.
5 She felt that somehow her ceiling fan had changed and
6 it was now monitoring her behavior. She went from her
7 home to Lowe's or Home Depot or a place like that to
8 look at other ceiling fans to see if she could notice
9 any difference between theirs and hers. She thought
10 she was getting messages from the red light on her
11 phone.

12 She felt that their cat Bam Bam would shapeshift,
13 which is from the Twilight books, and her deceased aunt
14 would shape into that cat and back. She felt that
15 there's drug activity at the house across the street.

16 We've heard about how she was afraid of Nate
17 Stegall because he wore sunglasses. Sort of a bizarre
18 thing. He came over to borrow Mike's truck. She hid
19 the keys, didn't want him to get in the house, had him
20 out in the yard looking for the keys. Mike came home.
21 They were all looking for the keys. Finally, when Nate
22 left, she showed Mike where she had hid the keys and
23 was relieved that he wasn't mad.

24 She continued to have concerns for her children.
25 She went and got her child out of school, as discussed

1 earlier, because of the shootings in Connecticut. She
2 was worried about their safety.

3 She was at the library one time with her children.
4 When she left, she felt followed out of the library by
5 an unknown woman. She gets in her car and the unknown
6 woman stays in her car so she stays because she thinks
7 that woman is following her.

8 She believes that the world is becoming unsafe.
9 It's full of evil. And, really, that was the -- her
10 belief was on the night of the 13th that she would
11 shoot her family and then kill herself and they'd all
12 be reincarnated in a better place.

13 And, actually, that's when she -- when she left,
14 she felt her family was in Nate's garage. And if that
15 seems irrational, that's part of having a mental
16 illness. And so she was feeling like she was getting
17 these messages. She thought she'd get messages from
18 the Today show when she would watch it. I mean, she
19 was having all of these ideas of reference, feeling the
20 world was a dangerous place, and she was trying to
21 protect her family.

22 Q The escalation and intensity of these, I'll call
23 them delusions. I don't know if that's an accurate --
24 is that -- would that be considered delusional?

25 A That is a delusion.

1 Q But the escalation of these delusional thoughts,
2 while perfectly unrealistic and totally false to you or
3 I or others, did you believe that Anna felt that they
4 were real, that this was real to her?

5 A When a person has a delusion, that's their belief
6 or the reality of their world, and then their behavior
7 is then consistent with that delusion. So the behavior
8 would look inconsistent to us because we're not
9 experiencing that delusion.

10 Q And it makes it difficult for us to understand
11 because we're not mentally ill?

12 A That's correct. We don't share that delusion.

13 Q Dr. Price, when this incident occurred, just a
14 moment ago you mentioned to the jury what she thought
15 if she killed her family and killed herself what would
16 happen, so I'm not going to go back through any of
17 that. Is it your opinion that at the time these acts
18 were committed by Anna, she was unable to distinguish
19 between right and wrong conduct?

20 A Yes. That is my opinion.

21 Q All right. Nothing further.

22 CROSS-EXAMINATION

23 BY MS. STROM:

24 Q Good morning.

25 A Good morn -- good afternoon now.

1 Q Is it? Oh, it is. Good afternoon, Dr. Price.

2 How are you?

3 A I'm doing great, Ms. Strom.

4 Q I just want to talk to you about a couple of
5 things. You said you talked to her treating
6 psychiatrist, Jeff Smith. When was that specifically?

7 A March 2, 2016.

8 Q March 2, 2016, okay. All right. And I just want
9 to talk to you a couple -- about a few things. All
10 these things that you're describing as far as she was
11 telling you about shapeshifting, let's see,
12 shapeshifting, ceiling fans, drug activity across the
13 street, all those kind of things, there's not any
14 notation in Dr. Smith's records that she shared any of
15 this with him?

16 A That's correct.

17 Q Okay. And when we start hearing about this or
18 when she starts telling a psychiatrist about this is
19 after the fact?

20 A No. Dr. Smith's records reflect that she's having
21 paranoid ideation. He doesn't go into depth about what
22 paranoid ideation she's having, but he does note she's
23 having paranoid ideation.

24 Q No doubt she's having paranoid thoughts. My
25 question was you just stated there was nothing in

1 Dr. Smith's records about any of this shapeshifting,
2 the werewolves or whatever, none of that?

3 A That's correct.

4 Q Okay. All right. But when she does talk to you,
5 she talks to you about that, but there are also some
6 things she talks to you about. She, in fact, tells you
7 and other -- she tells you and I think Dr. Frierson and
8 maybe even Dr. Mulbry that she knew how to shoot a gun.
9 Mike had taught her how to shoot a gun?

10 A Mike had taught her how to shoot a gun, that's
11 correct.

12 Q And she told you that, in fact, she and Mike had
13 had a fight that night. The night before the killings,
14 she and Mike had had a fight that night?

15 A Because when he came home --

16 Q Did they have a fight or not? Did she tell you
17 they had a fight?

18 A They had a disagreement, that's correct.

19 Q Okay. And that disagreement was about the fact
20 she could no longer take care of the children?

21 A That's correct.

22 Q You also are aware that, in fact, she made a phone
23 call to her mother that night, her own mother, and
24 said, "Mike is done with me. He says I can no longer
25 take care of these children"?

1 A That's correct.

2 Q You're also aware that she told you and she told
3 Dr. Harris in the ER, when she says why didn't she talk
4 to Mike about these thoughts, about her issues, she's
5 afraid he will lock me back up again. She told you
6 that?

7 A She did do that.

8 Q And she told Dr. Wade Harris that?

9 A I think so. I don't recall that exactly.

10 Q You don't recall him saying --

11 Just one second, Your Honor. I've got it right
12 here.

13 This is Dr. Wade Harris' report. If you will look
14 on that, I have it underlined right there.

15 A And the question again, Ms. Strom?

16 Q Yes. Is that she told Dr. Wade Harris after she's
17 admitted to the Greenville Memorial Hospital after
18 she's killed her children and shot Mike, he asked her,
19 "Do you talk to your husband about this?" And she
20 says, "No, I'm afraid he will lock me back up again and
21 he will leave me."

22 A Yes.

23 Q Thank you.

24 Just one quick second.

25 Thank you very much. I have no further questions.

1 MR. MAULDIN: Just one.

2 REDIRECT EXAMINATION

3 BY MR. MAULDIN:

4 Q I want to make sure there's a clarification about
5 this "lock me back up." That's what the prosecutor
6 said. Anna Simpson, according to your understanding,
7 has no prior criminal record of any sort; is that
8 correct?

9 A That's correct.

10 Q All right. So "lock me back up" apparently was
11 referring to an involuntary hospitalization process; is
12 that the only thing it could mean?

13 A That would be the only thing it could mean.

14 Q All right. Thank you.

15 THE COURT: Thank you, sir. You can step down.

16 Any objection to him leaving? Do you want him to
17 leave or you need him?

18 MR. MAULDIN: I'm done with him, Your Honor.

19 MS. Strom: Fine.

20 MR. MAULDIN: If he can be excused.

21 THE COURT: Thank you, sir. You are free to
22 leave.

23 Scheduling real quick. Let me talk to the
24 lawyers.

25 (WHEREUPON, a bench conference was held off the

1 record in the presence of the jury, but out of the
2 hearing of the jury.)

3 THE COURT: We're discussing y'all's schedule so
4 hang on.

5 Here's what we're going to do. We're going to
6 take a lunch today. It's going to be a little bit
7 shorter lunch today based upon my previous commitment I
8 told y'all about Monday. So I want you back in your
9 jury room, ready to go, at 1:45. That's an hour and
10 15. That should give those of you who want to go home
11 for lunch enough time to get back in time.

12 Remember, don't discuss the case with anybody.
13 Don't look up news reports about the case or seek out
14 any other information about the case other than what
15 you've heard in this courtroom. Okay? Y'all have a
16 good lunch. See you back at 1:45.

17 (WHEREUPON, the jury exited open court at
18 12:36 p.m.)

19 (WHEREUPON, Defendant's Exhibit Number 15
20 was marked for identification.)

21 THE COURT: Anything before we bring the jury in?

22 MR. MAULDIN: One quick administrative matter,
23 Your Honor.

24 The court reporter, we were marking an exhibit,
25 and the court reporter indicated that there had never

1 been an actual admission of the group of photos at the
2 very first of the case involving the car wreck sequence
3 of pictures.

4 THE COURT: Yeah.

5 MR. MAULDIN: The State had no objection to them,
6 but I don't think they were ever formally introduced.
7 So I am going to ask that they be moved in at this
8 time.

9 MS. Strom: We have no objection.

10 THE COURT: They're into evidence.
11 Anything else before we bring the jury in?

12 MR. MAULDIN: No, sir.

13 THE COURT: All right.

14 (WHEREUPON, the jury entered open court at
15 1:50 p.m.)

16 THE COURT: All right. All members of the jury
17 are present.

18 Mr. Mauldin, you can call your next witness.

19 MR. MAULDIN: Thank you, Your Honor.

20 Richard Frierson. Dr. Frierson, please.

21 **RICHARD LESESNE FRIERSON, M.D.,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 THE CLERK: If you would have a seat and state
24 your name for the record, please.

25 THE WITNESS: My name is Richard Lesesne Frierson.

1 DIRECT EXAMINATION

2 BY MR. MAULDIN:

3 Q Dr. Frierson, where are you from?

4 A Originally, Sumter, South Carolina. Since 1980
5 I've been living in Columbia.

6 Q All right. And what do you do in Columbia?

7 A I am a professor of psychiatry at the University
8 of South Carolina School of Medicine.

9 Q All right. And what is your -- is that your
10 title, professor?

11 A Yes, professor of psychiatry.

12 Q All right. Are you an employee of the University
13 of South Carolina or the State of South Carolina? Who
14 is your employer?

15 A Well, I'm a state employee for the university.

16 Q All right. Are you a doctor?

17 A Yes.

18 Q And describe your educational background, please.

19 A Okay. After graduating public school in Sumter, I
20 went to the -- I know I'm in Clemson territory. I went
21 to the University of South Carolina and got a
22 bachelor's of music degree in 1984. Then I went to
23 medical school, got my MD from the University of South
24 Carolina School of Medicine in 1988. I then completed
25 four years in general psychiatry training at William S.

1 Hall Psychiatric Institute in Columbia, and then a
2 one-year fellowship in forensic psychiatry at William
3 S. Hall Psychiatric Institute.

4 Q Have you had, in addition to what you just
5 described, any other specialized training in the field
6 of psychiatry or forensic psychiatry?

7 A I go to lots of CME, continuing medical education
8 meetings. So as far as that goes, that's how I keep
9 current.

10 Q Do you yourself conduct psychiatric education and
11 training?

12 A Yes. I've been an invited speaker at the American
13 Academy of Psychiatry and the Law. I have been a
14 speaker for the National College of District Attorneys.
15 That's a national prosecutors group. I've been to
16 Alaska and back for them and all over the country.
17 I've been an expert for defense attorney groups to come
18 lecture on mental illness with them as well.

19 Q Okay. I want to make sure that we've covered all
20 of your responsibilities and duties, and I don't know
21 whether we have or not. You would know. But are there
22 any additional duties that you find yourself conducting
23 on behalf of the State of South Carolina?

24 A Yes. I mean, my department has a contract with
25 the Department of Mental Health in Columbia. And the

1 majority of my work is to assist the Department of
2 Mental Health in performing evaluations for the court,
3 either competency to stand trial, can they work with
4 their lawyer, get through the trial process, or
5 criminal responsibility such as I was asked in this
6 case.

7 In addition to that, I also run the professional
8 wellness program for the university. In other words, I
9 evaluate physicians and nurses and other licensed
10 professionals that are referred for an evaluation by
11 the nursing board or the medical board for fitness for
12 duty. I have a lot of teaching obligations within the
13 school of medicine both for medical students,
14 psychiatric residents. And I run the forensic
15 fellowship, which is a one-year program that trains
16 psychiatrists to be forensic psychiatrists, to do this
17 type of work. And then, finally, I work part-time at
18 the South Carolina Department of Corrections where I
19 provide treatment to people that are incarcerated in
20 the Department of Corrections.

21 Q Are you board certified in general and/or forensic
22 psychiatry?

23 A I am board certified in both general and forensic
24 psychiatry.

25 Q And, in particular, with regard to that board, are

1 you asked to do any particular and unusual
2 responsibilities?

3 A Yes. The American Board of Psychiatry selected me
4 to basically come to Chicago twice a year and write
5 questions for the board certification examination. So
6 the ones that -- the exam that people take to become
7 board certified, I have been on the small committee
8 that writes those exams.

9 Q So you conduct forensic psychiatry training, you
10 furthermore provide the questions that applicants would
11 have to answer in order to become board certified?

12 A Yes.

13 Q All right. Are you licensed to practice in South
14 Carolina?

15 A Yes.

16 Q I'm going to ask you, Dr. Frierson, if you can
17 identify what's marked as Defendant's Exhibit Number
18 15?

19 A This appears to be a copy of my what we call a CV,
20 curriculum vitae. It's like a résumé.

21 Q It's like a résumé. All right.

22 MR. MAULDIN: We offer this.

23 MR. WILKINS: I hadn't seen it. Is that his CV?

24 MR. MAULDIN: Yeah.

25 MR. WILKINS: No objection.

1 THE COURT: Without objection, introduced into
2 evidence.

3 (WHEREUPON, Defendant's Exhibit Number 15 was
4 admitted into evidence.)

5 BY MR. MAULDIN:

6 Q Dr. Frierson, have you been qualified to testify
7 in the courts of the state of South Carolina on the
8 matters before this court today?

9 A Yes.

10 Q How many times have you been offered and qualified
11 as an expert in the field of forensic psychiatry?

12 A Several hundred. I think it's probably about 500
13 at this point.

14 Q All right.

15 MR. MAULDIN: Your Honor, at this time I would
16 offer Dr. Frierson as an expert in the field of
17 forensic psychiatry.

18 MR. WILKINS: No voir dire. Without objection.

19 THE COURT: All right. Without objection, so
20 qualified.

21 Ladies and gentlemen of the jury, remember what an
22 expert can testify about.

23 BY MR. MAULDIN:

24 Q Dr. Frierson, in this particular matter, did the
25 Department of Mental Health receive a court order to

1 conduct an evaluation on criminal responsibility for
2 Anna Simpson?

3 A Yes.

4 Q Was that order issued at the request or on the
5 motion of the prosecutor in this case?

6 A Yes. The prosecutor made the motion for the
7 evaluation, and the judge ordered it.

8 Q And how then -- do you recall when that was or
9 about the timing of when you -- well, how did you
10 then -- the evaluation wasn't ordered for you to do it?

11 A No. It was just for someone from the Department
12 of Mental Health.

13 Q So how did you get assigned that responsibility?

14 A You'd have to ask them. They told me to do it,
15 so, you know, it's my job.

16 Q You got it through the normal course of
17 assignment?

18 A Oh, yeah.

19 Q All right. And can you tell us about when that
20 was?

21 A Well, the order was received on September 10th of
22 2014, and so sometime between then and February of 2015
23 I was assigned. I think probably sometime -- it might
24 have been in December or January, probably.

25 Q All right. Are you being paid by either the

1 prosecutor or the defense for your report or
2 information today?

3 A No.

4 Q You're a salaried employee doing your job?

5 A Correct.

6 Q When you commenced the process of conducting this
7 court-ordered evaluation, describe to the members of
8 the jury what your examination or evaluation consisted
9 of.

10 A First of all, I reviewed the court order.
11 Obviously, the arrest warrants. There were four
12 charges in this case. I reviewed the indictments. I
13 reviewed statements of probably 12 different people. I
14 reviewed all the police reports. I reviewed the
15 autopsy reports on the two deceased victims. I
16 reviewed an attempted interview with the defendant in
17 the emergency room. I interviewed -- I reviewed
18 records from Dacusville Elementary School, the
19 Children's Home of North Carolina related to the
20 defendant's adoption when she was a child, employment
21 records from First Citizens Bank, records from the
22 Greenville County Schools for the defendant, medical
23 records from her OB-GYN, her eye doctor, her dentist,
24 Spartanburg Regional Medical Center, Piedmont Medical
25 Center, Neurology Associates of Greenville, Pelham

1 Family Practice, Greenville Hospital System,
2 St. Francis Hospital, the Carolina Center for
3 Behavioral Health, the Pickens County Detention Center,
4 the Greenville County Detention Center, the offices of
5 Dr. Robert Richards, SLED crime scene investigative
6 reports, SLED firearms reports, SLED DNA analysis, SLED
7 latent prints report, a trace evidence report, the
8 statement of Elizabeth Simpson, of Alison Simpson.
9 Those are what I reviewed prior to interviewing the
10 defendant.

11 Q Would the court order that we've referred to, that
12 court order would have required or ordered both the
13 State of South Carolina and the defense counsel, would
14 have ordered both of us to provide you with
15 information; is that right?

16 A That's my understanding, yes.

17 Q All right. And that's how you got all of this
18 stuff. And plus the additional investigation that you
19 conducted?

20 A Yes.

21 Q In this particular case, after you began your
22 evaluation and meeting with the client and so forth,
23 did you find this particular evaluation to require
24 perhaps a little more than the normal evaluation would
25 have and why?

1 A Yes. This evaluation is much more difficult and
2 time consuming than -- this would be in the top two
3 percent of all evaluations I've done as far as how much
4 actual time it took to review all this information, to
5 interview the defendant. Also, I interviewed in person
6 the surviving victim, Mike Simpson. I interviewed in
7 person his parents. I interviewed in person the
8 parents of Suzanna Simpson in Columbia. They came
9 down. I interviewed Dr. Wade Harris, who was the first
10 psychiatrist who saw her in the emergency room at
11 Greenville Memorial.

12 Q This would have been after the incident?

13 A After the alleged incident, yes.

14 Q How many times, Dr. Frierson, did you actually --
15 and you're in Columbia, and Anna has been in the
16 Pickens County jail. Did you travel to the Pickens
17 County jail or was she transported by authorities to
18 Columbia?

19 A She was transported by authorities.

20 Q And how many times does your file indicate that
21 you had an opportunity to meet personally with Anna
22 Simpson?

23 A Three occasions.

24 Q On three occasions. Do you have any idea or
25 reference about how long that -- how much time you

1 actually spent with her?

2 A Yes. On February 12th of 2015, I interviewed her
3 for two and a half hours. Then on May 27th, 2015, I
4 interviewed her for an hour and 30 minutes. They were
5 late getting her to Columbia that day for some reason.
6 And then after I spoke with her parents and the
7 surviving victim and his parents, I wanted to do a
8 follow-up with her, so I saw her again on June 12th for
9 one hour.

10 Q All right. And why is it important or is it
11 important that an evaluator that is under the order
12 that you were under to actually have personal
13 interviewing opportunities with the patient?

14 A Well, this is an evaluation of how the patient was
15 thinking -- not the patient -- the defendant was
16 thinking and acting at the time that this happened.
17 And it's important that I ask her about her thoughts,
18 what was going on, what does she recall, what does she
19 remember, and also get a full history from her of her
20 life and her history of treatment.

21 Q Did you, in addition to what you have described to
22 this jury, have an opportunity to personally listen to
23 the 911 tapes that were made with Mr. Scott Hart, the
24 neighbor from across the street?

25 A Yes.

1 Q And do you recall with those 911 calls the general
2 description that was given over those 911 calls?

3 A Yes.

4 Q All right. If you could describe that to the
5 jury.

6 A My understanding is this was a neighbor who found
7 the wreck or heard it and went outside and discovered
8 that Ms. Simpson had wrecked the truck that she was in,
9 and he was calling 911 to get emergency help. I do
10 remember him telling 911 that -- 911 was asking him if
11 she was speaking to him, and he said yes. And the 911
12 asked, "Well, so she's responsive?" And he said,
13 "Well, I don't think she knows who she is or where she
14 is. I think she may have hit her head and been knocked
15 unconscious."

16 Q Dr. Frierson, having conducted this records
17 review, interviews, and been provided information by
18 both the prosecution and me, to a reasonable degree of
19 medical certainty, have you been able to actually
20 diagnose Anna Simpson psychiatrically?

21 A Yes.

22 Q And what is that diagnosis?

23 A The diagnosis that I assigned is schizoaffective
24 disorder bipolar type.

25 Q I'm going to ask you because the jury has heard

1 from other witnesses this morning. Was your diagnosis
2 of schizoaffective disorder bipolar type, was that
3 wholly independent of the other two psychiatrists who
4 have testified in this case?

5 A Yes. I have not spoken with the other experts in
6 this case.

7 Q Now, I want you to very briefly --

8 A Let me clarify. I have spoken with them but not
9 about this case.

10 Q And you did not consult with those experts to make
11 any determination of whether y'all had come to the same
12 conclusion?

13 A No.

14 Q All right. I want to ask you, if you would, and
15 as I mentioned, the jury has heard the testimony from
16 previous experts, so without going into a tremendous
17 amount of detail, I want you to simply describe in your
18 words the difference between a schizoaffective disorder
19 and a bipolar disorder, a comparison of those two.

20 A Okay. Let's start with bipolar disorder. Bipolar
21 disorder is a mood disorder. It's a disorder of mood.
22 And it's characterized by having at least one period in
23 your lifetime of mania, what we call a manic episode.
24 A manic episode is a distinct period of time, lasting
25 at least several days, maybe up to a week or more, when

1 a patient has a predominant euphoria or predominant
2 irritability. Their mood, they're on top of the world
3 or they're incredibly angry all the time. They have
4 pressured speech which means they're speaking 90 miles
5 an hour. They have racing thoughts. Their thoughts
6 are going so fast, they have a hard time keeping up
7 with those. They have a decreased need for sleep.
8 They can go days without sleeping and still feel full
9 of energy. They can become religiously preoccupied.
10 They can become grandiose, thinking they have special
11 abilities. So it's a period of time where someone has
12 an abnormally elevated or irritable mood. That's
13 enough to call someone bipolar disorder.

14 However, typically, you also have other periods of
15 time when you have the opposite of that, you have
16 depression. And Ms. Simpson had depression starting in
17 college, then after the birth of each of her children,
18 and especially after a miscarriage. So she has had
19 periods of depression and had a manic episode when she
20 was in Carolina Center for Behavioral Health. So that
21 means she has met the criteria in the past for bipolar
22 disorder.

23 However, the reason she has schizoaffective
24 disorder is because in addition to that, during periods
25 of time when she has not been manic and not been

1 depressed, her mood has been fine. She has had
2 significant paranoid thinking, delusional thinking,
3 that the dentist implanted a device in my filling
4 that's spying on me. I mean, just bizarre -- I hate to
5 use the word "crazy" because as a psychiatrist, we hate
6 that word. But just really bizarre thoughts they
7 believe is true. And you can try to convince them,
8 "This isn't true, Anna," and you can't convince them
9 otherwise.

10 So because she's had both symptoms in the absence
11 of mood symptoms, that's what makes the diagnosis
12 schizoaffective disorder. If you have those paranoid
13 symptoms without mood symptoms at all, then it would be
14 schizophrenia. But she has had significant mood
15 disturbance, depressive episodes and at least one manic
16 episode, that's the bipolar type. And then she has
17 schizoaffective because she's had these paranoid
18 thoughts when her mood has been fine.

19 Q Very quickly. How would you define, then, the
20 delusion element of that? Is it just something that a
21 normal person without the condition realizes is not
22 true, but the person with the impairment believes it's
23 true?

24 A That's exactly correct. Delusion is a fixed false
25 belief. I'll give you an example. I had a guy once

1 from the jail who thought that they had implanted a
2 device inside of his body that was sending him
3 shockwaves. He underwent a colonoscopy -- you stick a
4 long tube up your colon to look. It's not very
5 pleasant -- an EGD, which they stick a tube down
6 looking in your stomach. He underwent a CAT scan of
7 his whole body. The doctors told him you do not have
8 anything implanted in your body. I mean, that's proof
9 to the contrary. And he still believed that it was,
10 and that it must have a cloaking device.

11 Q With regard to a couple of follow-ups, then we'll
12 talk about the criminal responsibility of Anna.

13 Does a person have to have the symptom, I'll
14 describe it, of hearing voices in order to be
15 psychotic? In other words, if a person is psychotic,
16 does that mean they -- every person that's psychotic
17 hears voices?

18 A No. Psychosis just means you're out of touch with
19 reality. If you believe things that aren't true,
20 you're out of touch with reality, whether you hear
21 voices or not.

22 Q Do you believe, having evaluated Anna, that there
23 were some occasions when she would have heard voices
24 that were not real?

25 A Yes.

1 Q But that was not all the time?

2 A No.

3 Q All right. Finally, Dr. Frierson, did you, in
4 your review of the records and interviews, determine
5 whether Anna had had the conditions that she has today
6 for a significant length of time?

7 A Yes. I think that the -- to make a long story
8 short, I think her mental illness began when she was in
9 college, and it started out as depression.

10 Q Is that unusual --

11 A No, no.

12 Q -- that an onset of a condition like that would
13 occur?

14 A This is a major mental illness, and most major
15 mental illnesses start in the late teens or early
16 twenties. That's usually the age of the onset. We
17 have a saying in psychiatry, if you've made it to age
18 40 or 35 and you haven't had to go into the mental
19 hospital, maybe you're hopefully in the clear.

20 Q Is there a cure, and by cure, I mean something
21 that is going to actually make Anna Simpson well for
22 her condition?

23 A There's no cure for major mental illness.
24 However, with appropriate psychiatric treatment,
25 medication, therapy, the symptoms could be kept at bay.

1 The more troubling symptoms can usually -- not in all
2 cases -- but can usually be improved.

3 Q Will she require mental health treatment for the
4 rest of her life?

5 A Yes.

6 Q Now, Dr. Frierson, I'm going to ask you if you
7 had, through this evaluation process, to a reasonable
8 degree of medical certainty once again, were you able
9 to determine if Anna Simpson, on the evening of
10 May 13th, early morning hours of May the 14th of 2013,
11 could distinguish right from wrong?

12 A Yes.

13 Q And what is your opinion?

14 A It is my opinion that at the time of the alleged
15 crimes in this case Ms. Simpson, due to mental illness,
16 could not distinguish legal or moral right from legal
17 or moral wrong or recognize the specific acts that she
18 was doing as legally or morally wrong.

19 Q Was that -- describe just briefly again how you
20 drew that conclusion. What is your basis for that
21 ultimate opinion in this case?

22 A Well, the basis of that is the fact that
23 Ms. Simpson had paranoid delusional thoughts that hell
24 had come to earth, that something evil had come to
25 earth, and was specifically coming to earth at

1 nighttime. She believed that Nate Stegall was either
2 the devil or the Antichrist. This is reflected in the
3 text -- I mean, she texted Nate Stegall -- I hope I'm
4 saying his name right because I've never heard it
5 pronounced. But she texted him the night before this
6 happened "hell on Earth." She had never texted him
7 ever before that time.

8 Q Dr. Frierson, wait a minute. I'm going to hand
9 you what's been admitted into evidence as Defendant's
10 Exhibit Number 10. This is purported to be a photo of
11 Nate Stegall's smart phone with a text message. Does
12 that confirm what you're testifying to to the jury?

13 A Yes.

14 Q All right. Thank you.

15 All right. Go ahead.

16 A Let me clarify are you asking me to explain why I
17 have the opinion that I have?

18 Q Yeah. I think the jury is entitled to that.

19 A Sure. And I certainly want to do that.

20 Part of the basis of my opinion is what Anna
21 Simpson said to me when we talked about what happened.
22 That is insufficient for me to render the opinion
23 unless I find significant corroborating evidence that
24 isn't from Anna Simpson. And I always enter these
25 things with a -- in my line of work you have to have a

1 healthy degree of suspicion.

2 She told me -- let me go, first of all, to what
3 she said during my evaluation because it's part of the
4 basis of my opinion, that she was experiencing
5 significant difficulties with her thinking around that
6 time. On Monday May 13th, her son, Sawyer, stayed home
7 from school because he had a stomachache. That gets
8 her to thinking, and she's thinking about the last time
9 that Carly stayed home from school. And she remembered
10 specifically the last time Carly stayed home from
11 school sick because it was December 14th, 2012.
12 December 14th, 2012, is the day Adam Lanza went into
13 the Sandy Hook school and shot up the school and killed
14 a bunch of first graders. Of course, she has these
15 young children, and she believed that this was not just
16 a coincidence, that the fact that Sawyer stayed home on
17 this particular day was not just a coincidence, that
18 that meant -- and this is what mental illness does --
19 that meant that something bad was going to happen at
20 the school or could happen at the school and that she
21 needed to protect Carly.

22 Q Does that demonstrate -- does that type of thought
23 process demonstrate the delusional, that while
24 everybody in here knows that that just is totally
25 imaginary --

1 A That's what happens in mental illness. That's
2 what happens in psychosis. People read secret readings
3 into the most benign events.

4 Q But to her it was real?

5 A To her it was real. So real enough that she had
6 to go to school and get Carly out. So she went and
7 took Carly out of school. The school records tell me
8 that happened about 11:50 which, just for a point of
9 reference in time, 11:50 in the morning. She did not
10 tell her husband when he got home that she had removed
11 Carly from the school because of her premonition about
12 something bad happening. She told her husband that
13 Carly had gotten sick.

14 And I could talk more about that, why I think that
15 fits into other stuff she told me earlier about
16 sometimes when -- she says when she would say some of
17 her paranoid thoughts to family members, they would
18 say, "That's crazy. Don't say that. That's not true.
19 Shut up. I don't want to hear it," or, "We don't want
20 to hear about that." So I think she learned to believe
21 that people wouldn't believe her when she said these
22 things.

23 She said that that afternoon that Nate Stegall
24 came over to borrow her husband's truck, and she
25 already had previous thoughts that he might be the

1 devil, and she became very afraid of him that day
2 because he was wearing sunglasses. This has been a
3 theme of her mental illness. Back in 2012 when she was
4 at Carolina Center for Behavioral Health, there was a
5 security guard wearing sunglasses, and she was deathly
6 afraid of him.

7 Q Wait. I mean, do you have any kind of input for
8 the jury about why that would necessarily --

9 A She believed that she has the ability to see
10 people's core and to tell whether they're a good person
11 or not a good person by looking in their eyes. This is
12 a special ability that not everybody has, but she
13 thought that she had it. And when people wear
14 sunglasses, she couldn't.

15 Q So if the sunglasses were such that she couldn't
16 see their actual eyes, this was a frightening thing for
17 her?

18 A Yes. So frightening to her, she didn't want to go
19 in the house with him. And so she didn't want to leave
20 him outside with the children because she was afraid he
21 was going to do something to the children.

22 Q Let me ask you and then we'll go back towards the
23 conclusion of your testimony. We'll go back to the
24 actual event, and you can describe what you believe
25 Anna was experiencing. But I want to talk, because the

1 jury has heard a number of references about paranoia
2 and about things that reflected or indicated an
3 existence of paranoia.

4 I want to ask you about if you could give us some
5 of these indicators of her paranoia, her fear, and also
6 why that information, perhaps, was not given to a
7 physician who she was supposedly seeing for psychiatric
8 treatment.

9 A Okay. She became clearly delusional and paranoid.
10 First thing that happened was when she was in the
11 dentist office. And she had some sort of spell where
12 she thought something nefarious was going on, bad, that
13 maybe something -- and she wrote, actually, after this
14 the dentist a very bizarre letter about, "Why didn't
15 you call me personally to apologize for what you did to
16 me? I don't know that I'll ever be able to trust the
17 dentist again." And then it ends up by saying, "I love
18 you and I hope you will see me as a patient." I mean,
19 it's just bizarre. It doesn't add up. Doesn't make
20 any sense to say opposite things.

21 But then she clearly became more progressively
22 paranoid to the point that in 2012 she became convinced
23 that her mother-in-law was teaching Carly how to
24 masturbate and was planning on somehow getting Carly
25 involved in some sort of child sexual ring. Clearly

1 this is not true and was clearly delusional to the fact
2 that it led to her hospitalization.

3 Q And that particular experience was what led to the
4 St. Francis July of 2012 where they took her to the
5 emergency room?

6 A Correct.

7 Q All right.

8 A And then subsequently she was admitted to Carolina
9 Center for Behavioral Health where those delusions are
10 clearly documented in the records that she was
11 delusional.

12 After she gets out of the hospital, her husband,
13 about two to three weeks after she leaves the hospital,
14 her husband leaves the country for three weeks to go on
15 a hunting trip to Africa leaving her with the kids. At
16 one point she calls her mother-in-law, Ms. Simpson, and
17 asks her if she believes that her husband was not
18 coming back.

19 Q Coming back to the family?

20 A Right. Was abandoning her and the children. It
21 concerned the mother-in-law enough that the
22 mother-in-law calls Ms. Brown, who is Anna Simpson's
23 mother. And they go over there and talk with her.
24 Initially she's very agitated, but the longer they
25 stayed there, the better she became. She calmed down

1 and was no longer quite having the paranoid thoughts.
2 When someone is incredibly paranoid and you introduce
3 some reality to the contrary, at some point they can --
4 sometimes they can say, "Okay. Maybe you're right.
5 I'm not convinced you're right, but maybe you're
6 right," and it calms them down. But then in the
7 subsequent months that happened there's abundant
8 evidence of paranoia. She carried her computer to a
9 computer place because she thought somebody had been
10 tampering with her computer. I don't remember if it
11 was Geek Squad, but some computer place that works on
12 computers.

13 She had taken a picture of her ceiling fan and
14 taken the picture to Lowe's to look at ceiling fans of
15 the same model because she believed that the ceiling
16 fan in her home had been bugged and that people were
17 spying on her through the ceiling fan. She believed
18 that people were coming into the house at night, and
19 the people were coming into the house at night doing
20 nefarious things, tampering with her mail, doing stuff
21 to the computer. She convinced -- well, her husband
22 set up like a deer camera or some sort of camera device
23 in the garage at nighttime to try to prove to her no
24 one is coming in the house.

25 So I now have evidence that isn't from Anna's

1 mouth, from one of the victims in the family in this
2 tragedy, that she was that paranoid that they were
3 trying to do something to convince her. The thing is
4 you can't convince somebody who believes these things
5 that they're not true. I mean, you could try to
6 convince them. It just doesn't work.

7 She believed that, in addition to her mail, she
8 believed that she was being followed by government
9 agents at times. She thought the fillings in her teeth
10 had been bugged by her dentist and that the bugging of
11 her teeth caused her breath to smell different. And
12 she repeatedly asked her father to smell her breath,
13 say, "Can't you smell it?" That is so bizarre of
14 thinking that -- that's also sort of typical of major
15 mental illness and psychosis. You frequently see
16 themes of being bugged, being poisoned, being spied
17 upon, things like that.

18 Q Let me ask you, Dr. Frierson, because we
19 obviously -- the jury has heard a number of these from
20 other witnesses, and then the list goes on. But let
21 me, in the interest of time, ask you to let's start
22 talking about the day of May the 13th and that night
23 and May the 14th, and I want you to describe what you
24 believe was going on in her state of mind that caused
25 this horrible tragedy.

1 A Okay. So just so I'm clear, you don't want me to
2 explain why Dr. Smith wasn't aware of these paranoid
3 thoughts. You had asked me that. I never answered.

4 Q Right. I want you to make sure that this jury
5 understands her state of mind. And if you feel like
6 that's necessary before we place the inquiry at the
7 scene of the crime.

8 A Okay.

9 Q Yeah.

10 A So I think we were doing that, and I think it had
11 gotten to the point where she took -- where Carly had
12 come home and Nate Stegall had shown up to borrow the
13 truck and she had hid the keys because she was paranoid
14 about him.

15 That night -- let me get back to this part of my
16 report. Excuse me.

17 Q And, by the way, you were ordered by the court to
18 produce your report; is that correct?

19 A Yes. The court order says I have to produce a
20 report.

21 Q And the report goes to the judge with copies to
22 both of us. Is that the report you're talking about?

23 A Yeah. I wasn't aware that it's directly sent to
24 the judge. I think it's sent to both of you, the
25 prosecution and the defense.

1 Q Yeah. Go ahead.

2 A So she had played outside with the kids. And that
3 was also confirmed to me with a statement from a
4 neighbor. So I'm getting these statements from other
5 people that are sort of confirming to me things that
6 Ms. Simpson was saying.

7 She remembers she said that she had a bad day that
8 day because she hadn't done any of the chores in the
9 house that she needed to do. And that's because she's
10 so obsessed in her thinking over what's going on, hell
11 is coming to earth, I think he's the Antichrist,
12 something bad is going is to happen. And I also don't
13 think she ate that day because when she got to the
14 hospital at Greenville Memorial, she had ketones in her
15 urine, and she's not a diabetic. She weighed much less
16 than she does now back then. She's probably gained 70
17 to 100 pounds as a side effect of the medicine she's
18 taking for her mental illness.

19 But she had ketones in her urine which tells me
20 she hadn't been eating or taking care of herself very
21 well. She at that time also reported that she was
22 receiving special messages from the television. This
23 is a symptom known as ideas of reference. So this was
24 going on that day. And then she also believed that she
25 was receiving messages from God through this red light

1 on the telephone in her house even when the phone was
2 on the hook.

3 When her husband got home at some point that day,
4 he was upset that there was no dinner prepared, and she
5 reports that they argued. There was no physical
6 altercation, but this was not an uncommon occurrence
7 that Michael might be upset. I mean, he's the
8 breadwinner, he's out working, taking care of the
9 family, he wanted a meal when he got home.

10 She gave the kids a bath, got their backpacks
11 ready for school the next day. And that's interesting
12 to me because she's very forward looking. You know,
13 why would she get the backpacks ready for the next day
14 if she was already thinking about doing something
15 harmful to the children.

16 She and her husband watched television, and she
17 texted Nathan Stegall the "hell on Earth" sometime that
18 evening that she states was a reflection of what she
19 was thinking. I asked her, "Why did you do that? He's
20 never heard from you before."

21 She called her mother earlier that evening, and
22 her mother confirms that she was talking about religion
23 a lot, wanting to know if Heaven or hell was real. So
24 once again, there is corroborating evidence from her
25 mother that she had some sort of preoccupation with

1 religious confused ideas going on in her head.

2 She woke up -- she kissed her husband goodnight
3 and went to sleep. And then she woke up at 4:00 a.m.
4 feeling absolutely panicked. She reported to me that
5 she walked around the room, the living room, several
6 minutes and that she got a small light out and went to
7 the gun safe which, unfortunately, was not secured.
8 She got out her gun. What she calls "my gun."

9 Now, she's not able to tell me was it a .38, was
10 it a 9mm, and I'm not a gun expert so I probably
11 couldn't look at the gun and tell what you it is
12 either, but she didn't know. She just knows,
13 recognizes it as her gun because that's a gun that Nate
14 (sic) had taught her how to shoot and they had been
15 shooting together before.

16 She states that she wasn't sure what kind of gun
17 it is, she doesn't remember anything that she was
18 thinking right at the time but thinking that she was
19 doing something very special that was going to protect
20 her children and husband from the evil in the world and
21 the hell on Earth that had come to earth.

22 What's very bizarre about this is she thought
23 that, well, she shot her husband and then went to
24 Sawyer's room and shot him in the head and Carly's room
25 and shot her. Now, when she's telling me this back

1 when I first -- it was the second time I saw her that
2 we went through all of this. I mean, she clearly now
3 is remorseful. She's on medicine. She's no longer
4 delusional. She realizes that the thinking she had
5 that night was crazy.

6 Q Now, is that type -- is that unusual, what you
7 just --

8 A No.

9 Q Is it unusual for a person subsequently, whether
10 it's a day later or six months later, to have, I don't
11 know what the word would be, restored or recompensated
12 or whatever you would call it?

13 A I mean, to have -- every patient is different.
14 Some patients get better very quickly when they get put
15 on antipsychotic medication, within a matter of just a
16 few days. In fact, the later the onset of psychosis in
17 a person's life, generally the better they respond to
18 treatment and the quicker they respond to treatment.
19 And the first time she became psychotic was rather late
20 in her life since I told you the psychosis normally can
21 start in their late teens or early twenties. So that
22 would be surprising in her given that.

23 Q At the time, Dr. Frierson, at the time that Anna
24 Simpson went and got her gun, shot Michael, shot her
25 children and killed them, was she able to distinguish

1 between right and wrong conduct?

2 A No. She thought she was doing the right thing.

3 She also has stated that she heard voices of her

4 parents telling her to do this. So a trusted voice.

5 And she also told me that she wanted to kill herself to

6 be with them. And she had the thought that they were

7 going to some place to be together between Heaven and

8 Earth. And that even though hell was on Earth, it was

9 not going to be a permanent thing, that at some point

10 hell was going to leave Earth, and that at that point

11 they could come back and be just like they were before.

12 So I don't even think she realized the full extent

13 of what she had done, much less that it was wrong. If

14 you're shooting your children in the head, you don't

15 think this is going to result in a permanent death.

16 Q And would that be the most profound example of a

17 total delusion?

18 A Yes. I mean, I don't know what you mean by the

19 most profound example. I mean, there are tons of

20 examples in this case of delusions, but that is the

21 specific delusion that impairs the knowledge of

22 wrongfulness. You can be delusional about lots of

23 things and still know right from wrong. I can think my

24 wife -- well, I'm not married. But let's say my

25 girlfriend has been replaced by a look-alike double,

1 and I go out and rob a bank and wear a mask and gloves.
2 Even though I'm having a delusion, I still know it's
3 wrong to rob the bank.

4 Q I want to just ask you a couple of final
5 questions, Dr. Frierson. I know the evaluation is
6 extraordinarily intense and a lot of material, a lot of
7 material, but I want to go ahead --

8 A Well, let me just finish on what happened because
9 I think what happened afterwards is also important.

10 She tried to load the gun, she says, several
11 times, to shoot herself in the head. And she said the
12 gun wouldn't work. I had SLED evidence that the gun
13 was loaded with the wrong bullets. You could show me a
14 9mm bullet. I wouldn't though the difference. But it
15 didn't work. Then she thought I must already be dead.
16 Because the gun didn't work, so I must already be dead.
17 So then she gets into the car thinking that her family
18 was in Nate Stegall's garage. This is something that I
19 cannot confirm that she drove to his garage, but she
20 says that she did. And given the fact that everything
21 else fits what I know, I have no reason to doubt that.

22 But, once again, that's just bizarre. If you
23 think that's the Antichrist, why are you going to his
24 garage to find your family? Which is also why I think
25 she says, "I don't know. I don't know where my family

1 is," when she's asked at the scene of the wreck.

2 But she saw a bunch of cars at Nate Stegall's
3 house, so she decided -- it made her nervous. She
4 didn't want to go there. She drove back, she said, to
5 the school parking lot and then knew that several weeks
6 earlier someone had died in a car accident, which is my
7 understanding, near the place where she had -- she
8 purposely ran her car, the truck, off the road in an
9 attempt to kill herself so that she could be with her
10 family and that they would eventually come back to
11 earth.

12 Q All right. You mentioned that you actually had
13 the opportunity to speak directly with Mike, her
14 surviving husband, and you also were provided by the
15 prosecutor on April, 21, 2015, while you were
16 conducting your evaluation, you were provided with this
17 written statement by Michael Simpson. Does that look
18 familiar to you?

19 A Yes.

20 Q All right. And I want you in particular to look
21 at the final paragraph, the last three lines there on
22 that statement. Let me show this to the prosecutor.

23 All right. I'll once again refer you to the last
24 paragraph, and in particular the last sentence
25 beginning with the word "I do not." If you would

1 simply read -- this was provided to you as part of your
2 evaluation. It is the written statement of
3 Mr. Simpson. If you would read that last sentence,
4 please.

5 A "I do not recall having searched Zillow for any
6 homes, nor do I recall there ever having been any
7 marital problems between Anna and I."

8 Q And that was a just one of thousands, basically,
9 of pages of material that you were provided?

10 A Yes.

11 Q All right. Couple final questions.

12 After you conducted your evaluation, you, I
13 believe, had an opportunity to meet with me and
14 Ms. Johnson about your findings?

15 A Yes.

16 Q You had an opportunity to meet with Mr. Wilkins
17 and Ms. Strom about your findings?

18 A They drove to Columbia, and I met with them.

19 Q And you held meetings with both of us?

20 A Right.

21 Q Dr. Frierson, in your many years of experience,
22 how many evaluations for criminal responsibility --
23 that issue, criminal responsibility -- would you
24 estimate that you have conducted?

25 A This is a rough estimate. Probably, I'm sure,

1 over 1,000.

2 Q And out of that rough estimate of a thousand, how
3 often is the person evaluated determined by you to be
4 unable to distinguish right from wrong? Just what
5 percentage?

6 A It's very, very unusual for me to have this
7 opinion. 98, 99 percent of the time I end up opining
8 that the person knew right from wrong because it's very
9 hard to be so sick to have that degree of loss of
10 reality. It is possible, but it's very rare to happen.

11 Q Are you an advocate for Anna Simpson?

12 A No.

13 Q What are you an advocate for?

14 A I'm advocating for my opinion and to defend my
15 work in this case.

16 Q Under the law of South Carolina, was Anna Simpson
17 criminally responsible for her actions when she shot
18 her family?

19 A No.

20 MR. MAULDIN: Nothing further, Your Honor.

21 Thank you.

22 THE COURT: All right. Solicitor.

23 MR. WILKINS: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. WILKINS:

1 Q Good afternoon, Dr. Frierson.

2 A Good afternoon.

3 Q There's no blood test you can give Anna Simpson to
4 decide if she knows right from wrong, is there?

5 A No. Not yet.

6 Q Not yet. Is it coming?

7 A There's actually -- well, there's some brain
8 scanning research that is promising.

9 Q But today you can't do that?

10 A No.

11 Q Anna had good knowledge of guns, would you agree?

12 A I would not agree with that. I think she knew how
13 to shoot her gun that Michael had taught her how to
14 shoot.

15 Q Because you said she went and got --

16 A Her gun.

17 Q -- her gun, and that Michael Simpson told you that
18 she had a good deal of experience with guns and had
19 gone shooting with him before?

20 A Yes.

21 Q Is that correct?

22 A She had been shooting with him several times.

23 Q So she had shot numerous times, and she had what
24 she referred to as her gun?

25 A Yes.

1 Q You read the report of Dr. Harris, Wade Harris,
2 the ER doctor?

3 A I read the records from Greenville.

4 Q The records?

5 A Yeah.

6 Q And at one point do you recall that she claims
7 that she did not really talk to her husband about what
8 was going on because she was afraid he would lock her
9 up -- by this she meant put in a psychiatric
10 hospital -- and then would leave her? Do you recall
11 that statement -- you reading that statement being made
12 to Dr. Harris?

13 A I don't recall specifically that statement, but
14 I'm sure if you're reading it from the record, you
15 wouldn't mislead me.

16 Q I'm going to show you Dr. Harris' statement.

17 A Right.

18 Q It's underlined right here. You can just read it
19 real quick.

20 A Yeah.

21 Q Is that what she said to Dr. Harris?

22 A That's what she told Dr. Harris. She told me that
23 she never wanted to tell him about these paranoid
24 thoughts, tell her husband, because it would upset him.

25 Q And you -- and in Dr. Harris' statement as well,

1 do you recall reading that she made several comments
2 throughout the interview about just feeling trapped and
3 not knowing what to do?

4 A Yes.

5 Q Is that fair and accurate?

6 A Yes.

7 Q In your statement, in your report that you've been
8 referring to, she tells you that she did not take her
9 Adderall that day; is that correct?

10 A Yes.

11 Q Now, you recently testified about ketones in her
12 blood?

13 A In her urine.

14 Q I mean, I'm sorry, in her urine. Apologize. Are
15 you aware that she had ADD medicine in her system when
16 she arrived to the ER?

17 A I'm aware that she tested positive for
18 amphetamines in the Greenville Hospital System. You
19 know, that was -- I think you and I had that
20 discussion, could amphetamines in some way be
21 responsible for some of this and --

22 Q But my question to you was in your report, she
23 said she didn't take that it day?

24 A Well, you know, she may have taken it the day
25 before. It may still show up. It tends to be a fairly

1 short-acting drug, but it didn't surprise me that it
2 was in there, and it doesn't make me think that
3 necessarily she didn't take it -- that she did take it
4 that day.

5 Q But --

6 A Maybe she was confused about whether she took it
7 or not.

8 Q But in your report you say, "She reports that she
9 was not using excessive Adderall around the time of the
10 alleged offense. On the day prior to the alleged
11 offense, had -- the day prior had missed taking this
12 medication altogether."

13 A That's what she told me, yes.

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

16 A Overuse of any amphetamine or abusing like
17 methamphetamine, I'm sure everybody has heard of that,
18 overuse of amphetamines can cause worsening of
19 psychotic symptoms. We know in this particular case,
20 however, that it is not the cause of her psychosis
21 because when she was admitted to the St. Francis
22 Hospital psychotic, she had no amphetamines in her
23 system.

24 Q Correct.

25 A In 2012.

1 Q Right. Well, in 2012, though, the diagnosis was
2 bipolar; isn't that correct, from St. Francis?

3 A Well, the bipolar with psychosis. It becomes
4 schizoaffective when the mania goes away and the
5 psychosis remains. That's when it changes from bipolar
6 to schizoaffective disorder.

7 Q Did the doctors at St. Francis or the Carolina
8 Center diagnose her with schizoaffective?

9 A No, because she was manic.

10 Q Did she admit to you in your report or did she
11 admit to you that she has in the past overused or -- I
12 don't want to say hoarded, but had used more Adderall
13 than she was prescribed?

14 A Yes, but not excessively. I mean, she would say
15 that, "When I had an important task to complete," that
16 she might take an extra Adderall and that -- but, you
17 know, clearly she wasn't calling her doctor for
18 prescriptions early. There's no evidence from the
19 pharmacy that she was trying to get --

20 Q Did you review any --

21 A I wasn't really concerned about abuse.

22 Q Did you review any pharmacy records?

23 A I reviewed the --

24 Q Prescriptions?

25 A Prescriptions.

1 Q But once she gets the prescription, we don't know
2 what she does with it. You reviewed what was
3 prescribed to her by her doctor, correct?

4 A Yes.

5 Q You also said that delusions -- you can have
6 delusions and still know right from wrong; was that
7 your prior testimony?

8 A Right. It depends on the content of the delusion
9 and the specific act that you commit.

10 Q Are you aware that Michael Simpson doesn't have
11 hardly any memory, any prior memory, of what happened
12 to him prior to his injury?

13 MR. MAULDIN: Your Honor --

14 THE WITNESS: I disagree. That's not what he told
15 me.

16 MR. MAULDIN: One moment. One moment,
17 Dr. Frierson.

18 The question contains information that is not in
19 the record in this case in evidence. There has been no
20 offer of such evidence of that by anybody.

21 MR. WILKINS: His mama testified to that.

22 THE COURT: Objection overruled.

23 BY MR. WILKINS:

24 Q You interviewed Michael Simpson?

25 A Right. But he doesn't have a total loss of memory

1 from anything before his accident. He doesn't remember
2 the incident. He doesn't remember several days or
3 maybe a few weeks before he was shot in the head, which
4 is what we would expect.

5 Q Okay.

6 A But you were implying that he doesn't remember
7 anything.

8 Q No, no. I'm sorry. I apologize. I was not
9 trying to imply that.

10 A Yes, he doesn't remember exactly what happened the
11 day before.

12 Q Weeks before.

13 A I wouldn't be surprised -- I would expect that.

14 Q I'm not faulting it.

15 A He did tell me that they had a happy marriage. So
16 one of the reasons that I wanted to interview him was
17 this allegation that this was an unhappy marriage. But
18 he recalled to me that their marriage had been fairly
19 happy.

20 Q All right. And then, finally, if Ms. Simpson
21 wanted to kill herself, could she have grabbed another
22 gun from the safe and done it that way?

23 A I suppose so if they were loaded and she knew how
24 to use it. She was familiar with shooting her gun.
25 And I was provided evidence that she does not know how

1 to load guns from family members. So it would make
2 sense to me that she gets the bullets she thinks are
3 the right bullets, puts them in the gun and the gun
4 won't work, which is what she told me happened, and
5 that's also consistent with the SLED evidence that the
6 gun was found near the vehicle where she was and loaded
7 with the wrong bullets.

8 Q My question was, Dr. Frierson, she could have used
9 another gun to effectuate that if she wanted to?

10 A I guess if she were thinking clearly enough to do
11 that and if she felt comfortable using another gun.

12 MR. WILKINS: No further questions, Your Honor.

13 MR. MAULDIN: Just a couple, Your Honor.

14 One moment, Your Honor. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. MAULDIN:

17 Q The prosecutor asked you whether it was of
18 significance to you that the records indicated that
19 Anna was reluctant to talk to Michael, her husband,
20 about the paranoid indicators, indications, because he
21 might lock her up in a mental hospital, I think was
22 what the solicitor read from the medical report. And
23 that -- there was that reluctance, was there not?

24 A Yes.

25 Q And is that reluctance consistent with being

1 paranoid, the fact that she was reluctant to talk to
2 her husband because she was afraid what might happen to
3 her?

4 A You could view that as paranoia. I tend to view
5 that more as -- there is, to me, when I meet with all
6 the family members here, I'm struck by the denial of
7 her illness.

8 Q All right.

9 A We'll just wish it away. She wasn't that sick,
10 you know. And whenever she would say something that
11 was, "Don't talk about that. Don't say that." You
12 know, "That's crazy. I don't want to hear that.
13 That's crazy. I don't want to hear it." So it's sort
14 of like she gets the message and she's told, "Don't say
15 that to anybody else either. That's crazy."

16 Q Does that -- or could that, could that also
17 explain why the references to these paranoid delusions,
18 these specific paranoid delusions she was having, were
19 not conveyed to Dr. Smith?

20 A Yes. That's one possibility. I'm surprised,
21 quite frankly. I mean, his records, Dr. Smith's
22 records, does say she has paranoid thinking, and he
23 actually started her on risperidone, an antipsychotic
24 medication, at one time. So, clearly, he identified
25 the need for an antipsychotic medication, saw her as

1 psychotic. But the extent of all these paranoid things
2 that I've gone through from the teeth filling to the
3 ceiling fan to the computers, taking the computers
4 multiple times to get them checked out, to putting the
5 camera in the house to make sure no one is coming in,
6 it just strikes me that no one says, "Let's pick up the
7 phone --"

8 Q Yeah.

9 A "-- and call Dr. Smith." It's almost just sort of
10 brush -- okay, that's just Anna being crazy.

11 Q Now, last question. The reference by the
12 prosecutor was to explain the amphetamine issue. Now,
13 when we hear the word "amphetamine," is that reference
14 to the Adderall?

15 A Yes. That is Adderall. Adderall is
16 dextroamphetamine. It's a combination, yeah.

17 Q And in your review, your overall review of the
18 records and all the interviews, were you concerned
19 about evidence or clear evidence of any overuse of the
20 prescribed medications, and if so, what was the
21 context?

22 A If I understand your question, the answer is no, I
23 was not concerned about that. I was concerned in
24 general that she was prescribed this medicine.

25 Q All right.

1 A Because once you get psychotic and you think that
2 your mother-in-law is training your daughter to be part
3 of a sex something, when you lose contact with reality,
4 that's a relative contraindication to prescribing
5 Adderall because Adderall can make those symptoms worse
6 and --

7 Q Thank you, Dr. Frierson.

8 THE COURT: Thank you, sir. You can step down.
9 Defense can call its next witness.

10 MR. MAULDIN: That's the defense, Your Honor.

11 THE COURT: All right. The defense rests.

12 Ladies and gentlemen of the jury, at this time I'm
13 going to have you step back into your jury room. Don't
14 talk about the case. I'll get you back out here
15 momentarily.

16 (WHEREUPON, the jury exited open court at
17 3:02 p.m.)

18 THE COURT: Do y'all need Dr. Frierson anymore?

19 MR. WILKINS: No.

20 MR. MAULDIN: No.

21 THE COURT: Dr. Frierson, you're free to leave if
22 you want to.

23 Okay. The defense has rested, and I've sent the
24 jury out to decide the issue which, Mr. Mauldin, you
25 brought up about allowing the State to present any

1 rebuttal or reply.

2 So at this point in time I'll give you an
3 opportunity -- it's my understanding that the State
4 does intend to offer evidence in reply; is that
5 correct?

6 MR. WILKINS: That's correct, Your Honor.

7 THE COURT: And what do y'all intend to offer?

8 MR. WILKINS: We intend to call Dr. Jeff Smith,
9 her treating psychiatrist.

10 THE COURT: That would just be the one witness?

11 MR. WILKINS: Yes.

12 THE COURT: Mr. Mauldin, let me hear from you,
13 then. I'm making the record, good record, for you.

14 MR. MAULDIN: Yes, sir.

15 Your Honor, first of all, I want, at this point on
16 the record, to renew the motion for a directed verdict.
17 I think that would be appropriate as a follow-up to the
18 motion I made at the beginning of the case, at the end
19 of the State's case. So I would make that motion, Your
20 Honor, on the same grounds as stated.

21 THE COURT: That motion is denied.

22 MR. MAULDIN: The next question, Your Honor, is
23 the opportunity for the State to present, and I
24 understand that the witness would be Dr. Jeff Smith, as
25 a rebuttal witness. And I will enter this particular

1 or enter this particular position with the assumption
2 that the court is inclined to allow it. That's all --
3 I'll take that position.

4 THE COURT: Yes, sir.

5 MR. MAULDIN: Your Honor, I once again put on the
6 record the notice provided by the defendant regarding
7 placing sanity in question, state of mind is the
8 principle issue in the case, sanity therefore can no
9 longer be assumed. We believe that it should have been
10 required to be addressed in the State's case and it was
11 not, or at least it was not to the extent that we feel
12 like it should have been, considering the notice of
13 intention to claim not guilty by reason of insanity.

14 This arises because of the elements of the
15 offenses charged being malice in the murder case and
16 specific intent in the case of the attempted murder.
17 The State relied upon or at least -- I won't speak for
18 them -- but I get the impression that the State relies
19 upon the fact that the burden of proving lack of
20 criminal responsibility is on the defendant by a
21 preponderance of the evidence. That's, I believe,
22 their argument.

23 THE COURT: Well, the statute says that.

24 MR. MAULDIN: And we believe that that burden
25 under state law in South Carolina as currently exists

1 is wrong, that it requires the defendant under the
2 circumstances -- and this case seems to me to be
3 alining as a perfect example. State produces a case.
4 We are, under discovery rules, required to disclose our
5 experts, produce reports if they have them. We did
6 that, and yet under this circumstance by requiring the
7 defendant to overcome that burden, it allows the State
8 to now at the end of our case tell us who the rebuttal
9 witness is and attempt to call him to the witness
10 stand.

11 So I think that that's a fundamental denial of due
12 process for the defendant under those circumstances.
13 It is burden shifting and violates both state and
14 federal constitutional provisions. So to the extent
15 that that's what the rebuttal environment has created
16 for us, that's our point.

17 THE COURT: I'm with you. In any other trial,
18 let's forget sanity is an issue. The State has the
19 right to call rebuttal or reply witnesses, correct?

20 MR. MAULDIN: They would. Yeah, they would if it
21 was -- the way I understand rebuttal, Your Honor, is if
22 they put up their case-in-chief and we put up evidence
23 that raises a new question of some sort that was not
24 addressed in their case-in-chief, then they have the
25 right under state law to call a rebuttal witness to

1 address that new evidence.

2 THE COURT: Okay.

3 MR. MAULDIN: I'm kind of simple-minded.

4 THE COURT: I'm with you on that. I'm following
5 you.

6 And, of course, I know, Mr. Wilkins, you're going
7 to address this in a moment, but, I mean, I think
8 there's -- of course, because I've denied your directed
9 verdict information, motions, I mean, I think there is
10 clearly enough evidence in the record -- circumstantial
11 evidence, some direct evidence -- where the jury, a
12 juror, can reasonably infer that the issue of sanity or
13 insanity, okay. I mean, so you have the experts.

14 Yeah, you're right. You may have introduced
15 expert testimony that she was insane, but the State has
16 introduced other factual evidence which could
17 reasonably compete with that expert testimony, and
18 that's an issue for the jury to determine. And that's
19 why I've denied your directed verdict. And I
20 understand where you're going.

21 Go ahead.

22 MR. MAULDIN: Well, and that's where we are right
23 as we stand here. I don't disagree with that. I mean,
24 that's a matter for the court to determine. I'm either
25 entitled to a directed verdict or I'm not. You've

1 denied it, and I respect it.

2 So now it's a question of the fact testimony that
3 the State put up in their case-in-chief versus the
4 expert testimony that we've put up in our defense.
5 That's where we are at this stage.

6 The question now is does the State have the right
7 to call a rebuttal witness. Now, here is the problem.
8 Not only do we say that they should not and that it is
9 created because of that burden shifting problem in the
10 insanity defense arena, which is where we are.

11 But here is the problem with Dr. Jeff Smith who is
12 now their -- that's who they're going to bring in to
13 testify. Dr. Smith is a clinical psychiatrist. He is
14 not a forensic psychiatrist. He is a doctor that works
15 in a psychiatric practice that has patients. One of
16 those patients at one point was Anna Simpson.

17 We raise the question of whether or not Dr. Smith
18 has been authorized, consented to through counsel or
19 the patient, has there been a waiver of any
20 physician/patient privilege. This is not an
21 independent evaluator like the three that you've heard
22 already.

23 THE COURT: Yes, sir.

24 MR. MAULDIN: This is a person who was actually
25 treating her over a period of time and receiving

1 payments or insurance, I mean, just like a regular
2 doctor.

3 THE COURT: I see where you're going.

4 Can I order him to testify?

5 MR. MAULDIN: Pardon?

6 THE COURT: If he's going to claim that he's --
7 there's some type of privilege.

8 MR. MAULDIN: Right.

9 THE COURT: Okay. A physician/patient privilege,
10 can't I nonetheless order him to testify if I find his
11 information is relevant to the case?

12 MR. MAULDIN: Well, at this point --

13 THE COURT: Under Title 44 or whatever it is. I
14 forget the statutory section.

15 MR. MAULDIN: Well, at this point his -- his --
16 I'll call it profile. His profile in the case is as a
17 prior treating physician who has records that are
18 privileged as to his -- his records.

19 Now, we've got a completely different argument
20 that I'm going to allow my young associate, Jacob
21 Goldstein, to clarify for you in a moment.

22 THE COURT: Hold that thought. Put a pin in it.
23 All right. Coming back to you, Mr. Solicitor.

24 MR. WILKINS: Yes.

25 THE COURT: First of all, what I'm trying to

1 get -- what do you want him to say? What do you think
2 he's going to say?

3 MR. WILKINS: I think he's going to discuss his
4 treatment of Anna Simpson from 2010 to March of 2013.

5 THE COURT: They can stipulate to that.

6 MR. WILKINS: He's going to talk about the
7 individual sessions that he had with her. He's going
8 to talk about the fact that he never saw any
9 indication --

10 THE COURT: He's going to voluntarily talk about
11 this?

12 MR. WILKINS: Yeah. He's ready, willing to come.

13 THE COURT: What about the privilege issue that
14 they raise?

15 MR. WILKINS: 44-22-90 is the statute, Your Honor,
16 I think we're referring to. These records have already
17 been released to Dr. Frierson, a third party, and she's
18 consented to that so the privilege has been waived.

19 THE COURT: Keep on going. I'm listening.

20 MR. WILKINS: I'm not sure how much more I have,
21 Your Honor. So then he can come in here and testify as
22 to his treatment of her and what he saw in her and what
23 he --

24 THE COURT: And what opinion, if any, are you
25 going to be seeking from him, if you're seeking one?

1 MR. WILKINS: Well, I don't think I can qualify
2 him as a forensic psychiatrist.

3 THE COURT: Sure, but clinical psychiatrist.

4 MR. WILKINS: I can qualify him as a psychiatrist,
5 and my question would be did you ever -- when you
6 interacted with her, did she ever have attributes or
7 did she ever show any --

8 THE COURT: To you that she knew right from wrong.

9 MR. WILKINS: That she knew right from wrong.

10 THE COURT: All right.

11 Can y'all stipulate to that?

12 MR. MAULDIN: He can't testify to that.

13 THE COURT: Okay. I understand. Hang on. Hang
14 on.

15 What I'm trying to do, okay, y'all, obviously, it
16 seems like the defense can stipulate, yes, he was a
17 treating physician. His name has already been
18 mentioned by two psychiatrists and one psychologist,
19 okay. That he was the treating physician, treated her
20 for three years, had numerous sessions with her.

21 MR. WILKINS: He's also going to testify, Your
22 Honor, to remediation as well. It's been testified
23 that she remediated in about 48 hours.

24 THE COURT: Okay.

25 MR. WILKINS: And he's going to say that that is

1 very atypical, it's not common for somebody who is in a
2 true psychosis where they don't know right from wrong
3 to be able to remediate out of that so quickly. He's
4 never seen it in his 34 years. It's extremely atypical
5 unless it is a voluntary intoxication-induced
6 psychosis.

7 THE COURT: There we go.

8 MR. MAULDIN: A lot of stuff. A lot of meat on
9 the bone here, Judge.

10 And we're kind of going up and down on my page
11 here.

12 THE COURT: Right.

13 MR. MAULDIN: But Dr. Smith cannot be asked nor
14 can he testify spontaneously regarding the legal
15 standards of right or wrong or ability to conform. He
16 can't testify to that.

17 THE COURT: Because you say he's not qualified to
18 because he's not a forensic psychiatrist.

19 MR. MAULDIN: And, furthermore, he's the treating
20 psychiatrist in this case.

21 THE COURT: I'll let you voir dire him under Rule
22 702, and I'll make that determination tomorrow.

23 MR. MAULDIN: With regard to the limitations --

24 THE COURT: We'll do that outside the presence of
25 the jury tomorrow morning when the State offers him,

1 you can voir dire him on his qualifications, and we can
2 make a determination about what he's qualified to
3 testify to.

4 MR. MAULDIN: And, you know, I'll be glad to do
5 that and I would want to do that if that was -- if the
6 court is reluctant to just rule outright.

7 THE COURT: I don't know what he's going to say.
8 I'm just saying, this is what Mr. Wilkins tells me he's
9 going to say.

10 MR. MAULDIN: Here is what I know, and it ain't
11 going to change between now and tomorrow. Dr. Smith is
12 not a forensic psychiatrist.

13 MR. WILKINS: It goes to weight, not
14 admissibility, Your Honor.

15 THE COURT: I understand that. I'm going to get
16 around to that.

17 MR. WILKINS: You can assess all that.

18 MR. MAULDIN: So he is not going to be qualified
19 to answer ultimate questions regarding right or wrong
20 or ability to conform so those questions should be
21 stopped before they're asked.

22 THE COURT: We'll deal with that tomorrow morning.
23 Here is the other thing that I can't fathom. The
24 statute at play here, Title 17, whatever it is,
25 17-24-10, mentally ill or insane defendant, is 32 years

1 old. It's been around since 1984. And I haven't been
2 handed up any case law from either one of y'all that
3 talks about the rule of due process and burden
4 shifting. I can't imagine, number one, that it's never
5 been addressed in 32 years. If it has, then I'd like
6 to know about it. If not, then I guess we've got a
7 case. We've got a case that's going to test it. But
8 y'all understand the quandary I'm in from a judicial
9 perspective, but I just wanted to put that on the
10 record, if y'all wanted to enlighten me.

11 Are y'all aware of any case law that addresses
12 that issue?

13 MR. MAULDIN: I'm not. I've got a couple
14 hardworking young lawyers here that might spend all
15 night looking for one.

16 THE COURT: My law clerk couldn't find one. Let
17 me just throw that out.

18 MR. WILKINS: All I know is Solicitor Bill Traxler
19 back in the '80s went down to the legislature and said
20 we need something between not guilty and NGRI, and this
21 is what they came up with. That's all I know.

22 MR. MAULDIN: Now, but I do want to get some more
23 on this record on this, Judge.

24 THE COURT: Yes, sir. And I will tell you, even
25 though we're kind of jumping the gun here on my jury

1 charge, which I'm about ready to -- I'll give y'all
2 copies of that. Y'all can digest overnight. I do talk
3 about the burden, but I address it in a light that I
4 think will be acceptable to both sides.

5 Having said that, go ahead.

6 MR. MAULDIN: Judge, the next angle, I think, that
7 the calling of Dr. Smith creates, we've got the -- I'm
8 watching that, Your Honor. We've got the privilege and
9 we've got the authorization, and, of course, Solicitor
10 Wilkins has very well responded.

11 The next question is records, medical records of
12 my client. It's pretty sensitive now if a treating
13 physician during a controversy provides copies of a
14 party to the controversy's medical records,
15 particularly mental health records, to someone without
16 the authorization of the patient. That becomes a
17 pretty slippery slope. And the question is whether or
18 not if Dr. Smith is going to get on the witness stand
19 and the State is calling him and the State has access
20 to Dr. Smith's medical records, first of all, we are
21 curious about whether or not the State contacted
22 Dr. Smith to meet with him about records that they had
23 in their possession, or did Dr. Smith provide them with
24 records that he had in his possession.

25 And let me tell you why that's really sensitive in

1 this case. I'm going to introduce the point, then I'm
2 going to allow Jacob to make sure the court follows it.
3 I'm going to have this document marked for the record.
4 And this is, obviously, a not-for-jury exhibit.

5 MR. WILKINS: Can I see that document just so I
6 know what you're talking about?

7 THE COURT: So the purpose of -- this is for the
8 purpose of the court deciding whether or not the State
9 should be allowed reply testimony. Specifically under
10 Section 17-24-10 and 20.

11 (WHEREUPON, Defendant's Exhibit Number 16
12 was marked for identification.)

13 MR. MAULDIN: Your Honor, I'm going to pass up to
14 you a document, and I want to you just follow me,
15 please, because this -- there is a sequence to this
16 that is extraordinary, and we did not discover it -- we
17 discovered this by accident. And here's what happened.

18 We were appointed to represent Anna Simpson on the
19 morning of May the 15th, 2013, by Judge Verdin.
20 Letitia Verdin was our administrative judge at the
21 time. I immediately went to Greenville Memorial
22 Hospital attempting to meet with my new client. Now,
23 that creates the representation.

24 The normal -- in the normal course, we had our
25 client sign general releases and HIPAA releases that we

1 then sent out to various medical providers including
2 Piedmont Psychiatric Services. Those records were
3 received by us, I don't know, probably within 30 days.

4 MR. GOLDSTEIN: June.

5 THE COURT: The records just began to kind of come
6 in as they normally do, and within maybe 30 to 45 days
7 we had received responses from these medical
8 facilities. The five-page document that's marked as
9 Defendant's Exhibit Number 16 for the court's exhibit
10 was contained in the Piedmont Psychiatric Services
11 records that they copied and sent to us. So that's how
12 this came to our attention. We get the psychiatric
13 records, and we look and we say, well, what is this
14 stuff? So we began to look at it, and we began to
15 notice that the same document had been sent by SLED to
16 every one of the medical records that we were gathering
17 for our client.

18 Now -- and this is something, Judge, that you
19 might want to take a look at overnight because this is
20 a novel issue. This is a brand-new issue. I've
21 practiced law for 42 years, and I have never seen this
22 tactic.

23 What happened was, if you look at the top of the
24 page on 5-15-13 at 3:19 p.m., SLED faxed these five
25 pages to this particular medical facility demanding the

1 records.

2 And now I'm going to ask Jacob if he could please
3 describe to the court what our research has discovered
4 about the use of this tactic. This is an illegal act.
5 This calls for a criminal penalty. And SLED is the one
6 that did it. So we've got -- all right. Come on up.

7 MR. WILKINS: Could I see the document? I've
8 never seen it.

9 THE COURT: Yes, sir.

10 MR. GOLDSTEIN: Your Honor, may it please the
11 court.

12 THE COURT: Yes, sir.

13 MR. GOLDSTEIN: As discussed by Mr. Mauldin, he
14 asked me to take a look at this document and the
15 purported justification from SLED for why these health
16 care providers should be required to turn over these
17 records.

18 Now, they cite both state law and federal law.
19 And what they're saying, what they're misrepresenting
20 to these providers is that you are required and we're
21 asking you to provide these records, and these are the
22 legal justifications. But if you actually peer behind
23 these justifications cited in this document and read
24 the statutes, both the state statute which is S.C.
25 Code Section 63-11-1960, which is the child fatalities

1 law, and then you look at the HIPAA CFR regulations,
2 this disclosure is not required at all, and, in fact,
3 it's in contravention of law and the purpose of the
4 statute. So if these are the two justifications, state
5 and federal law. And if I may, Your Honor, I'm going
6 to address each in turn.

7 Now, looking first at the state statute, what they
8 have attached -- and I believe it is on page three,
9 Your Honor, of the document that's been marked and
10 handed up -- is Code Section 63-11-1960 which is
11 entitled Access to Information.

12 Now, the thing is there's two subsections there.
13 There's subsection 1 and subsection 2. Subsection 2
14 pertains to health care records that a government
15 agency -- or more than health care records that they're
16 required to provide. That's not at issue. What's at
17 issue here is subsection 1.

18 It says, "Upon request of the department," which
19 is SLED, "the department immediately must be provided
20 by a provider of medical care access to information and
21 records regarding a child."

22 Now, "child" is a term that is explicitly defined
23 in 1910 meaning a person under 18 years of age.

24 THE COURT: They didn't ask for a child's records.
25 They asked for the defendant's records.

1 MR. GOLDSTEIN: They asked for Ms. Simpson's
2 records based on a statute that authorizes only the
3 release of child records.

4 Now, that subsection that I had mentioned before
5 pertained to a government agency and what they may or
6 may not be required to provide. Admittedly, that's
7 broad here in scope, but what that really tells us is
8 the legislature knows how to legislate. They knew how
9 to say when we're asking for the records of a child or
10 when we're asking for records that might be broader
11 than that, say a child and the child's family, they
12 chose not to do that here.

13 So, Your Honor, the clear conclusion here under
14 this statute that they sent to health care providers is
15 that the disclosure of medical information regarding an
16 adult. That was in contravention of law.

17 Now, the interesting thing, too, is that that
18 statutory scheme actually makes this information
19 confidential. So all information and records. So it's
20 not just the records, but it's the information
21 contained therein that is disclosed is confidential.
22 So only the department is allowed to look at it. It
23 can't be disclosed in a court proceeding or to anyone
24 else. Again, this is 63-11-1990(a). And these records
25 and information only may be disclosed as necessary to

1 carry out what the statute says is the duties and
2 purposes of the department.

3 Now, the interesting thing is that, okay, so I
4 look to the section and that statutory scheme
5 discussing the duties and purposes of the department.
6 None of those pertain to litigation, court proceedings,
7 criminal prosecution.

8 THE COURT: All right. Well, let me cut to the
9 chase. Number one, what's the remedy? Number two,
10 weren't these records used by y'all's experts anyways?
11 So why can't the State bring them up?

12 MR. GOLDSTEIN: Well, Your Honor, the conclusion
13 here, that's more of a HIPAA thing. I guess under the
14 state statute, the argument is they should not have
15 been disclosed or obtained to begin with under the
16 state statutory scheme. There's no justification for
17 it.

18 But as far as our experts using or relying on the
19 records, well, they obtained them legally and lawfully
20 with the consent of our client. And, of course, our
21 client is entitled to put on a defense and have an
22 expert testify and to form opinions based on lawfully
23 obtained records. But it's different when the other
24 side or the State obtains the records unlawfully.

25 THE COURT: So the remedy is they shouldn't be

1 allowed to present the witness to testify about these
2 records.

3 MR. GOLDSTEIN: Yes, sir. I mean, that would be
4 the ultimate conclusion I'm getting to after the HIPAA
5 discussion as well. And like Mr. Mauldin said, this is
6 a novel issue. It hasn't been addressed in South
7 Carolina. I did find case law from New York that was
8 dealing with a similar issue. Admittedly, it wasn't in
9 the criminal context. But it was discussing mental
10 health issues. But they said the remedy for violation
11 of HIPAA -- and I haven't gotten to HIPAA yet -- would
12 be suppression of the records, of the information
13 contained therein.

14 And then there was another case decided after that
15 from New York as well that said, okay. If the records
16 are inadmissible and they can't come in, the conclusion
17 they draw is that the expert who based his opinion on
18 those illegally obtained records, the expert can't
19 testify either. So that is the remedy that we're
20 asking for. The records are not admissible --

21 THE COURT: But the expert here is the one who
22 created these records. Didn't -- I'm not familiar with
23 the case you're talking about because it's from New
24 York. I mean, there's a difference between an expert
25 reviewing illegally obtained records versus the person

1 who actually created the record talking about his own
2 records. Do you understand what I'm saying?

3 MR. GOLDSTEIN: Yes, sir, I do. And then the
4 argument I would make is that especially under HIPAA, I
5 mean, Ms. Simpson is entitled to privacy in her medical
6 records, and they cannot be disclosed in this courtroom
7 or otherwise absent her consent or a lawful exception
8 that applies.

9 THE COURT: But did you open the door by a
10 psychologist and two psychiatrists relied upon those
11 records in giving their ultimate opinion?

12 MR. GOLDSTEIN: Yes, sir. And I understand. And
13 my response --

14 THE COURT: That's the issue. If you relied on
15 them, you may absolutely be correct. And certainly it
16 appears the South Carolina statutory, without getting
17 to the HIPAA thing, the South Carolina statutory
18 reference -- I haven't heard from this side yet -- but
19 it certainly appears on a prima facie review, you know,
20 they cited the wrong statute when they served this
21 request upon Piedmont Psychiatric Associates. So I
22 understand what you're saying about that.

23 MR. GOLDSTEIN: Yes, sir.

24 THE COURT: I follow your line of reasoning. But
25 from a bigger scale, in looking at this case as a

1 whole, the totality of the circumstances, it would
2 seem, even though y'all don't have to prove anything
3 except under the statutory scheme we have in South
4 Carolina you've got to prove by a preponderance of the
5 evidence insanity, okay. I mean, that's what you have
6 to do. When you open the door to something, you know,
7 it cuts both ways.

8 MR. GOLDSTEIN: Yes, sir.

9 THE COURT: Do you wish to address that?

10 MR. GOLDSTEIN: I do. And like I said before,
11 Your Honor, I think that my client is entitled to
12 present a defense which includes expert testimony. And
13 I think what's interesting about this case is that the
14 order is a bit off in how the State is presenting its
15 evidence. I think in a normal case where we weren't
16 dealing with reply testimony, which is not a matter of
17 right but in the discretion of the court.

18 THE COURT: Okay. What if I let y'all call
19 another witness after they go again?

20 MR. MAULDIN: Do we intend to call another
21 witness?

22 THE COURT: What if I give you the opportunity?

23 MR. MAULDIN: Well, you know, I mean, that's a
24 matter of discretion. If they -- I don't know what
25 this reply witness that I'm so aggressively fighting is

1 going to say.

2 MR. WILKINS: Yes, you do, John. You know what
3 he's going to say.

4 MR. MAULDIN: Doggone I'm going to have somebody
5 available for surrebuttal, and I don't know whether I
6 will have the opportunity or right to do that or not.

7 THE COURT: Well, that's always in the back of my
8 mind. I mean, that could be some type of judicial
9 remedy here if there is any defect, which I'm not sure
10 there is, but if there is any defect.

11 Hang on. Let me hear from them.

12 MR. WILKINS: Well, Your Honor, the first thing I
13 say, I'm so happy that it says South Carolina Law
14 Enforcement Division on that thing and not 13th Circuit
15 Solicitor's Office on that request. That made me feel
16 a lot better about it. That's the first time I saw
17 that document. I think that's an issue for them.
18 That's an issue for SLED. It sounds like SLED might
19 have messed up a little bit in their drafting of that
20 letter and sending it out. Don't know.

21 For purposes of this trial, and tomorrow in the
22 records that we intend to go over with our witness,
23 she's already waived it. I mean, that's the bottom
24 line. She's waived it through Frierson and consenting
25 to the psychiatric evaluation previously. Those

1 records are all over the testimony to this court. I
2 mean, they have been in our case-in-chief and their
3 defense so it's been waived. I'm not sure how they can
4 argue those records -- if they wanted to keep those
5 records out, then they would have had to not allow them
6 to be utilized by anybody. They don't get to use them
7 and then not allow us to discuss them. I don't think
8 they get it both ways, so.

9 THE COURT: Okay. All right. Let me digest it
10 overnight, and I'll rule in the morning.

11 MR. MAULDIN: Your Honor, we have our client's
12 medical records by the most simple and fundamental
13 customary practice that we do in every case.

14 THE COURT: Sure.

15 MR. MAULDIN: The State has our client's medical
16 records on their desk right now obtained by SLED
17 illegally. I haven't waived the illegal acts of the
18 State Law Enforcement Division by providing my client's
19 records to my witnesses.

20 THE COURT: Following that line of reasoning,
21 then, what if Dr. Smith brings his own medical file
22 tomorrow?

23 MR. MAULDIN: Well --

24 THE COURT: And testifies from his original
25 record, not copies illegally, in quotation marks,

1 obtained by SLED? Wouldn't that cure the issue?

2 MR. GOLDSTEIN: Well, Your Honor, I mean, she
3 would still be provided under the federal law. Under
4 HIPAA, she's entitled to privacy in her medical records
5 unless either a lawful exception applies in the
6 disclosure, which we would contend there's not, or if
7 she consents, which she hasn't. So I would say that
8 that doctor cannot disclose those privileged medical
9 records just like my doctor couldn't come to this
10 proceeding without my consent and disclose my records
11 in front of a TV camera.

12 MR. WILKINS: She's already consented to
13 Dr. Frierson reviewing those records. She's consented
14 to two other psychiatrists that her lawyers have
15 called --

16 THE COURT: That's because they're saying what the
17 defense wants them to say. I understand that.

18 MR. WILKINS: That's right.

19 THE COURT: And I say that in jest, okay, but it's
20 a fundamental fairness issue on both sides, is the way
21 I'm trying to look at it, okay. Certainly, you know,
22 the defense has all kinds of rights, and I'm going to
23 do everything I've got to do to protect those rights
24 under the constitution. But at the same time, you
25 know, the State has rights as well, and I've got to

1 walk that slippery slope.

2 All right. Let me read this. I'm going to read
3 it, and I understand where your argument is going with
4 HIPAA. I'll look over that, and I'll rule on this
5 tomorrow morning.

6 MS. Strom: Also Rule 703 in that analysis, if you
7 don't mind, Your Honor, about the basis of the opinion
8 by testimony of the experts. I mean, if they relied on
9 it -- and 705, the disclosure of that underlying facts
10 and data upon which they rely.

11 THE COURT: Okay. We'll reconvene tomorrow at
12 9 o'clock in the morning. I'm going to tell the
13 jury -- see, they're back there right now. I need to
14 get them back out here and tell them what's going on
15 and tell them we'll see them in the morning. I'm not
16 going to have them here anticipating arguments. We'll
17 have them here at 9:30, okay. So be ready to go with
18 whatever else happens, whether there be reply testimony
19 or closing arguments at 9:30, and then we'll go from
20 there.

21 Now, Mr. Clerk, are we going to call in lunch
22 tomorrow for the jury? I anticipate them working
23 through lunch.

24 My goal, Counsel, is to after -- in the event I do
25 allow reply testimony or whatever, we're going to argue

1 and charge prior to lunch. That way the jury can go in
2 there and eat lunch and start deliberating.

3 MR. WILKINS: Yes, sir.

4 MS. Strom: Yes, sir.

5 THE COURT: Having said that, I have -- I don't
6 know where he went. He's back there working on
7 charges, I guess. I'm going to give each side a copy
8 of my proposed charges, okay. I'm going to let y'all
9 digest those overnight. And then we will deal with all
10 the charges, reply testimony issue, between the hours
11 of 9:00 and 9:30. We're going to start something on
12 this trial at 9:30. Sound good?

13 MR. MAULDIN: So your law clerk is going to --

14 THE COURT: Law clerk is going to come back out
15 here in a second, and we're going to print it out, and
16 I'm going to hand it to you. Then y'all can think
17 about it and see what we're going to do. We'll put
18 that on the record in the morning.

19 MR. MAULDIN: Thank you, Judge.

20 MS. Strom: Thank you.

21 THE COURT: So we're in recess -- not yet. I've
22 got to deal with them. Hang on.

23 All right. Bring them in.

24 (WHEREUPON, the jury entered open court at
25 3:39 p.m.)

1 THE COURT: All members of the jury are present.

2 Thank you very much, ladies and gentlemen. Sorry
3 for the delay. Now is a good time. I was dealing with
4 some matters of law with the attorneys as well as some
5 scheduling issues.

6 My anticipation -- I'll let you know we're going
7 to go ahead and stop for the day, okay, because I have
8 a prior scheduled meeting later this afternoon. Number
9 two, we're going to be here tomorrow morning at 9:00
10 dealing with some other issues. I want y'all here at
11 9:30 tomorrow morning. Okay?

12 Now, my plan, I will tell you, is to reach closing
13 arguments as well as jury charge to you late tomorrow
14 morning, maybe early tomorrow afternoon, and we'll
15 provide lunch for you tomorrow. So go ahead and make
16 plans, okay. Then y'all can start deliberating this
17 case early tomorrow afternoon. That's at least my plan
18 and the schedule we're going to work on.

19 Having said that, I'm going to release you from
20 the evening. Remember the charge I've given you every
21 day and at everyday break. Don't discuss this matter
22 with anybody. Don't do any independent research.
23 Don't watch or read news reports about the case. Your
24 sole job in this case is to determine the facts, and
25 you do that by the testimony presented in this

1 courtroom and this courtroom only. Okay? Thank you
2 very much. Have a wonderful evening. We'll see you
3 tomorrow morning at 9:30.

4 (WHEREUPON, the jury exited open court at
5 3:42 p.m.)

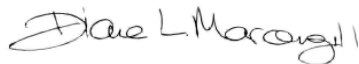
6 THE COURT: All right. We're in recess, then,
7 until tomorrow morning. If y'all just give a couple of
8 minutes to let the jury get out of the courtroom, I'd
9 appreciate it.

10 (WHEREUPON, proceedings adjourned at 3:42 p.m.)
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Certificate of Reporter

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May 10, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

4	State of South Carolina,	)	
5		)	2014-GS-39-0396-98
6	-vs-	)	June 23, 2016
7	Suzanna Brown Simpson,	)	Volume 4 of 4
8	Defendant.	)	Pages 591 - 781
9	_____	)	Transcript of Record

13 The Honorable Brian M. Gibbons, Judge;
and a jury.

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 17 Attorneys for the State

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For the State:

Marked	Description	I.D.	Admitted

None offered.

For the Defendant:

Marked	Description	I.D.	Admitted

17	Defense proposed jury charge	689	

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:00 a.m.)

4 THE COURT: Okay. First things first. Let's
5 revisit the issue that we were speaking about yesterday
6 before we recessed for the day. That's the issue of
7 any reply evidence from the State along with the issue
8 of the confidentiality of the records from, I believe
9 it's Piedmont Psychiatry Associates.

10 Yes, sir.

11 MR. MAULDIN: Your Honor, I think that we had put
12 on the record our objections and our position regarding
13 those issues. I guess the only additional inquiry that
14 I have picked up from the State's arguments and
15 comments, that there will be no attempt to qualify the
16 treating psychiatrist as a forensic psychiatrist. And
17 if that is the case, then that in and of itself creates
18 a serious limitation on the testimony that he can be
19 asked or answer.

20 THE COURT: Okay.

21 MR. MAULDIN: And if that's where we are, then I
22 think we made our positions clear.

23 THE COURT: All right. In your opinion, what can
24 a forensic psychiatrist qualified as an expert in court
25 testify to differently from a clinical psychiatrist

1 qualified as an expert in clinical psychiatry?

2 MR. MAULDIN: Basically, Your Honor, if the court
3 is inclined to allow the treating psychiatrist to
4 testify --

5 THE COURT: Let's assume I do.

6 MR. MAULDIN: All right. He can testify to
7 observations that he made regarding his treatment of
8 that patient, prescriptions, diagnosis, he can testify
9 to what he was treating her for and how he was treating
10 her and how often he saw her and whether the treatment
11 was successful. That is testimony of a treating
12 psychiatrist.

13 A forensic psychiatrist can testify that their
14 observations and reviews and interviews led them to
15 form a conclusion from a legal standards point of view,
16 that is, right or wrong, ability to conform. Those are
17 psychiatry as it relates to law.

18 The treating physician cannot testify to
19 psychiatry as it relates to law and, therefore, if the
20 State intends to ask him questions about whether or not
21 he has an opinion on her ability to --

22 THE COURT: Conform to the law.

23 MR. MAULDIN: -- distinguish right from wrong,
24 that's an objectionable question. He is not qualified
25 as a forensic psychiatrist.

1 If the State intends to ask the witness does -- is
2 she able to conform her conduct or is she not able to
3 conform her conduct, those are forensic questions, and
4 that is what he is not qualified to answer.

5 THE COURT: Okay.

6 MR. MAULDIN: So that's the distinction. One is
7 observations, treatment plan, prescriptions,
8 appointment -- number of appointments, how often, what
9 was her diagnosis as far as he was concerned. On the
10 other hand, the other is opinions as to ultimate issues
11 regarding the relationship between the psychiatric
12 condition of the client and the relation with legal
13 principles.

14 THE COURT: Gotcha. All right. I just want to
15 make sure -- I understood what it was, but I wanted to
16 make sure the record was clear for the record's sake.

17 Yes, sir.

18 MR. WILKINS: Your Honor, the State obviously
19 disagrees with that. We intend to qualify Dr. Jeff
20 Smith as an expert in psychiatry. He is a practicing
21 psychiatrist for 34 years. What he does for a living
22 is diagnose individuals and opines as to their state of
23 mind based on their mental illness or lack of mental
24 illness.

25 In addition, during his residency, he has done

1 criminal responsibility and ability to conform opinions
2 as well as competency hearings. He's testified in
3 probate court, depositions, civil cases as to mental
4 illness, lack of mental illness, what their state of
5 mind is at the time of a particular incident or
6 whatever. He does exactly what a forensic -- I mean,
7 he does everything that a forensic psychologist does as
8 well, he's just not board certified. That's the
9 only -- only difference.

10 THE COURT: All right.

11 MR. WILKINS: But it's all the same psychiatry.
12 It's all the same perceptions. He's a doctor just like
13 they are.

14 THE COURT: Okay.

15 MR. WILKINS: And, again, it would go to the
16 weight of the evidence. And Mr. Mauldin can bring out
17 the fact that, "You're not a forensic psychiatrist."
18 I'm not board -- you know, it's a weight -- the jury
19 can decide how much weight they want to give Dr. Smith
20 versus the other experts or not. That's really up to
21 them. But I think he meets the Daubert standard for
22 being able to testify as to her criminal responsibility
23 and her ability to conform.

24 MR. MAULDIN: Your Honor, then if that is the
25 case, if -- it appears now at this moment that the

1 solicitor is intending to offer him as a forensic
2 psychiatrist --

3 MR. WILKINS: No. I'm offering him as a
4 psychiatrist.

5 THE COURT: Okay.

6 MR. MAULDIN: But he intends to elicit testimony
7 from that treating doctor that amounts to forensic
8 relationship between that doctor's patient and the law,
9 and that raises an extraordinarily serious ethics
10 question. It is -- it's unethical for a private
11 psychiatrist who is treating a patient to then be
12 called by the State to testify in a forensic manner
13 against his own patient.

14 THE COURT: Well, but a doctor has to -- that's
15 the doctor's --

16 MR. WILKES: That has no place in this courtroom,
17 Your Honor.

18 THE COURT: All right. Here is what we're going
19 to do. Let me cut y'all off because I've heard enough
20 of what I need to hear to form a decision on this.

21 All right. First of all, after considering all
22 arguments of counsel, I am going to allow the State to
23 present reply evidence. I believe the statutory scheme
24 is clear.

25 Again, I make this decision taking seriously into

1 consideration the defendant's position of fundamental
2 due process possible violation with the way the
3 statutory scheme is drafted of burden shifting. Okay.
4 I understand that 100 percent. But I'm constrained by
5 the arguments and by fundamental fairness both -- well,
6 to the State as well to allow the reply testimony.

7 All right. Having considered -- having ruled that
8 I am going to allow the reply testimony, I specifically
9 find for the record that the privilege, if -- the
10 privilege that Ms. Simpson would have had with the
11 doctor that's going to be testifying for the State has
12 been waived.

13 These records that this doctor generated that the
14 State intends to call were used by three defense
15 experts to help establish her defense, and as such, I
16 believe that has opened the door for the State to
17 allow -- to allow the State to use that evidence.

18 I make no finding as to the way SLED retrieved the
19 evidence. That matter is reserved for review,
20 obviously, by a higher court. And I have taken into
21 consideration both Title 63 as well as the HIPAA
22 argument that you presented. And I reviewed that
23 yesterday evening, and I find that I am going to allow
24 the doctor to testify.

25 Now, as to his qualifications and what he can

1 testify about, it appears that I'm going to qualify him
2 as an expert in the field of psychiatry or whatever --
3 of course, I haven't made that decision yet because I
4 haven't heard what all his qualifications are. But
5 let's just assume I qualify him as an expert in the
6 field of psychiatry.

7 At that time, Mr. Mauldin, certainly, you know,
8 you could voir dire him further in front of the jury
9 and make your point, like you've made to me, that you
10 don't think he's qualified to offer an opinion as to
11 the issue of distinguishing right from wrong.

12 And then, of course, if they do ask -- if the
13 State does ask that, you enter your objection, and I
14 will make a ruling at that time on whether or not he's
15 allowed to testify. I mean, I haven't heard it yet. I
16 haven't heard what his qualifications are. I'll have
17 to, you know, go through those evaluative factors under
18 Rule 702, 703, 705, and the case law. I believe it's
19 called the Council factors --

20 MR. WILKINS: *State v. Council*, Your Honor.

21 THE COURT: -- Council factors to determine
22 whether or not that evidence -- and, again, it very
23 well, like the solicitor indicates, it very well may go
24 to credibility and weight of the evidence rather than
25 admissibility.

1 And I understand my role as the trial judge. I'm
2 the gatekeeper. I certainly understand that. And it's
3 in light of all that that I make the ruling that I do.

4 All right. Let's move on now. I've ruled on
5 that. Let's move on now then to the issue of jury
6 charges and verdict form. Let's deal with one at a
7 time.

8 First, let's deal with the verdict form.

9 MR. WILKINS: State's good, Your Honor.

10 THE COURT: Okay. State likes my verdict form.

11 Mr. Mauldin, I will let you revisit your issue of
12 having the four options. Go ahead.

13 MR. MAULDIN: I believe this is actually
14 premature, and I'll tell you why. Because we still
15 have testimony that's going to be offered, and I think
16 that what jury instructions are given to the jury and
17 what verdict forms reflect always relate to the
18 existence of evidence, to what has been presented in
19 the case.

20 THE COURT: Okay. We can do this after the reply.

21 MR. MAULDIN: I actually believe that this
22 dialogue actually needs to happen when the evidence is
23 over.

24 THE COURT: That's fine.

25 MR. MAULDIN: And I apologize, but I just think

1 that's sound reasoning.

2 THE COURT: Not a problem. Not a problem. I
3 just -- what I was looking to get to, just like we
4 were -- y'all were making arguments about testimony we
5 haven't even heard yet, I wanted to go ahead and give
6 y'all an option at this time to make arguments about
7 something that may as well be premature as well.

8 MR. MAULDIN: Right. I could, Your Honor, at
9 least since we've got a few minutes, I could go ahead
10 and put on the record a position that is not going to
11 have anything to do with this next gentleman's
12 testimony, so I believe it's okay to put it on now.

13 THE COURT: Sure.

14 MR. MAULDIN: The court, at the pretrial hearing,
15 the State moved and the court granted a request that
16 the jury not be instructed regarding consequences of
17 verdicts.

18 THE COURT: The penalty of verdict.

19 MR. MAULDIN: Yes, sir. And at that time we took
20 issue, and we now at this time are going to ask the
21 court to consider adding to the jury instructions, and
22 the reason -- like I say, it has really nothing to do
23 with what this next witness will testify to.

24 The consequence of that ruling, Judge, is this.
25 The jury is going to be told that one of the verdicts

1 is guilty. And it's just basic, sensible and common
2 knowledge that if a person is guilty of murder, they go
3 to prison. Again, I don't think the jury is going to
4 be curious about what would happen to a person who's
5 found guilty of murder or guilty but mentally ill of
6 murder. In other words, guilty means prison.

7 A straight not guilty verdict, I think the jury
8 is -- has common sense, and they're going to interpret
9 that as meaning the State failed to prove the case, the
10 person charged leaves the courthouse and goes on their
11 way.

12 The problem and uniqueness of this situation is
13 the not guilty by reason of insanity. There is a South
14 Carolina Supreme Court protocol in place that
15 specifically directs you, the trial court, to take
16 certain steps in the event of the return of a not
17 guilty by reason of insanity verdict. It's not like
18 that verdict would come in and then we're all going to
19 sit down and say, "What do we do now?" That's not
20 going to happen.

21 What's going to happen is this court, under the
22 authority created and authorized by the supreme court,
23 is going to operate under the protocol, she is going to
24 be placed in, essentially, the custody of the
25 Department of Mental Health.

1 THE COURT: For a period of 120 days.

2 MR. MAULDIN: That's right. And then they're
3 going to report back to this court, and that this court
4 is going to monitor that --

5 THE COURT: Not me. The chief administrative
6 judge. I'll be gone.

7 MR. MAULDIN: Oh, is that what it says?

8 THE COURT: That's what it says. Within 15 days
9 after receipt of this report by the court, the chief
10 administrative judge of the circuit in which the trial
11 was held -- that's Judge Miller -- will hold a hearing
12 whether or not the person should continue to be
13 hospitalized.

14 MR. MAULDIN: Right. So -- and I'm clarified on
15 that. I appreciate that, Judge.

16 But the fact of the matter is there is something
17 in place that actually tells us what we're going to do
18 so that if she's convicted of murder, she goes to
19 prison. If she's found not guilty, she goes home. If
20 she's found not guilty by reason of insanity, she goes
21 under the protocol. And I'm not suggesting that the
22 entire protocol be read, but that the jury be informed
23 that there is a process in place.

24 THE COURT: Come up with a proposed charge on what
25 you're arguing. Let the State look at it, and then

1 I'll make a decision when we have the charge
2 conference.

3 Come up with something basically, you know,
4 without having to read the entire statute, just plain
5 and simple.

6 MR. MAULDIN: My intention, Your Honor, is to have
7 a one-sentence instruction.

8 THE COURT: I understand.

9 MR. MAULDIN: So that the jury doesn't go back in
10 the jury room and say, "Well, wait a minute. Let's go
11 back out in the courtroom and ask the judge what's
12 going to happen if we find her not guilty," and you
13 say, "Y'all can't think about that." That's just blind
14 to the realities of jury deliberations. It is blind to
15 the fact that -- about the way normal people think.

16 THE COURT: Again, Mr. Mauldin, you have been
17 trying these cases -- well, not these particular type
18 of cases, but trying cases 42 years, as you've
19 discussed. I understand all that. This is a very
20 unique case, as I believe all the lawyers understand.

21 First one you have ever done, if I'm not mistaken,
22 that's gone for trial, Solicitor?

23 MR. WILKINS: My first one. Betty Strom has got
24 the most experience of anybody here.

25 THE COURT: Just because of the four different

1 possible verdicts. So the issue -- in a normal
2 criminal trial, for the benefit of everybody in the
3 courtroom, you know, you don't discuss penalty or
4 punishment. It doesn't -- that's a matter of law.
5 That's a matter of law for the judge.

6 MR. MAULDIN: I acknowledge that, Your Honor.

7 MR. WILKINS: Your Honor, that's a fundamental --

8 THE COURT: Solicitor, go ahead. I'm coming to
9 you now for your argument. Of course, like Mr. Mauldin
10 says, it's kind of premature to talk about the charge.
11 We'll do that here after the reply testimony.

12 MR. WILKINS: I don't need to say a lot, Your
13 Honor. We'll look at a charge. I'm going to tell you
14 we're going to vehemently object. It's a fundamental
15 principle that the jury does not take into
16 consideration. In every case I have ever tried, it is
17 faux pas number one to let them know there is a
18 mandatory sentence, there's not a mandatory sentence,
19 what are they going to get. And I've had plenty of
20 jury instruction, what they get should not go into your
21 deliberations. What happens to the person if they are
22 convicted, not convicted should not be considered by
23 the jury. That's not their role. It is outside the
24 scope. It's extremely prejudicial.

25 THE COURT: It's kind of like trying a shoplifting

1 up here in this court. Shoplifting up here means it's
2 third property offense or higher. Up to ten years in
3 prison for shoplifting a coffee mug.

4 MR. WILKINS: Bazooka Joe bubble gum, looking at
5 ten years, you know.

6 THE COURT: All right. I'll take all that into
7 consideration.

8 Anything else for the next ten minutes?

9 MR. MAULDIN: The -- well, you know, something did
10 come up last night that I was thinking about when I was
11 preparing my closing. Because the defendant in this
12 case has the burden by a preponderance to establish the
13 question of whether she knew right or wrong, the
14 question then becomes whether or not the defendant's
15 entitled to final argument.

16 I've always understood that the State has final
17 argument because they have the burden, and I get that.
18 I mean, I've had the final argument in death penalty
19 cases. I've had not the final argument in noncapital
20 cases. But I was thinking, okay. If I have the burden
21 of establishing the affirmative defense, so to speak,
22 then I raise the question about whether or not that
23 then creates a right in the defendant, particularly
24 because it's really -- and I don't know. I'm assuming
25 the State would -- it is the issue in this case.

1 THE COURT: That's an interesting point.

2 Solicitor, I mean, this is unlike the usual
3 criminal trial where the State gets the last word under
4 the rules. And I know we had a rule formulating,
5 percolating in the supreme court in general assembly
6 this year to make them more like the federal system.

7 Go ahead.

8 MR. WILKINS: I was a federal prosecutor for five
9 years, Your Honor. And it is state, defense, state
10 rebuttal. And that's the way it is in every case in
11 the federal system, and that's fine if that's what the
12 legislature wants to do.

13 But the fact that he has to prove beyond a
14 preponderance of the evidence of his affirmative
15 defense, we would submit it's not burden shifting. I
16 still have to prove my burden as I always would in
17 every single case beyond a reasonable doubt. I have to
18 prove. That just allows the jury to consider the
19 affirmative defense.

20 Self-defense. You can't get a charge of
21 self-defense unless there is evidence in the record
22 that the judge would allow a self-defense charge.

23 Well, it's the same thing here except they have
24 just put it in a statute. And we don't see any
25 difference. So there's no burden shifting here from

1 our perspective. I have to prove beyond a reasonable
2 doubt that she did, in fact, commit murder and
3 attempted murder. I have to prove beyond a reasonable
4 doubt that -- I'm assuming --

5 THE COURT: You have to prove beyond a reasonable
6 doubt that she was not insane at the time.

7 MR. WILKINS: That she knew right from wrong or
8 didn't. Either way. You know, that she was not
9 legally insane or that she knew right from wrong,
10 however you want to phrase it.

11 THE COURT: Okay.

12 MR. WILKINS: So beyond a reasonable doubt is
13 still the burden. We get last argument, Your Honor.
14 Those are the rules that are in effect today at this
15 time. If the legislature wants to go tweak them and go
16 to the fed system, I know a lot of my solicitor
17 brethren will object to that. From one who's been in
18 the fed system, you know, I kind of like it. It's kind
19 of nice. But that's for the legislature to discuss. I
20 am not a legislator, thank God, and I'll do whatever
21 they tell me to do and whatever you tell me to do.

22 THE COURT: All right. Well, considering your
23 argument, Mr. Mauldin, I'm going to reject your
24 position. And, of course, you'll, when we get to the
25 closing argument stage, you will go first, and the

1 State will have the opportunity to go last.

2 All right. What else? The jury is here, I've
3 been advised.

4 MR. MAULDIN: They are here?

5 THE COURT: Yes.

6 What I intend to do is after this for y'all,
7 before we move into -- this is just one witness, right?

8 MR. WILKINS: Yes, sir, your Honor.

9 THE COURT: Okay. So after this one witness,
10 we'll take a brief recess, let you get your thoughts
11 together and then we'll do closing arguments.

12 MR. MAULDIN: And, Your Honor, at that time --

13 THE COURT: Go ahead. I'm listening.

14 MR. MAULDIN: At that time --

15 THE COURT: When we take our break after the
16 witness, we'll have the charge conference, then y'all
17 move into closing arguments and then I charge on the
18 law, and then they start deliberating. Okay?

19 Anything else y'all think y'all need me to address
20 before we bring the jury in?

21 MR. WILKINS: Not from the State, Your Honor.

22 MR. MAULDIN: (Shaking head.)

23 THE COURT: All right. Bring the jury in.

24 (WHEREUPON, the jury entered open court at
25 9:25 a.m.)

1 THE COURT: All right. All members of the jury
2 are present.

3 Good morning, Madam Forelady, ladies and gentlemen
4 of the jury. I hope you had a nice evening last night.
5 We'll jump right into it this morning. The defense has
6 rested.

7 Solicitor, do you have any witnesses in reply?

8 MR. WILKINS: Your Honor, we do.

9 We would call to the stand Dr. Jeff Smith.

10 THE COURT: All right.

11 Sir.

12 JEFFREY K. SMITH, M.D.,
13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 MR. MAULDIN: We do renew and reserve our
15 objection.

16 THE COURT: Objection noted for the record.

17 THE CLERK: If you would have a seat and state
18 your name for the record.

19 THE WITNESS: My name is Dr. Jeffrey K. Smith.

20 DIRECT EXAMINATION

21 BY MR. WILKINS:

22 Q Hey, Dr. Smith. What is your education?

23 A I earned my undergraduate degree and medical
24 degrees from the University of Alabama. I did my
25 psychiatry residency at the William S. Hall Psychiatric

1 Institute in Columbia, South Carolina, and I've been in
2 private practice in psychiatry, next month, July 9th,
3 will be 26 years.

4 Q And so are you a doctor?

5 A Correct.

6 Q And, again, explain to this jury what kind of
7 practice you have.

8 A I'm in private practice, exclusively outpatient
9 private practice. At one point early in my career I
10 did inpatient and outpatient psychiatry, now
11 exclusively outpatient psychiatry.

12 Q And tell this jury what kind of -- have you done
13 any continuing education? Do you do continuing
14 education programs to maintain your license?

15 A Absolutely. It's mandatory in South Carolina for
16 all physicians to do a minimum of 30 hours of
17 continuing education each year to maintain their
18 medical license.

19 Q Explain to this jury what kind of practice you
20 have. What kind of patients do you see?

21 A I essentially see patients from 18 to 118,
22 essentially from all adult patients with a variety of
23 diagnoses, depression, bipolar disorder, anxiety
24 disorders, attention deficit disorder, substance abuse
25 issues, really the entire spectrum of adult forensic

1 mental illnesses.

2 Q As part of that practice, how do you treat those
3 patients? What are your principal duties in treating
4 them?

5 A Our practice, as it's set up, the physicians and I
6 have -- there's one other psychiatrist, my partner. We
7 also have a physicians assistant who is allowed to
8 evaluate patients. We see patients for initial visits.
9 We then do the medication prescribing and subsequent
10 visits. If it is deemed that this patient may benefit
11 from psychotherapy and counseling in addition to their
12 medications, we offer that through one of six
13 psychotherapists in our office. Or if the patient is
14 already seeing a therapist outside of our office or has
15 a preference of seeing a therapist outside of our
16 office, they're allowed to do so.

17 Q And in diagnosing your patients, do you have to
18 determine their states of minds?

19 A Yes.

20 Q Do you have to, in evaluating your patients, you
21 have to determine if they are suffering from any mental
22 illness or not?

23 A Absolutely. That is the reason they're there, to
24 ascertain if they are suffering from mental illness and
25 what that mental illness may be.

1 Q Have you ever been deposed for any types of civil
2 cases?

3 A Hundreds of times.

4 Q And briefly explain what type of testimony you
5 were providing in those civil cases.

6 A I've been deposed in child custody cases, divorce
7 cases, workman's comp cases, medical malpractice cases,
8 and other civil litigation for wrongdoing. I have only
9 testified in one criminal case and this occurred
10 shortly after the end of my residency training. I did
11 a -- all the psychiatry residents are required to do a
12 certain portion of forensic training, whether they
13 choose to become a forensic psychiatrist or not. I had
14 prepared a report concerning this person's mental state
15 prior to a murder trial. The patient decided that he
16 wished to plead guilty. It just so happened my
17 attending physician was out of the country who had
18 signed off on the report so I was the next closest
19 person. So I was actually already in private practice
20 in the Upstate but was called to a different county,
21 and my evaluation was whether this patient was
22 competent to agree to a life sentence plea.

23 Q Have you ever opined as to criminal
24 responsibility?

25 A Yes.

1 Q How many times?

2 A I would say approximately five times in my
3 residency. Those reports were prepared by me. They
4 were signed off and approved as being accurate and
5 correct by my attending physician.

6 Q Have you ever testified about someone's ability to
7 conform or not to conform?

8 A I have not testified in court. I have rendered an
9 opinion but those trials, because my forensic rotation
10 as a resident was so near the end of my residency,
11 those cases went to trial after I had completed
12 residency so my attending physician would have been the
13 one to testify, except in this one case when he was out
14 of the country that I previously alluded to.

15 Q Have you testified in probate court?

16 A Yes.

17 Q Okay. All right.

18 MR. WILKINS: Your Honor, I would move to have
19 this expert qualified in the field of psychiatry.

20 THE COURT: All right. Any further voir dire from
21 the defense?

22 MR. MAULDIN: Just a few questions.

23 THE COURT: Okay.

24 VOIR DIRE EXAMINATION

25 BY MR. MAULDIN:

1 Q Dr. Smith, you said that your experience with
2 regard to these requests for your opinion occurred
3 during your residency?

4 A Only the criminal cases. Civil cases have all
5 been postresidency.

6 Q Right. But during your residency training, you
7 had what I wrote down was five times when you actually
8 stated what your opinion was in a criminal matter?

9 A Correct.

10 Q All right. And when -- how long did you say you
11 had been a psychiatrist?

12 A Well, to more easily answer your question, those
13 opinions would have been rendered in the year 1990.

14 Q These five times were in 1990?

15 A That is correct.

16 Q Okay. So in -- so 26 years ago you had on five
17 occasions the opportunity to express an opinion
18 regarding a criminal matter that then was reviewed by
19 your supervisor of your residency?

20 A That is correct.

21 Q I mean, 26 years ago did you actually come into a
22 courtroom?

23 A Only on one occasion, in a murder case.

24 Q All right. And that was 26 years ago?

25 A Correct.

1 Q All right. And at the time you came into court
2 that one time, which was 26 years ago, were you
3 declared qualified by whoever was presiding in that
4 court as an expert to testify in that matter?

5 A I was declared as an expert witness in psychiatry.
6 Now, I was not declared an expert forensic
7 psychiatrist, and I think there is a very important
8 distinction to be made there. Forensic psychiatrists
9 choose to do an additional year of their residency
10 which is known as a fellowship to specialize in
11 forensic psychiatry. The reason he or she does that is
12 that they wish to devote all or the majority of their
13 time to forensic psychiatry, the interface between law
14 and psychiatry, not to treat patients in a clinical
15 setting. However, all psychiatrists have forensic
16 training and all psychiatrists are expected to have a
17 fundamental understanding of legal matters. All
18 psychiatrists should be able to testify to testamentary
19 capacity such as in a will, to someone's competency as
20 to whether or not they need to have a guardian or a
21 conservator appointed for them. They should be able to
22 know the McNaughton statute, depending upon the
23 jurisdiction of the court, the American Law Institute
24 statute and the Guilty But Mentally Ill statute which
25 is not applicable in every state, but my understanding

1 is in South Carolina.

2 So not being boarded in forensic psychiatry does
3 not mean you do not know about forensic psychiatry, you
4 do not study about that, and you do not make rulings
5 related to forensics or decisions -- not rulings --
6 decisions related to forensics matters on a frequent
7 basis.

8 Q The fact of the matter is, Dr. Smith, you have
9 never been qualified by a court in the state of South
10 Carolina to testify as an expert witness on issues of
11 forensic psychiatry; isn't that true?

12 A That is true.

13 Q All right. And, furthermore, you said to the
14 prosecutor when he asked you if you had ever testified,
15 you said that you had been deposed. Was that your
16 answer?

17 A I have testified in court in civil matters, I have
18 been deposed in civil matters, probate matters, but, to
19 my knowledge, I have not been deposed and I certainly
20 have not testified in a criminal case.

21 Q And when you say you've been deposed, that's --
22 that means that you were served with a subpoena to
23 appear at a location and answer the questions of the
24 lawyers regarding a civil matter that you would have
25 actually had personal involvement in; isn't that

1 correct?

2 A Can you did define what you mean, "personal
3 involvement"?

4 Q Well, I mean, like if you got sued, if you got
5 sued --

6 A No, I've never. No, no.

7 Q -- for malpractice?

8 A No. I have never been sued for malpractice. None
9 of those I had any personal involvement in. My role
10 was to formulate opinions concerning the patient's
11 mental status, so I had no personal involvement other
12 than supplying an opinion.

13 Q So the depositions that you've been required to
14 testify to have related to your own patients?

15 A Correct. In most cases. I have been asked in
16 some cases to review other cases and offer an opinion
17 so they have not been exclusively my patients, but have
18 been, the majority of them, have been mine.

19 Q All right. Now, regarding this matter, regarding
20 the matter of the State of South Carolina versus your
21 patient, Suzanna Simpson, were you asked prior to
22 coming to court today to review any medical records
23 regarding my client, Suzanna Simpson, other than your
24 own records? Were you asked to review or take a look
25 at any records involving my client?

1 A The only records that I had available to me were
2 my own chart notes on the patient prior to being
3 subpoenaed.

4 Q All right. And after being subpoenaed, were you
5 then asked to review, examine, read, look at any other
6 medical records of Anna Simpson?

7 A Yes.

8 Q You were?

9 A Yes.

10 Q And what -- all right. Okay. I'm going to ask
11 for -- to have a moment with the court.

12 THE COURT: Okay. All right.

13 Ladies and gentlemen of the jury, I need to deal
14 with some matters outside of your presence. If you
15 will go back to your jury room. Don't talk about the
16 case.

17 (WHEREUPON, the jury exited open court at
18 9:39 a.m.)

19 THE COURT: All right.

20 Yes, sir. Do you want to keep asking him?

21 MR. MAULDIN: Yes, sir.

22 THE COURT: Go ahead.

23 VOIR DIRE EXAMINATION (Resumed)

24 BY MR. MAULDIN:

25 Q Dr. Smith, you confirmed a moment ago after you

1 had been subpoenaed, apparently, you were either
2 instructed or requested or whatever to take a look at
3 additional information regarding Anna Simpson. And
4 what I want to know is if your file there reflects what
5 you were asked to look at. Just give the Court an
6 itemized list of the things that you were shown, the
7 things that you were exposed to or in any other manner
8 asked to review regarding your involvement as a
9 possible witness in this case.

10 A I will be glad to do that. First of all, I was
11 not asked to look at anything. I asked myself -- or I
12 asked the solicitor if I were going to testify, that
13 the following items, that I would like to look at
14 myself so that I could gain a full understanding of the
15 evaluations of the forensic psychiatrists and
16 psychologists.

17 Q All right.

18 A Prior to that time, the only thing that I had
19 reviewed and I had reviewed exhaustively were my
20 clinical notes that ranged from the 8th of March 2010
21 through the 26th of February 2013 during which time I
22 treated Ms. Simpson over the course of 34 visits. I
23 requested to -- and I apologize. I'll add one other
24 thing. I did have a copy of her Carolina Center notes
25 that were sent to me because she was in the hospital

1 during the time I was treating, so I did review those
2 as well. I asked then to be allowed to review the
3 notes from the emergency room taken by Dr. Harris on
4 the day of the incident. I asked to be allowed to
5 review the reports that were made available by any of
6 the other forensic examiners. That includes
7 Dr. Frierson and Dr. Price. And so those were all the
8 additional records I asked for. I was not urged to
9 review those. I asked for them because I wanted to be
10 able to give a comprehensive and informed opinion.

11 Q All right. So prior to the subpoena, you had your
12 own records?

13 A Correct.

14 Q Right. After you were subpoenaed and apparently,
15 I guess, conversations took place about the need for
16 you to be available to testify, right?

17 A Well, I was subpoenaed. I wasn't given any
18 choice.

19 Q No. I mean, when you had the subpoena, you would
20 have then had a conversation with somebody that, "Hey,
21 you may be called as a witness"?

22 A Correct.

23 Q All right. And that is when, if I'm making notes
24 correctly, you requested access to the Greenville
25 Hospital System records that related to any

1 conversations she would have had with anyone after she
2 was hospitalized in May of '13?

3 A I did. Let me qualify that by saying in early
4 March of this year Dr. Price, who I understand
5 testified for the defense, told me that he realized
6 that my records had been looked at by many people but
7 no one had ever spoken to me, so he made an appointment
8 with me. He briefly allowed me to review
9 Dr. Frierson's report which I thumbed through that he
10 kept. He told me what the findings of both forensic
11 psychiatrists and the forensic psychologist were. So
12 that was the first contact I had had from either
13 defense or prosecution, and that was in early March of
14 this year.

15 Q And you --

16 MR. WILKINS: Your Honor, I'm going to object.
17 How does this go to his qualifications as being
18 qualified as an expert? We're in voir dire here
19 outside the jury. I mean, we're going way down a road
20 that I'm not sure that affects his ability to testify.

21 MR. MAULDIN: Your Honor, the inquiry I'm making
22 is access to records that were illegally obtained by
23 the State and that those records have been -- or this
24 witness has been provided access to records that were
25 illegally obtained and, therefore, he is disqualified

1 as a witness.

2 MR. WILKINS: Your Honor's ruled on this issue.

3 MR. MAULDIN: I've got to make that record.

4 THE COURT: No, sir. I've already ruled on that
5 issue, Mr. Mauldin. I mean, we're not going down that
6 road. Okay? I mean, right now you're voir diring him
7 about his qualifications. Okay? And I sent the jury
8 out and what I've heard him testify now to is that one
9 of the defense doctors came and talked to him and
10 shared information with him and that he's relying upon
11 his own notes in making whatever opinion he's going to
12 make today. I haven't heard anything about him being
13 provided with any notes from SLED.

14 MR. MAULDIN: Well, that's why I want to ask the
15 question.

16 THE COURT: I'll ask him.

17 Doctor, were you provided any notes or anything
18 that SLED requested from you, were you provided
19 anything from SLED for you to make whatever opinion
20 you're making here today?

21 THE WITNESS: No. SLED, shortly after the
22 commission of the crime, requested a copy of the
23 records. They sent a long submission form that
24 indicated that in felony cases that HIPAA regulations
25 did not apply and we turned over the records of the

1 patient to SLED.

2 THE COURT: Okay. Any further questions based
3 upon my questions to him?

4 MR. MAULDIN: Yes, your Honor.

5 Q Did you -- didn't you say just a minute ago that
6 you reviewed the records from St. Francis Hospital?
7 Didn't you say that just a second ago?

8 A I certainly did.

9 Q All right. And those records that you reviewed
10 from St. Francis were -- that you received access to
11 and reviewed those after your subpoena?

12 A Correct.

13 Q And they were provided to you for review by
14 somebody?

15 A Yes, sir, provided by the solicitor's office at my
16 request.

17 Q All right. You asked for those records and the
18 solicitor gave you records of Anna Simpson's
19 hospitalization at St. Francis Hospital in August of
20 2012?

21 A Correct.

22 Q All right.

23 MR. MAULDIN: All right. Then, Your Honor --

24 THE COURT: All right. I'm with you. I
25 understand where you're going.

1 BY MR. MAULDIN:

2 Q Okay. And you understood -- you mentioned a
3 moment ago, Dr. Smith, that you had a conversation with
4 Dr. Price?

5 A Correct.

6 Q And you understood that Dr. Price was a forensic
7 psychologist, was conducting interviews in an effort to
8 process a forensic evaluation of Anna Simpson. You
9 understood that was what he was actually doing?

10 A No, I did not understand that specifically. What
11 I understood was and what Dr. Price explained to me was
12 three different forensic examiners, two psychiatrists,
13 one psychologist, had pored through my notes and no one
14 had ever bothered to contact me ever about this, and he
15 felt like that he should add that to the interview
16 portion of his report. And, in fact, his report, if
17 you look at it, was compiled and typed after -- I think
18 I'm the last interview listed on all of the interviews
19 and records that he reviewed.

20 Q All right.

21 MR. MAULDIN: Then, Your Honor, now I'm going to
22 question him specifically as to forensic evaluation.
23 That's all the questions I'm going to ask him about the
24 access to records. I think I've got that record pretty
25 well preserved about how he reviewed those records.

1 They were provided to him by the solicitor and we now
2 how the solicitor got them.

3 So now I'm going to ask him regarding forensic
4 evaluations because that's where these questions are
5 going to end up coming from the solicitor.

6 THE COURT: Okay.

7 BY MR. MAULDIN:

8 Q Dr. Smith, you did review some records?

9 A Oh, absolutely.

10 Q Did you conduct -- in preparation for your offer
11 of testimony today, did you conduct any interviews with
12 any family members, witnesses or any other people
13 regarding the matter at hand?

14 A Well, first of all, I would somewhat object to
15 offering testimony. I was subpoenaed to testify. I'd
16 much rather be anywhere else but here right now, but
17 no, I was not asked to evaluate that. That would have
18 required either a court order or the defense asking me
19 to do that, so I was never contacted by the defense
20 until approximately, you know, three months ago. I
21 assume that I was a forgotten entity in this tragic
22 case.

23 MR. WILKINS: Your Honor, could we bring the jury
24 back in? I don't know if this is still outside the
25 scope of the jury here. We're in voir dire. I'm not

1 sure what Mr. Mauldin is trying to do.

2 THE COURT: We kind of moved from voir dire on
3 to --

4 MR. WILKINS: No man's land.

5 THE COURT: -- on to proffering a witness.

6 MR. MAULDIN: He's proffering the witness as an
7 expert in psychiatry.

8 THE COURT: Right.

9 MR. WILKINS: That's right.

10 MR. MAULDIN: We absolutely anticipate that
11 questions of a forensic nature are going to be asked
12 this witness.

13 THE COURT: Right.

14 MR. WILKINS: Right.

15 MR. MAULDIN: And I am going to establish by these
16 questions that this witness is not qualified. Might as
17 well -- if we don't ask --

18 THE COURT: You don't want to do that in front of
19 the jury?

20 MR. MAULDIN: Well, if we ask him -- he's going to
21 ask the questions and I'm going to have to object to
22 them as being beyond the scope of his expertise.

23 THE COURT: Yes, sir.

24 MR. MAULDIN: Then we're going to have to send the
25 jury out and do all this over.

1 THE COURT: Mr Wilkins.

2 MR. WILKINS: I think you're going to rule on it.
3 After we complete voir dire, you're going to qualify
4 him as an expert. Or not.

5 THE COURT: Yes. We completed voir dire. I'll go
6 ahead and tell you, yes, based upon what I've heard,
7 he's qualified to testify as an expert in psychiatry.

8 MR. WILKINS: Okay. So the elephant in the room
9 is I'm going to ask him about criminal responsibility
10 as to her and as to whether she had the ability to
11 conform as to the defendant. Now that's not my only
12 questions, but it is going to be a question, and I
13 think that that's what Mr. Mauldin is objecting to. So
14 that needs to be ruled on. So if you want to let him
15 go down the driveway as far as he wants to go so we can
16 rule on that.

17 THE COURT: I understand this. We're out of the
18 presence of the jury.

19 Doctor, do you believe you're qualified to testify
20 as an expert to render an opinion as to criminal
21 responsibility?

22 THE WITNESS: Yes, I do.

23 THE COURT: Okay.

24 Start asking questions as to why he thinks that.

25 BY MR. MAULDIN:

1 Q Have you ever been -- and I think I already asked
2 him if he had ever been qualified and he said no.

3 THE COURT: He said no, never been qualified as an
4 expert in court before, and the jury has heard that.
5 Okay? They did before we sent them out.

6 MR. WILKINS: They did.

7 MR. MAULDIN: Well, I didn't -- oh, okay.

8 THE COURT: Yes, sir. See, that's where it goes
9 toward the weight and the credibility. I'm still
10 sitting here looking at the Council factors deciding
11 whether or not I'm going to allow it, but the question
12 hasn't been asked what is his opinion yet.

13 BY MR. MAULDIN:

14 Q All right. Then the questions to this witness
15 would be were you provided any documents of a law
16 enforcement nature, SLED documents, police reports,
17 witness statements, any warrants, any supplemental
18 reports, any 911 telephone calls, any -- were you
19 provided anything from the defense, did you ask for
20 anything from the defense regarding the facts of this
21 case, did you get any of that information?

22 A No. Now, I did not ask for that, did not receive
23 that. Now, some of those things were alluded to in the
24 forensic reports of the psychologist and psychiatrist I
25 read, but I did not specifically look at any law

1 enforcement records, any -- any other records other
2 than what I just enumerated previously.

3 Q Did you meet with counsel? That would be --
4 that's Teal Johnson, the lady seated at the table
5 there. I'm John Mauldin. Did you meet or discuss with
6 us anything about this case?

7 A No. I was never contacted by anyone on the
8 defense side, to my knowledge, other than Dr. Price.

9 Q But you were never asked to conduct a forensic
10 evaluation, were you?

11 A I was asked to do nothing until two weeks ago.

12 Q And two weeks ago were you asked to conduct a
13 forensic evaluation?

14 A Not directly of the patient. The patient was not
15 available to me. I was asked what my opinion was about
16 her diagnosis, and I was asked about what my opinion
17 was concerning her lack of knowledge of right and
18 wrong, which I had previously formulated on my own
19 because of the tragic nature of this case. In nearly
20 26 years of practice, I have never had anything
21 surprise me as much as this case did, and I've done
22 considerable self-education going back and going
23 through these records prior to that time. I had
24 arrived at an opinion of my own that I thought that
25 would never be solicited in court prior to ever meeting

1 the solicitor.

2 Q Well, I mean, what was it? I mean, you say you
3 struggled with it. So what was the opinion?

4 A I struggled with what?

5 Q Never mind. I'll withdraw that question.

6 THE COURT: Okay.

7 MR. MAULDIN: Your Honor, at this point -- one
8 moment.

9 THE COURT: Okay.

10 (WHEREUPON, an off-the-record discussion was had
11 between defense counsel.)

12 MR. MAULDIN: All right.

13 MR. WILKINS: Your Honor, I'm willing to ask him
14 the question so you can make a ruling on it, whether he
15 can answer it or not. Just haven't had a good
16 opportunity to do that yet, seeing how we're only in
17 voir dire.

18 THE COURT: All right. Do you have anything else
19 to ask him or do you want to make argument now?

20 MR. MAULDIN: I will make argument.

21 THE COURT: Before you do that, you had a
22 follow-up question while we're proffering.

23 MR. WILKINS: While we're proffering.

24 VOIR DIRE EXAMINATION

25 BY MR. WILKINS:

1 Q Dr. Smith, what would be your opinion as to Anna
2 Simpson's criminal responsibility on May 14, 2013?

3 A It is my opinion that she knew right from wrong
4 but was unable to conform her conduct -- conform her
5 conduct to the requirements of the law.

6 Q Does that mean guilty but mentally ill?

7 A That is the guilty but mentally ill statute, as I
8 recall it.

9 MR. WILKINS: That would be his ultimate opinion.

10 THE COURT: Right. I'm not going to let you ask,
11 "Does that mean guilty but mentally ill?" That's the
12 ultimate issue the jury has to determine. That's his
13 opinion. We all know what his opinion is now. Let's
14 hear argument.

15 MR. MAULDIN: Yes, sir. Your Honor, the State vs.
16 Harris, 318 S.C. 178.

17 THE COURT: Okay.

18 MR. MAULDIN: 1995 opinion. The basis, in a
19 nutshell, is a treating physician psychiatrist who is
20 not trained or certified in forensic psychiatry and not
21 performing a forensic evaluation at the time is not
22 qualified to render forensic testimony which is rooted
23 in the understanding of the law how legal concepts
24 apply to a particular patient's case. I mean, there's
25 nothing more absolutely and specifically on line than

1 that. He is a treating psychiatrist.

2 THE COURT: South Carolina Supreme Court case?

3 MR. MAULDIN: Mine is all marked up.

4 THE COURT: Is that it?

5 MR. MAULDIN: I got all kind of emphasis here.

6 MS. STROM: Did you make copies for counsel?

7 THE CLERK: I can make copies.

8 MS. STROM: Thank you.

9 THE CLERK: How many do we need, two sets?

10 THE COURT: That's a court of appeals case. Has
11 it gone up to the supreme court? Did y'all Shepardize
12 it?

13 MR. MAULDIN: Well, we kind of are in the
14 courtroom right now, so we're doing the best we can.

15 THE COURT: All right. From where were you --
16 what part of the -- all right. In that case the
17 defense offered a therapist as a witness and the Court
18 held that the therapist wasn't qualified much like
19 we're doing here. There was a bench conference and an
20 in-camera hearing. She was not qualified as a
21 psychologist or a psychiatrist. She had a master's
22 degree in clinical counseling from the center and had
23 been treating Harris and worked at Dorchester Mental
24 Health Center, and she was being offered as an expert
25 by the defense. The State objected, and that's what

1 that case was.

2 Don't you think that case is kind of
3 distinguishable here? We have a board certified
4 psychiatrist -- now we got it right. Just from a
5 factual standpoint don't you think it's
6 distinguishable.

7 MR. GOLDSTEIN: Yes, your Honor, but at the same
8 time, I mean, the expert at issue there had been
9 working as a mental health care professional for four
10 years and had been treating that particular defendant
11 for six months, and yet in spite of his background, the
12 court said that she failed to explain what her training
13 involved or what specific experience, if any, she
14 gained through her employment or through treating the
15 defendant that would allow her to comment on his state
16 of mind at the time of the incident, i.e., to render an
17 ultimate opinion. So in spite of the fact that she was
18 a treating mental health care professional, for this
19 particular defendant, she could not comment on the
20 ultimate issue, his state of mind.

21 THE COURT: Okay. I gotcha.

22 Any argument from the State on that?

23 MR. WILKINS: I'm just now reading the opinion,
24 but my understanding is she's a therapist.

25 THE COURT: Yes.

1 MR. WILKINS: Okay. Well, he's a psychiatrist.
2 And he's had training in this area, too.

3 THE COURT: All right. Here's what we're going to
4 do -- yes, sir.

5 MR. GOLDSTEIN: Your Honor, if I may.

6 THE COURT: Go ahead.

7 MR. GOLDSTEIN: And there's one section in the
8 opinion that says an expert's qualifications to
9 render --

10 THE COURT: Where are you?

11 MR. GOLDSTEIN: -- an expert opinion --

12 THE COURT: What page, five of six?

13 MR. GOLDSTEIN: On the printout that I have, it
14 says 181.

15 THE COURT: Okay.

16 MR. GOLDSTEIN: So this is right after I said that
17 she failed to elaborate on her specific experience.

18 THE COURT: Okay.

19 MR. GOLDSTEIN: But the court says, there's a
20 citation that says, "An expert's qualification to
21 render an expert opinion on a subject must depend upon
22 the nature and extent of his knowledge and not upon his
23 claim to a particular title, i.e., doctor or
24 psychiatrist. It's specific knowledge and the ability
25 to testify as to the ultimate opinion.

1 MR. WILKINS: Your Honor, his knowledge is about
2 ten times more than their forensic experts. He saw her
3 for 34 times over a three-year period. He's also
4 reviewed records from Carolina Center for Behavioral
5 Health, St. Francis ER, during the date of the
6 incident, St. Francis in 2012, as well as both forensic
7 reports by their forensic psychiatrists.

8 THE COURT: All right. Okay. Thank you. I don't
9 need to hear anything further. I've heard enough. I
10 think we've beat this horse enough. All right.

11 Here is what we're going to do. Okay? You know,
12 I've heard the doctor's testimony. We have had the
13 in-camera hearing. He's been proffered. I do find,
14 you know, in considering the Council factors,
15 considering the case law handed up, first of all, with
16 the case law, I believe the case law that the defense
17 handed up, State vs. Harris, is distinguishable from
18 this case because in this case we have a practicing
19 psychiatrist who clearly, in this Court's opinion, is
20 qualified to testify as a psychiatrist and, therefore,
21 render an opinion. I'm also satisfied with his
22 explanation about the difference between psychiatry
23 versus forensic psychiatry. Okay?

24 Now, having said that, I find, then, that he is
25 qualified to testify as an expert and offer an opinion

1 that the State seeks. Now, whether or not this jury is
2 going to accept that opinion considering the fact that
3 you have three, they have one -- I'm going to tell them
4 they can't really consider the number of witnesses.
5 That's the general credibility argument. But that goes
6 to the weight and credibility of the evidence, not to
7 the admissibility. And in making this decision, I want
8 the record to be clear, I have considered not only his
9 qualifications, but I've considered the State vs.
10 Council factors, and for the benefit of any appellate
11 court which may review this decision if it goes any
12 further, I will state those into the record.

13 Number one, when admitting scientific evidence
14 under Rule 702, the trial judge must find the
15 following: A, the evidence will assist the trier of
16 fact. I believe this evidence will assist the jury in
17 making a determination. B, the expert witness is
18 qualified. I have made the determination that I
19 believe the expert witness is qualified. And, C, the
20 underlying science is reliable. All right.
21 Considering reliability, the publications peer
22 reviewed, prior application of the method to the type
23 of evidence involved in the case, quality control
24 procedures used to assure reliability, and the
25 consistency of the method with recognized scientific

1 laws and procedures. He's testified that he's treated
2 the defendant for some 34 different occasions, has good
3 knowledge of her in his treatment of her. He's been
4 practicing for 26 years. I mean, I've already heard
5 from the defense side everything that goes into making
6 an opinion concerning whether or not someone knows the
7 difference between right and wrong and can conform
8 conduct, so I find that the evidence is reliable.

9 Lastly, and the main issue, at least where the
10 defense is concerned, is the balancing, whether it's
11 more prejudicial than probative. Okay? Clearly this
12 testimony is prejudicial to the defense. I understand
13 that. Okay? But, you know, any time somebody is
14 charged with a crime, it's prejudicial to the defense.

15 The State, considering and balancing fundamental
16 fairness issues, I believe the probative value of this
17 evidence outweighs the prejudicial effect and, again,
18 this Court finds that this evidence is admissible. You
19 can argue all day long, and you're doing so very
20 effectively in the Court's opinion, Mr. Mauldin. I'm
21 not a juror, but I think you're making very effective
22 arguments and very effective cross-examination of this
23 witness' testimony, and I'm sure the jury is going to
24 consider all that. And I know they will. Okay?

25 So having specifically ruled under the State vs.

1 Council factors and considered each of the factors as
2 I've just enumerated them, I find this witness is
3 qualified, I find this witness can be asked the
4 opinion, and that's over the defense's objection,
5 that's over the case law handed up to me. I will allow
6 you to cross-examine him just like you're going to
7 cross-examine, just like I know you're going to do.
8 And, of course, he hasn't been asked his opinion yet in
9 front of the jury, so when the State asks his opinion,
10 you make your objection, okay, I will rule on it then,
11 and then, of course, then we can go through the rest of
12 his cross-examination.

13 Okay? We all good?

14 Bring the jury in.

15 MR. WILKINS: Thank you, your Honor.

16 (WHEREUPON, the jury entered open court at
17 10:08 a.m.)

18 THE COURT: All right. All members of the jury
19 are present. Ladies and gentlemen, thank you very much
20 for your patience.

21 Any further voir dire from the defense of the
22 psychiatrist?

23 MR. MAULDIN: No further voir dire, Your Honor.

24 THE COURT: Thank you.

25 MR. WILKINS: Your Honor, I'll continue.

1 THE COURT: Well, there was a motion to qualify
2 him as --

3 MR. WILKINS: I believe I was going to -- we move
4 to qualify him, Dr. Jeff Smith, as an expert in
5 psychiatry.

6 THE COURT: All right.

7 MR. MAULDIN: We object, Your Honor.

8 THE COURT: All right. The defense objects.
9 Based upon the testimony and evidence in the record, I
10 do find this witness is qualified as an expert in the
11 field of psychiatry.

12 Ladies and gentlemen, I have described to you what
13 an expert can do. Just remember my description to you
14 about what an expert can testify to. Okay?

15 MR. WILKINS: Thank you, your Honor.

16 DIRECT EXAMINATION (Resumed)

17 BY MR. WILKINS:

18 Q All right, Dr. Smith. Were you the treating
19 psychiatrist for the defendant, Anna Simpson?

20 A Yes.

21 Q All right. Can you tell this jury when about you
22 became the treating psychiatrist and how you became the
23 treating psychiatrist?

24 A She was referred to me on the 8th of March 2010 by
25 Dr. Wayne Hanna, who is a primary care family practice

1 doctor in Greenville for evaluation of, quote, ADHD and
2 depression. He had attempted to treat her prior to
3 that time and was not -- did not feel the treatment had
4 been successful so he made that referral to me.

5 Q And did you begin treating her?

6 A Yes.

7 Q And tell this jury how your treatment process
8 began and continued.

9 A Well, I diagnosed her for the first time, to my
10 knowledge, with bipolar disorder. She had previously
11 been diagnosed as having depression and ADD and
12 anxiety. While I believe that she did indeed have ADHD
13 and anxiety, I felt that the depression was a
14 misdiagnosis and that her mood disorder was more
15 consistent with bipolar disorder which requires a
16 different approach medically to stabilize that
17 condition.

18 Q Okay. Tell this jury what bipolar disorder is.

19 A Well, bipolar disorder is the modern day term for
20 manic depressive disorder where individuals' moods
21 cycle from one extreme to another. Bipolar means two
22 poles, like the North Pole and South Pole. And the
23 South Pole are depressed phase, the person has
24 depressed mood, may have lack of energy, lack of
25 motivation, lack of interest, social withdrawal, lack

1 of libido, crying spells, suicidal ideations.

2 On the manic end of the pole, it's diametrically
3 opposed to depression. The patient often has a
4 euphoric mood. It doesn't have to be euphoric but most
5 often is, but it can be an irritable, extremely
6 irritable mood. They typically have racing thoughts.
7 They have very rapid speech. They write extensively.
8 They have what are called loose associations where they
9 go from point A to point G bypassing B through F,
10 jumping from one place to another. They can often get
11 by with minimal amount of sleep. They often are very
12 impulsive in what they say and what they do. They're
13 often prone to overspending money. And in extreme
14 cases on both the manic and depressed end of the pole,
15 patients can become psychotic where they can experience
16 auditory hallucinations and delusions in very severe
17 cases.

18 Q And how -- what was your treatment of her?

19 A Well, the first visit, I continued her on Adderall
20 which is a stimulant medication for attention
21 definition disorder. I started her on a mood
22 stabilizer. And to my understanding, it was the first
23 time, having taken a history of her previous
24 medications, that she had ever been on a mood
25 stabilizer. And a mood stabilizer is absolutely

1 fundamental to treating someone with bipolar disorder.
2 You cannot stabilize their condition without it. It
3 would be like baking a cake without flour. You could
4 have all the eggs, milk, sugar and butter you want, but
5 if you don't have flour, you can't make a batter and
6 make a cake, and the mood stabilizer is the flour in
7 this pharmacology formula. I also continued her on
8 Topamax. Topamax is an medicine that was originally
9 designed for seizures. Neurologists often use it to
10 treat migraine headaches, which is what it was
11 prescribed for. Topamax does have some mild mood
12 stabilizing properties. It's not really as effective
13 as the Lamictal, but certainly I felt it could possibly
14 help the Lamictal a bit in mood stabilization.

15 Q And when you first meet with a patient, especially
16 their first visit or their intake into your office, do
17 you get any history that comes along with that, prior
18 medical history or diagnoses or anything like that?

19 A Yes. I try to get an understanding of how long
20 the person has experienced these symptoms. I want to
21 elicit all the symptoms that they're experiencing to
22 make sure that some have not been overlooked in the
23 past. I want to get a history of what medications they
24 have been on in the past and what the response may be.
25 I want to get a general medical history. Do they have

1 other medical problems, do they have drug allergies, is
2 there a family history of forensic illness, a little
3 bit about background history. So it's a fairly
4 comprehensive evaluation.

5 Q And did you do that in this case?

6 A Yes, sir.

7 Q Can you give an overview of her prior medical
8 history?

9 A Well, it's my understanding that she had
10 previously been diagnosed with depression and ADD, and
11 the depression first had been noted sometime in the
12 vicinity of her college years and had been exacerbated
13 on at least one occasion in the postpartum period. But
14 all treatment to date had been for either depression,
15 ADD or anxiety and none for bipolar disorder.

16 Q And, just briefly, did you know her educational
17 background? Did you look at that?

18 A My understanding is a college graduate I believe
19 in finance from Winthrop University, if I remember
20 correctly.

21 Q And was she working at the time?

22 A I do not recall if she was working at the time.
23 My understanding was that she had worked at one time in
24 a bank.

25 Q Do you also look at potential stressors that could

1 exacerbate or enhance any of her mental illness
2 symptoms?

3 A Yes.

4 Q Okay. On the day that you saw her, the initial
5 day that you saw her on March 8, 2010, were there any
6 stressors that you indicated?

7 A Yes. She mentioned having two children ages four
8 and two, and she specifically mentioned that she often
9 got in conflict with her husband because of her
10 inattentiveness which is a symptom of ADHD, and, quote,
11 I guess blamed a lot from the husband.

12 Q So during your treatment of her, how many times
13 did you see her as her psychiatrist?

14 A I saw her 34 times. There were seven
15 cancellations and three no-shows so there was a
16 potential for there having been 44 total appointments,
17 but I actually saw her in person on 34 occasions.

18 Q And describe -- was she the exact same way every
19 time she came to you or were there differences in her
20 presentation?

21 A No. There were differences. There were times
22 when her condition was, I thought, very stable
23 including the last time I saw her in February of 2013.
24 But there were certainly times when things were not
25 stable, and an examination of my records will show we

1 made a lot of medication changes and adjustments
2 because we were dealing with three separate forensic
3 problems, and, specifically, when you're treating
4 bipolar disorder and ADHD, it's a very tricky thing to
5 do because ADD medicines in the absence of a mood
6 stabilizer will make bipolar disorder much worse so you
7 have to balance the medications out very carefully to
8 get the level of stability that you want.

9 Q Would she consistently take her medications during
10 the three-year period?

11 A My belief is that she, from what she was telling
12 me, she was. There was at least one occasion that she
13 admitted to having stopped the medication to me in the
14 office and it resulted in a marked worsening of her
15 symptoms. In fact, that was the second of three times
16 that she admitted to having any kind of psychotic
17 symptoms, specifically paranoia.

18 Q In 2012, it's previously been testified that late
19 July of 2012 she was admitted to the emergency room at
20 St. Francis and subsequently on to the Carolina Center
21 for Behavioral Health. Were you able to review those
22 records of that admittance?

23 A Yes.

24 Q And you saw her subsequent to that?

25 A Yes, I saw her --

1 MR. MAULDIN: Doctor, excuse me. I do renew my
2 motion with regard to access to those records.

3 THE COURT: Yes, sir. Motion noted and objection
4 noted. Objection overruled.

5 MR. MAULDIN: Thank you.

6 THE WITNESS: Can you restate your question?

7 MR. WILKINS: Sorry. Yes, sir.

8 Q Subsequent to her admittance to those two
9 hospitals, did you see her subsequent to that?

10 A Yes. My understanding is she was first at St.
11 Francis Hospital. They were in the emergency room for,
12 I believe, roughly about three days because they were
13 having difficulty locating an inpatient forensic bed.
14 She was then admitted to Carolina Center for Behavioral
15 Health, which is forensic hospital in Greer, and was
16 there for, I believe, three days. Very short
17 hospitalization. And then I saw her as an outpatient
18 within ten days of that discharge from the hospital.

19 Q And what was your analysis of that episode and
20 what occurred?

21 A Well, I think that there was evidence of
22 psychosis; however, in reviewing those records, there
23 was mentioned by the treating clinicians at St. Francis
24 that she had stopped taking her mood stabilizer which
25 could have indeed explained those symptoms,

1 particularly if -- and we really have no way of knowing
2 this, but if she continued to take the stimulant
3 medications without the mood stabilizer, that would
4 significantly contribute to the psychosis.

5 Q And you said -- so was she having a psychosis when
6 she went to St. Francis and Carolina Center for
7 Behavioral Health?

8 A By the -- in St. Francis Hospital, according to
9 the -- I did not see her myself -- according to the
10 treating clinicians, there were psychotic symptoms.
11 Those had largely resolved by the time she went to the
12 Carolina Center, and her stay at the Carolina Center
13 was very brief.

14 Q So when you saw her, what was your diagnosis of
15 her when you saw her subsequent to those?

16 A My diagnosis was the same throughout the course of
17 treatment, that she had bipolar disorder, attention
18 deficit hyperactive disorder, and an anxiety disorder,
19 so my diagnoses did not change throughout the course of
20 treatment.

21 Q If someone is having -- and you stated you saw her
22 while she was having some psychotic features; is that
23 correct?

24 A On -- twice in person, once reported in by
25 telephone to my medical assistant as a possible

1 reaction to a new medication we had started, and we
2 stopped that medication by the time she came for her
3 next appointment that had -- paranoia, psychosis had
4 resolved, but in person, one on one, two occasions.

5 Q And if someone has psychotic features, does that
6 mean that they do or do not know right from wrong?

7 A Not necessarily.

8 Q So you can have psychotic features and still know
9 right from wrong?

10 A Absolutely.

11 Q Were you able to review the reports of
12 Dr. Frierson and Dr. Price in this case?

13 A Yes, sir.

14 Q You read those reports?

15 A Yes.

16 Q Did you ever meet with any of them?

17 A I met in person with Dr. Price in early March of
18 this year. He allowed me to briefly look over the
19 report that Dr. Frierson, the forensic psychiatrist,
20 had prepared, and he also told me what his findings
21 were. I don't think he had dictated his report at that
22 time. He asked my opinion. I said, "Well, based upon
23 what you were seeing at that time, I can see how you
24 arrived at your decision," but I was very pointed in
25 telling Dr. Price that this is an entirely different

1 individual than the one I saw for 34 visits. There is
2 nothing about this that is similar in clinical
3 presentation. I was so struck by that, that within a
4 few days I actually telephoned Dr. Frierson in
5 Columbia. I know Dr. Frierson, have utmost respect for
6 him. I saw him when he was a medical student and I was
7 a resident. And, again, he -- I had only perused his
8 report. I had not had time to look at it in great
9 detail, but he told me how he arrived at the report,
10 and I reiterated to him that I had never seen anything
11 like this in 26 years of practice. It was like we were
12 talking about two different individuals.

13 Q So elaborate on that. What are you referring to,
14 their report and what they said in their report versus
15 what you were seeing for 34 visits up until February of
16 2013?

17 A Well, in those 34 visits with me, there was only
18 two face-to-face reports of paranoia. And when asked
19 about the paranoia, it was, "I think people are talking
20 about me," okay, which is a generalized, vague
21 paranoia. The extent of the delusions that are
22 enumerated in the forensic psychiatrist and forensic
23 psychologist reports were never revealed to me by the
24 patient, nor did the patient's family ever contact me
25 independently to say, "Wow, this person has got really

1 severe delusions, you know, that are extremely
2 bizarre." So, at most, again, I saw was vague
3 reference to paranoia but nothing about bugs in ceiling
4 fans, about shift shaping changes, about the
5 Illuminati, about just any variety of things. I could
6 enumerate those by finding my notes and looking at
7 them, but nothing of that complex and bizarre nature
8 did I ever witness. Is it possible she concealed that
9 from me? Certainly. Anything is possible, but if she
10 did, it's the first time it's ever happened in
11 26 years.

12 Q When did the forensic psychiatrist talk to Anna
13 Simpson for the first time?

14 MR. MAULDIN: Your Honor, let me ask just for
15 clarification, when he says when did the forensic
16 psychiatrist first talk to Anna Simpson, if he can
17 identify who he is --

18 MR. WILKINS: I'm sorry.

19 Q When did Dr. Frierson first meet, according to his
20 report, first meet with Anna Simpson?

21 A According to his report, and that's all I can rely
22 upon, he met with her on three occasions in February,
23 May and June of 2015.

24 Q That would be after the incident that we're here
25 about?

1 A Close to two years after the incident.

2 Q And Dr. Price?

3 A According to Dr. Price's report, he met with the
4 patient between June 14th -- between June of 2014 and
5 June of 2015. He did not, unless I misread the report,
6 did not specify the exact number of visits.

7 Q Did any -- did you ever get any information from
8 any family members about hallucinations or issues that
9 they referred to in that report?

10 A No, and I sorely wish that I had.

11 Q Did any family members ever accompany Anna Simpson
12 to her visits, any of her 34 visits?

13 A I have no recollection of that.

14 Q Did you review the Dr. Wade Harris' notes from the
15 Greenville Hospital System emergency room from May 14,
16 2013?

17 A Yes.

18 Q What did you notice about -- anything that you
19 noticed about those records that you took -- that you
20 had taken into consideration?

21 A Well, he certainly is the -- is a board certified
22 psychiatrist. He is certainly, among anyone who's
23 testified or been alluded to, had the closest, most
24 direct access to this patient in proximity to the
25 commission of the crime. Now, his records indicate

1 that she would not say that she tried to kill herself.
2 She did say that she tried to shoot herself but the gun
3 wouldn't go off, which was contradictory to not
4 answering whether she was trying to kill herself. He
5 learned from the coroner that she had previously
6 admitted to shooting her family. He noted that she
7 felt like there was some sort of conspiracy against
8 her, things were closing in on her, her children were
9 behaving in abnormal ways, that she was fearful and
10 scared. Again --

11 MR. MAULDIN: Dr. Smith --

12 THE COURT: Is there an objection?

13 MR. MAULDIN: Yeah. We object to the witness just
14 simply sitting there reading the medical records. I
15 mean, if he's got something to say about those medical
16 reports, perhaps he can answer the question, but for
17 him to just sit there and read medical reports is
18 inappropriate.

19 THE COURT: All right.

20 BY MR. WILKINS:

21 Q Just cut to the chase.

22 A Cut to the chase is that she did not admit to
23 hearing voices. There was some evidence of paranoia
24 and as Dr. Harris concluded, but, again, his
25 description of her psychosis is not nearly as severe as

1 what is reflected in the forensic psychiatrists and
2 psychologists reports.

3 Q And we'll get back to those two reports in just a
4 second. What about her remediation at the Greenville
5 Hospital System, did that strike you as something you
6 took into consideration?

7 A Yes. I think that her rapid resolution or, if not
8 complete resolution, lessening of her psychotic
9 symptoms in such a short period of time, both at St.
10 Francis Hospital earlier and at the emergency room that
11 day, I've never seen someone with a functional
12 psychosis -- and when I say functional psychosis, I'm
13 talking about something like schizophrenia, bipolar
14 disorder with psychosis, depression with psychosis --
15 respond that quickly to medications. We're talking
16 within hours to a few days. I have seen people who
17 have an organic psychosis. When I say organic
18 psychosis, I'm talking about dementia or stroke or a
19 drug-induced psychosis that will sometimes respond
20 fairly rapidly to medication, but this is an atypical
21 response to a functional psychosis.

22 Q Did you consider her actions prior to the May --
23 the morning of the May 14th incident into garnering a
24 conclusion?

25 A Yes.

1 Q What did you take issue with about her actions
2 prior to May 14th?

3 A That -- a number of things. I think that the day
4 prior to the event that -- and, again, I'm relying on
5 the forensic examiners' reports that in a conversation
6 with the mother-in-law, she was described as sounding
7 normal in one of three or four -- I think it said four
8 in one place, and I think five in another report --
9 that she sounded normal. The other times she sounded
10 bizarre, in trouble. Again, it would be very unusual
11 for someone who is that psychotic to be coming in and
12 out of it and sounding clear in one phone call and
13 psychotic in another.

14 Q Could it be possible for someone who's suffering
15 from mental illness to do that?

16 A Possible but not likely.

17 Q Okay. Go ahead.

18 A I would question the one troubling statement, to
19 me, that was apparently made to the patient's mother
20 prior to the night before the incident in reference to
21 her husband is, "Mike is done," quote/unquote. That
22 could be the product of psychosis, but that is open to
23 interpretation and a troubling statement. There again,
24 it's a suggestion of premeditation by taking one of the
25 children out of school the day before. There is a

1 suggestion of premeditation by shooting husband first
2 to disable him to keep him from keeping her from
3 shooting the children. So there are some things there
4 that very much suggest that there was some planning and
5 that planning directly suggests that one --

6 MR. MAULDIN: Dr. Smith.

7 Your Honor, object to --

8 THE COURT: Sustained.

9 BY MR. WILKINS:

10 Q All right. Let's move on.

11 Dr. Smith, what is your opinion as to Anna
12 Simpson's criminal responsibility?

13 MR. MAULDIN: Objection.

14 THE COURT: Objection noted. Objection overruled.

15 THE WITNESS: It is my opinion that she knew right
16 from wrong but was unable to conform her conduct to the
17 behavior of the law.

18 BY MR. WILKINS:

19 Q Thank you, Dr. Smith. Answer any questions
20 Mr. Mauldin may have.

21 THE COURT: Mr. Mauldin, your witness.

22 MR. MAULDIN: Subject to my objections, Your
23 Honor.

24 THE COURT: Absolutely.

25 CROSS-EXAMINATION

1 BY MR. MAULDIN:

2 Q First of all, Dr. Smith, we can conclude that you
3 disagree with Dr. Frierson, Dr. Mulbry, and Dr. Price
4 in their forensic evaluations; is that right?

5 A Yes.

6 Q All right. You had mentioned a telephone
7 conversation with Dr. Frierson?

8 A Correct.

9 Q And you mentioned a meeting with Dr. Price?

10 A Yes. The meeting with Dr. Price was solicited by
11 him. The phone conversation with Dr. Frierson was
12 solicited by me after speaking with Dr. Price.

13 Q And at the time you had the meeting with Dr. Price
14 and at the time you had the telephone conversation with
15 Dr. Frierson, you were not in the process of performing
16 a forensic evaluation?

17 A No. At that point some three years had lapsed. I
18 had not been contacted by anyone on defense,
19 prosecution, law enforcement or anyone. I basically
20 considered myself a nonentity in this case at that
21 point.

22 Q All right. And, in fact, let's talk just a little
23 bit about your qualifications to be offering this
24 ultimate opinion regarding your former patient.

25 You have never, not one single time in -- how long

1 have you been a doctor?

2 A Well, let's see. I've been a doctor since 1986.
3 I believe that's 40 years, if I'm doing my math right.
4 Or is it 30 years?

5 Q I don't know. It's one of them.

6 A It's been a long time.

7 Q Long time.

8 A Yeah.

9 Q You have been a doctor for a long time and not one
10 single time have you ever been qualified as an expert
11 to offer testimony as a forensic psychiatrist; is that
12 right?

13 A I have not nor have I ever been asked to do so.

14 Q Right. You have never been asked to conduct a
15 forensic evaluation, you have never been asked to be
16 qualified as an expert to testify about forensic
17 evaluations?

18 A Let me qualify this because I know you're very,
19 very heavy on specifics here. I have never been asked
20 in a murder case except on the one occasion I
21 previously alluded to. I had been asked to render
22 forensic opinions in civil cases multiple times.

23 Q All right. So you have been asked to render
24 opinions when people get sued. Lawsuits between
25 Mr. Jones and Mr. Smith, that's a civil?

1 A It might be a civil lawsuit. It might be a child
2 custody case. It might be a divorce. It might be a
3 workman's comp. It might be a social security case.
4 It might be a medical malpractice case involving
5 another physician, so there are a variety of different
6 civil suits that I've been asked to either testify in
7 court or testify in deposition. Some of those have
8 been videotaped depositions that were shown in court.

9 Q Well, and let me then make sure we're getting a
10 yes or no here. Have you ever under any circumstances
11 been declared by a judge to be an expert in forensic
12 psychiatry in courtroom testimony? Have you ever had
13 that?

14 A No.

15 Q So the answer is no. The answer is no; is that
16 right?

17 A The answer is --

18 MR. WILKINS: Your Honor, asked and answered.

19 MR. MAULDIN: All right.

20 THE COURT: All right.

21 MR. MAULDIN: Thought I heard.

22 Q When -- well -- well, okay. When were you served
23 with a subpoena in this case?

24 A On March -- excuse me, on June 7th of this year.
25 So I think it's 13 days before the opening of the

1 trial, I believe.

2 Q All right. Let me ask that question again. When
3 you were served with a subpoena?

4 A As I said before, June 7, 2016.

5 Q June 7th. All right. That's 13 days before the
6 trial started on Monday?

7 A That is my understanding.

8 Q Okay. Okay. And when you were served with that
9 subpoena, did you then meet and discuss the subpoena
10 and the case with the prosecutor?

11 A Yes. The following week, on Tuesday night -- I'm
12 not sure the exact date, but it was a week prior to the
13 opening of this trial, I met with Mr. Wilkins and
14 Ms. Strom.

15 Q So that would have been June 14th?

16 A 14th, 15th, 13th, somewhere in that neighborhood.

17 Q It was less than a week before the beginning of
18 the trial?

19 A Correct. It was the Tuesday before the beginning
20 of the trial.

21 Q And so in your effort to be prepared to offer an
22 opinion about the ultimate issue in this case, and that
23 is Anna Simpson's criminal responsibility which you've
24 testified to just a moment ago, that effort to prepare
25 to offer that testimony began less than a week ago?

1 A Incorrect.

2 Q All right. Was it back when you got the --

3 A No. I think I previously testified that after
4 having spoken with Dr. Price and with Dr. Frierson and
5 talking with them, I was again so struck by the
6 differences between what they found in their evaluation
7 and what I saw, I went back through these records again
8 for several hours and parsed them very closely, and it
9 was my opinion that, were I asked that, my opinion
10 would be guilty but mentally ill as opposed to not
11 guilty by reason of insanity. So, no, I did not make
12 that decision just in six days.

13 Now, was my decision reinforced by examining
14 documents in the days leading up to the trial that I
15 had not previously seen, yes, it reinforced my opinion.

16 Q All right. Let's talk about the reinforcement of
17 your opinion. When you had the conversations with
18 Dr. Price and Dr. Frierson --

19 A Correct.

20 Q -- you say that you were concerned and you just
21 could not believe what had happened. You could not
22 believe that Anna had just deteriorated to that point
23 and you looked at your records -- your records?

24 A Well, it goes back before that even when I can
25 distinctly remember the date of this crime coming home

1 from work and the television news being on, and I was
2 reading or doing something else --

3 Q Hold on. Hold on, Dr. Smith. I don't know where
4 you're going to go with that, but I'm not really sure
5 -- one, I don't know if it's responsive. If you want
6 to say as a result of something you might have seen,
7 that's fine, but don't go into what you may or may not
8 have seen on television.

9 A How can I answer your question longitudinally --

10 THE COURT: No, sir. Let him ask the question.
11 He asks, you answer. Let's roll.

12 BY MR. MAULDIN:

13 Q All right. When you -- all right. When you were
14 served with your subpoena -- all right. Prior to being
15 served with your subpoena, were you aware that you
16 would be testifying in this case?

17 A Absolutely not.

18 Q Okay. So prior to the subpoena, you did not know
19 that you would be here today?

20 A Correct.

21 Q And after you were served with the subpoena, I
22 believe you said the next Tuesday, which was Tuesday of
23 last week?

24 A Correct.

25 Q You consulted with the prosecutor about the

1 subpoena?

2 A Correct.

3 Q And you -- and at that time, at that time or since
4 then, in the last week, last five days, did you have
5 the opportunity to review records of my client and your
6 former patient? Did you have an opportunity to review
7 medical records of my client and your former patient?

8 A Yes. I mean, I've -- do you have in mind any
9 specific medical records you're talking about?

10 Q Well, I don't know what you've reviewed.

11 A I've already told you. I already testified to the
12 fact of everything I've reviewed from day one. I'll be
13 glad to restate those for you, but I've already
14 testified to everything, every document that I've
15 reviewed from day one.

16 Q Well, I don't think the jury was in the room when
17 you did that if I'm -- unless -- he didn't do that on
18 direct.

19 MR. WILKINS: I believe he did, Your Honor.

20 THE COURT: I don't know. Can't remember.

21 MR. WILKINS: It's Mr. Mauldin's witness.

22 MR. MAULDIN: I'll specifically refer.

23 THE COURT: Sure.

24 BY MR. MAULDIN:

25 Q You reviewed the Greenville Hospital records May

1 of 2013?

2 A Yes.

3 Q All right. You -- and those records were provided
4 to you by the prosecutor?

5 A They were supplied to me by the prosecutor, but I
6 also -- those were supplied to me by Dr. Harris shortly
7 after the event, so I had those prior to that time.

8 Q You had received those records back in 2013?

9 A Within a day or two of the incident.

10 Q Okay. And you received those records prior to her
11 appointment with you -- no, no. You're talking about
12 in May of 2013?

13 A No. I received those records -- I couldn't have
14 received them because she wasn't available for an
15 appointment after the incident, so it was after the
16 crime.

17 Q All right. And you had never seen Anna Simpson in
18 terms of meeting with her or consulting with her or
19 talking with her since February of 2013, three months
20 before the incident out in Dacusville?

21 A That is correct.

22 Q Did you have an opportunity to review law
23 enforcement records? That would be such things as
24 witness statements, supplemental reports, police
25 reports, EMS reports, 911 phone calls. Did you have an

1 opportunity to gather all of that data and listen to it
2 and analyze it?

3 A As I previously answered, no.

4 Q As you previously answered?

5 A You asked me that question earlier.

6 Q But the -- if the jury wasn't in here --

7 THE COURT: Just answer the question yes or no,
8 Doctor.

9 THE WITNESS: No.

10 THE COURT: Thank you.

11 BY MR. MAULDIN:

12 Q All right. So you haven't had an opportunity or
13 you did not have an opportunity to do any of that?

14 A No.

15 Q All right. Did you have an opportunity to meet
16 and have a face-to-face meeting with the family members
17 involved in this matter? That would be Michael
18 Simpson, her husband who survived this incident, Mr.
19 and Mrs. Brown, who are the parents of your former
20 patient, Anna Simpson, Mr. and Mrs. Simpson, who are
21 Michael's parents. Did you have an opportunity in the
22 last five, six days to meet with them and consult with
23 them about the accuracy of expressing your forensic
24 opinion in this courtroom?

25 A No. I have never met with any of them.

1 Q Never met with anybody. Did you consult with me
2 or Teal Johnson, attorneys for Anna Simpson? Did you
3 meet with us and discuss before you formed your
4 opinion?

5 A I did not. My understanding is that's your
6 responsibility.

7 Q That what?

8 A That is your responsibility to get in touch with
9 potential witnesses, not witnesses to seek out the
10 attorney. I did not plan to be a witness, so I made no
11 effort to contact you. There was no reason for me to
12 do so.

13 Q Oh, Dr. Smith, if you were formulating a forensic
14 opinion, it was your responsibility to gather the
15 appropriate information; isn't that correct? Isn't
16 that correct?

17 MR. WILKINS: Your Honor, objection.

18 THE WITNESS: Can you restate that question? I'm
19 not sure.

20 MR. WILKINS: Badgering the witness.

21 MR. MAULDIN: I admit it and I apologize.

22 THE COURT: All right.

23 THE WITNESS: I accept.

24 THE COURT: Move on.

25 BY MR. MAULDIN:

1 Q You had never met or consulted or discussed this
2 matter about which you have expressed your ultimate
3 opinion on the issue. You never met with me, you never
4 met with Teal Johnson, my co-counsel, and you never met
5 since February of 2013 with your former patient, Anna
6 Simpson, before forming that opinion; is that right?

7 A No. The last time I saw Ms. Simpson, we scheduled
8 a four-month follow-up visit because her condition was
9 stable and I felt like it was of such stability that a
10 four-month interval would be appropriate, but she is,
11 just like any of my patients are instructed, if their
12 condition changes, they are to contact me immediately
13 before that. So that's the last contact I had with the
14 patient. I've never had any contact, much to my
15 regret, with the family, particularly prior to the
16 incident.

17 Q We're going to get back to that February meeting
18 you had with her, but did you just testify that you met
19 with her in February of 2013 and set her up for a
20 four-month period because she had stabilized; is that
21 what you just said?

22 A Yes.

23 Q Well, that obviously ended up being wrong, didn't
24 it, Dr. Smith?

25 A Yes.

1 Q It sure did. Ended up being bad wrong.

2 MR. WILKINS: Your Honor --

3 THE COURT: Sustained.

4 BY MR. MAULDIN:

5 Q You didn't meet with us but you did meet with
6 them, right?

7 A Correct.

8 MR. WILKINS: Your Honor, asked and answered.

9 THE COURT: Sustained. Move on.

10 BY MR. MAULDIN:

11 Q Okay. You saw Anna as a patient beginning in 2010
12 and continuing through February of 2013, correct?

13 A That is correct.

14 Q And you saw her initially in March of 2010, and I
15 believe you saw her for about 37 minutes. If you want
16 to look at your records, I would be glad to give you an
17 opportunity to do so.

18 A I don't recall the time frame. The initial visits
19 are set up for 50 minutes, but I would have no way of
20 giving you exactly how many minutes they were other
21 than it was likely not more than 50 minutes.

22 Q So you can't -- so let me, just for clarification,
23 so in your records, it does not indicate the time frame
24 that you would have spent with the patient? I mean,
25 how do you bill -- how do you send a bill to the

1 insurance company for that? You just estimate them
2 or --

3 A No. You set aside -- some codes are billed on
4 timing, some are based on the nature of the visit.
5 This was a new patient visit. That's not a timed
6 visit. We set aside a certain amount of time in our
7 schedule. It's 50 minutes to see a new patient, but,
8 no, there would be no reason. I've never recorded the
9 amount of time that I spend with a patient in a note.

10 Q Your notes do not indicate the amount of time; is
11 that what you just said?

12 A Correct.

13 Q Okay. I'll follow up with that in just a moment,
14 Dr. Smith.

15 In June of 2010 you prescribed Geodon, I think, or
16 Geodon. I don't know how to pronounce that medicine.
17 Take a look at that.

18 A Yes. On June 21st, 2010, I prescribed -- I
19 changed mood stabilizers from Lamictal to Geodon.

20 Q And Geodon is an antipsychotic?

21 A It is an antipsychotic, but most all of the new
22 generation antipsychotics are also effective mood
23 stabilizers. So it's not just used to treat psychosis,
24 it's used to treat bipolar disorder with or without
25 psychosis.

1 Q Okay. And were you treating her for bipolar
2 disorder without psychosis?

3 A At that time, yes, there was no evidence of
4 psychosis.

5 Q But during the time that she was a patient of
6 yours, there were occasions when there were clearly
7 evidence of psychosis and it was confirmed by your own
8 records?

9 A There were, according to my analysis, three times
10 it was noted that there was psychosis. One was via
11 telephone which remitted after a medicine had been
12 added. The other two times that psychosis were noted,
13 antipsychotic medicines were used, so.

14 Q All right. And you -- then you continued to see
15 her, and I think you had her set up monthly; is that
16 right?

17 A Usually it was about three weeks if her condition
18 was not stable. We went as long as three or four
19 months if her condition was stable with a provision
20 that she can, whether I say three days, three weeks or
21 three months, she is to call back, you know, if she's
22 not doing well.

23 Q Well, I think you said you met with her 34 times
24 and it was a period of less than three years. So we're
25 talking about approximately an average of once a month;

1 is that fair?

2 A I would have to look at the exact dates and
3 average them out to say because there were times when
4 there were three-week intervals, there were times when
5 there were three-month intervals, so I think a month
6 would be probably as good a calculation I could do
7 without going through every note one by one and doing
8 the math.

9 Q All right. In March -- I mean, sorry, August of
10 2011, August of 2011, you indicated that she had
11 developed paranoid ideations, hypermanic, speech is
12 pressured, paranoid ideations; is that correct? That
13 was August of 2012?

14 A Can you specify? I have two August notes,
15 August 2nd -- are you talking about 2010 or 2011?

16 Q '11. 2011.

17 A Okay. Excuse me. Give me a moment to locate
18 those. I apologize to the Court. I dropped these
19 earlier today and they fell out of chronological order.

20 All right. I have a note from -- you're referring
21 to August 23rd, 2011.

22 Q Yes. And it indicates that she had paranoid
23 ideations, correct?

24 A Correct.

25 Q And affect was hypermanic?

1 A Hypomaniac.

2 Q Hypomaniac. And you prescribed Risperdal?

3 A Correct.

4 Q Which is an antipsychotic?

5 A And also a mood stabilizer.

6 Q Okay. All right. But the paranoid ideations, did
7 that have any -- was that a justification to change her
8 medicine to another antipsychotic?

9 A It was a portion of it. Number one, she was
10 mentioning -- that was the only -- that was the first
11 time in a face-to-face meeting she had ever mentioned
12 paranoid ideations, so that played a factor, but she
13 also was hypomaniac which indicated the existing mood
14 stabilizer, the lamotrigine was not working effectively
15 so the change to Risperdal was made to help stabilize
16 the mood and to treat the paranoid ideations.

17 Q So the treatment at that point, it was concerning
18 because it wasn't being -- it wasn't managing her. It
19 wasn't controlling her psychiatric condition, was it?
20 I mean, otherwise you wouldn't be changing the
21 medications, right?

22 A It wasn't, but may I qualify that by saying if you
23 want to look at all the notes, and there's an omitted
24 word in here. She had stopped her medications in
25 successive months prior to that meeting and her mood

1 swings had started to worsen so it was not working.

2 She had been back on the lamotrigine, but the initial
3 problems she was having were likely provoked by having
4 stopped the medications.

5 Q And isn't it true, Dr. Smith, that one of the
6 ongoing challenges and continuing challenges for anyone
7 who practices medicine in the field of psychiatry is
8 whether or not the medications are properly taken and
9 so forth by the patient? Isn't that an ongoing
10 problem?

11 A I would say that's an ongoing problem not just in
12 psychiatry, the entire field of medicine.

13 Q All right. And so that's not an unusual situation
14 when a patient either fails to take their medicine or
15 takes too much of it; that's common in your business,
16 isn't it?

17 A Yeah. I would not testify to that being unusual.
18 I would testify to that being causative, potentially
19 causative.

20 Q All right. Two months later, on November of 2011,
21 you noted that she was having some paranoia?

22 A Correct.

23 Q You added Latuda?

24 A Yes. And let me -- again, I don't want to
25 piecemeal these notes because I think you have to look

1 at them in their entirety. She had felt nauseated and
2 had stopped the mood stabilizer and antipsychotic
3 Risperdal. And as you note in my note, I put, "Not
4 surprisingly, she is having mood swings and she's
5 having some paranoia." So, again, there was some
6 causative factor being off the medications that likely
7 worsened her condition. So it was, indeed, replaced
8 with Latuda which is an antipsychotic and a mood
9 stabilizer.

10 Q So we've got a change to a different
11 antipsychotic?

12 A That and mood stabilizer, yes.

13 Q All right. Now I'm going to bring you forward to
14 July 2012. You knew -- you knew that Anna Simpson had
15 been taken to the emergency room at St. Francis for a
16 psychotic episode and has been kept under guard with a
17 security guard in her room while she was at
18 St. Francis; you knew about that happening, didn't you?

19 A Not until she told me. I had not received those
20 records prior to that time because usually discharge
21 summaries are sometimes a week or two before they're
22 dictated so she informed me of that.

23 Q Was -- so your notes do not indicate that her
24 family contacted your office and whoever was on call
25 told the family to take her immediately to the

1 emergency room at St. Francis? Your records do not
2 actually show that that happened?

3 A No.

4 Q Should they show that if it did happen, if
5 somebody called in the middle of the night and were
6 told by the doctor on call to take that person to the
7 emergency room? Wouldn't that be in your records?

8 A Not necessarily. If they called and it was a
9 situation where one of the clinicians in my practice
10 made a change in the medication themselves and
11 recommended they call the next day, that would be
12 documented. If they felt the patient was sick enough
13 to be in the hospital, that may or may not be
14 documented.

15 Q And the reason that I raise this question,
16 Dr. Smith, you're what I would describe as her ongoing
17 treating psychiatrist at that time, and she is taken to
18 an emergency room under a psychotic episode and housed
19 at St. Francis for three days, and you are essentially
20 telling us that you knew nothing about any of that?

21 A That is correct.

22 Q You ultimately were made aware of it, and did
23 you -- were you also made aware of the fact that she
24 was transferred to a forensic hospital, the Carolina
25 Center?

1 A Yes. I later received the discharge summary from
2 Carolina Center detailing her treatment which is
3 routine, but often because of however long it takes the
4 physician to dictate that report, it may be ten,
5 14 days after the person is discharged. So ultimately
6 I did receive that report. The St. Francis records,
7 no, I did not receive those until the past week.

8 Q So -- so your testimony, then, is that it could be
9 ten to 14 days before the psychiatrist who is the
10 treating psychiatrist knows that his patient is in a
11 forensic hospital in the same -- right down the street?

12 A If you're depending upon the paperwork alone. I
13 knew it well before that because the patient came to
14 see me shortly after that discharge and informed me
15 that she had been there. But, yes, depending upon the
16 doctor who is treating her at the hospital, how fast
17 they dictate the discharge summary, whether they
18 initiate a phone call, yes, it could certainly be that
19 time period.

20 Q All right. And she came to your office not
21 because she was forced to, but on August the 16th,
22 2012 -- please find those notes. Do you have them,
23 August 12th, 2012?

24 A Are you sure you're on the year and the date?
25 I've got August 16, 2012.

1 Q August 16th, 2012. I'm sorry, did I read that
2 wrong?

3 A That's the note we've been talking about already.

4 Q Okay. All right. She came to see you that day.
5 And is that, I guess, when you found out she had been
6 in St. Francis and in Carolina Center?

7 A Yes. She was -- when she was discharged from
8 Carolina Center, an appointment was made for her to see
9 me for a medication follow-up visit, also was made for
10 her to see a psychotherapist in our office as well.

11 Q All right. And she did both of those?

12 A No, she did not. She did not keep the
13 psychotherapist appointment. She cancelled that.

14 Q Okay. August -- and look at your records --
15 August the 16th, 2012, it says "visit date," that date,
16 at 10:27 a.m. You see that, up there at the top there,
17 you see where I'm looking at? I'll show it to you.

18 A I see it. You don't have to come any closer. I
19 got it.

20 Q You see it?

21 A Yes, sir.

22 Q And then it says, if you look down, it says,
23 "Electronically signed by Jeffrey Smith, M.D. on August
24 16, 2012, 10:35 a.m."?

25 A Correct.

1 Q All right. I mean, that's eight minutes?

2 A That does not -- electronically signed does not
3 mean necessarily the appointment ended there.

4 Electronically sign is when I hit a button after I had
5 accumulated written data. We could still be talking
6 about something. So that is not -- 10:27 through -- or
7 10:27 a.m. through 10:35:37 seconds could not be
8 construed as the entire length of that appointment.

9 Q Well, tell me what the entire length of that
10 appointment was?

11 A I have no way of knowing this far back.

12 Q Well, the records say it was eight minutes.

13 A No. The records say that I electronically signed
14 off after eight minutes, which does not mean the
15 appointment ended after eight minutes.

16 Q It says that -- all right. It says that you
17 electronically signed off in eight minutes, right?

18 A Electrically signed off means that I hit a button
19 on my computer. I'll be glad to have you come to my
20 office and look at my electronic medical records and
21 show that to you in detail, but that is not -- cannot
22 be construed as being the exact length of that
23 appointment. Could be, could not be.

24 Q Well, how long was that appointment, Dr. Smith?

25 A Given there were 34 visits over three years, for

1 me to give you the exact precise minutes of each
2 appointment with each patient would be absolutely
3 impossible.

4 Q The note says she was in Carolina Center for
5 Behavioral Health for three days earlier this month
6 after apparently having a psycho -- psychotic manic
7 episode, right?

8 A That is correct.

9 Q Did I read that correctly?

10 A You did good.

11 Q And you have no way of telling this jury how long
12 you spent with her after learning --

13 MR. WILKINS: Your Honor, asked and answered.

14 THE COURT: Sustained. Move on.

15 BY MR. MAULDIN:

16 Q You were aware at that moment, at that moment in
17 August of 2012, that your current patient had been in
18 St. Francis Hospital for three days with a security
19 guard and in Carolina behavioral health for three more
20 days which is a mental hospital?

21 A My recollection is that she did not mention the
22 St. Francis portion of that because I, in all
23 likelihood, would have written that in the note. I was
24 fully aware of the three days of being in CCBH. I
25 learned about the St. Francis situation much later.

1 Q On August 23rd, 2012, please, sir.

2 A Are we still talking about the same --

3 Q That's, what, a week later?

4 A Well, we were talking about August 16, 2012.

5 Q We were. And now I'm talking about August the
6 23rd, 2012.

7 A And I am looking to see. The next note I have,
8 unless it's fallen out of sequence, is October 1st,
9 2012. If you can show me that note, I would be
10 certainly glad to comment on it.

11 Q I will show it to you, and you can see if you can
12 find it.

13 A She was not seen by me. She was seen by the
14 therapist.

15 Q That's correct. I hadn't asked the question yet.
16 Do you see that report in your records?

17 A No, I don't know -- the only thing in my
18 electronic records was that she had cancelled that
19 report, so this is the first time I have seen this.

20 Q All right. I want you to take a good close look
21 at it, Dr. Smith.

22 MR. WILKINS: Your Honor, objection. If that's
23 not his note, how can he opine on it?

24 MR. MAULDIN: I'll be glad to --

25 THE COURT: Is it contained in his record?

1 MR. WILKINS: He said it was not contained in his
2 records.

3 THE COURT: All right.

4 MR. MAULDIN: Your Honor, let me see that just a
5 moment, please, sir.

6 MR. WILKINS: And I've never seen it either.

7 THE COURT: Well, show it to the solicitor.

8 MR. MAULDIN: This -- these records that I'm
9 referring to are the records that were provided to us
10 by Piedmont Psychiatric, which is who he is --

11 THE WITNESS: No, there's --

12 MR. MAULDIN: -- two and a half --

13 THE COURT: Don't talk.

14 MR. WILKINS: This is a record from Carol Rentz
15 Mitchell, not Dr. Smith.

16 THE COURT: Okay. Objection overruled.

17 BY MR. MAULDIN:

18 Q All right. Do you know who Carol Rentz Mitchell
19 is?

20 A Oh, yes. That's, no doubt, a note from my office.
21 I have just never seen it. She was then a therapist in
22 my office.

23 Q Didn't you testify just a few moments ago that
24 Anna Simpson had failed to follow up with the
25 therapist?

1 A That was my understanding because I do have in my
2 notes that she cancelled an appointment with a
3 therapist. That note, I don't know, did not come up in
4 my system when I pulled it, but I will be glad to look
5 at it and comment on it.

6 Q Just take a look at it.

7 A Okay.

8 Q All right. You have had an opportunity to look at
9 it?

10 A Correct.

11 Q All right. I'm going to ask you a couple of
12 questions about it. Does this record indicate that
13 Anna Simpson was seen by your therapist, this person
14 that works with or for you, on August 23rd, 2012?
15 That's the next week.

16 A Yes.

17 Q It indicates that she did keep that therapist
18 appointment, doesn't it?

19 A That particular one, yes.

20 Q All right. And it indicates, furthermore, and
21 I'll be glad to have you look at it while I read it. I
22 don't want to -- all right. I'll show you right here
23 where it, under the exam, you see that?

24 A Yes, sir.

25 Q And you tell me if I'm reading this correctly.

1 She reported the presence of anxiety, worrisome
2 thoughts, a sense of fearfulness, frustration, racing
3 thoughts. Her thought processes indicated the presence
4 of obsessive thinking, paranoid, suspicious thoughts,
5 worry, distractibility and suspicion. Did I read that
6 correctly?

7 A You read that correctly.

8 Q And that's what was reported in your records
9 August the 23rd, 2012?

10 A By the therapist in my office, correct.

11 Q By the therapist. All right. Dr. Smith, just a
12 few final questions, and I appreciate the Court's
13 indulgence with my cross-examination.

14 THE COURT: Yes, sir.

15 BY MR. MAULDIN:

16 Q Over the period from -- this is after the initial
17 consultation in March of 2010, the initial intake. If
18 I looked at the records that I obtained from you and I
19 calculated off those records the amount of time that
20 those records indicate that Anna Simpson was seen while
21 she was at Piedmont Psychiatric, and it turned out that
22 over the period of those 34 visits the average time was
23 7.4 minutes, do you deny that?

24 A Yes, because I would want to know how you're
25 making that calculation because, as I indicated before,

1 using sign-off times on the notes is not an accurate
2 perception of the amount of time spent. So it could
3 have been seven minutes, it could have been ten, it
4 could have been 12, it could have been 15 depending
5 upon how the patient is doing. It's not a fixed time.
6 It is how the patient is doing, what changes we're
7 making, and I'm always explaining to each of my
8 patients why we're making those changes and what the
9 options are. So if you use that calculation based upon
10 this beginning and ending thing, no, I would not agree
11 with that.

12 Q All right. You would, however, agree that it
13 appears that it was approximately three weeks to a
14 month average between?

15 MR. WILKINS: Your Honor, we have gone down this
16 road. Asked and answered.

17 MR. MAULDIN: I have further questions, Your
18 Honor, on that particular --

19 THE COURT: Just restate your question.

20 BY MR. MAULDIN:

21 Q All right. You would agree that over the period,
22 the average was about three weeks to a month between
23 appointments?

24 A I would say it would come closest to that because
25 the majority of the time that I saw her, we were making

1 med changes. And when you change forensic medicines,
2 they take about eight to 12 weeks to achieve their full
3 effect, but usually in about three to four weeks you
4 can get a pretty good idea if what you have just done
5 is helping. So when we're actively making med changes,
6 yes, it's usually a three to four-week interval between
7 appointments.

8 Q And here is the follow-up to it, Dr. Smith. You
9 saw her in August of 2012, and I've asked you those
10 questions about those notes. Your therapist saw her
11 August 23rd of 2012 indicating paranoia and all other
12 sorts of issues, right? Right?

13 A None of which were things that had not been
14 observed previously, but yes.

15 Q And you don't know whether you ever even saw that.
16 You said it's not in your notes so -- it came to me,
17 but you don't know whether you ever saw it?

18 A When I -- my staff printed those notes out, that
19 note did not come out, and there was a note that came
20 out that there was a cancellation of that appointment,
21 so I was -- the first time I've ever seen that note was
22 today, so that was a clerical error on whoever printed
23 them out, but --

24 Q Well, now, you're not questioning whether it was
25 accurate. I mean, it's --

1 A No, it's accurate. That's, without a doubt, she
2 was seen, but that note was just not printed out at any
3 time for me to have seen, and that was apparently a
4 clerical error on the part of my staff.

5 Q All right. In November of 2012 you saw her.
6 November of 2012 you saw her?

7 A You are referring to November 27, 2012, correct?

8 Q Right.

9 A Yes, sir.

10 Q And at that time you set her next appointment for
11 three months. You set a three-month window?

12 A That is correct.

13 Q All right. The last visit you had with her before
14 this incident in Dacusville was February of 2013?

15 A That's correct, February 28th.

16 Q And you set her return at that time for four
17 months?

18 A That is correct.

19 Q Window. All right. And, of course, four months
20 was beyond the date of this incident?

21 A That's correct.

22 Q No record in your file that indicates that your
23 patient at that time, Anna Simpson, was overmedicating
24 herself with her prescription; your records do not show
25 that?

1 A No.

2 Q Dr. Smith, of course, hindsight can be 20/20.

3 MR. WILKINS: Is there a question, Your Honor?

4 THE COURT: Yeah. He's getting to it.

5 MR. WILKINS: Okay.

6 BY MR. MAULDIN:

7 Q But it would appear that you were not aware or did
8 not realize how sick Anna Simpson was; is that fair to
9 say?

10 A That is fair to say. She never reported to me
11 that she was anywhere approaching that level of
12 psychosis and no one in her family ever contacted me to
13 suggest that this person's doing a lot worse than you
14 think they are. They're not telling you the truth, and
15 I've had that happen hundreds of times over the course
16 of 26 years where the patient says everything is
17 hunky-dory and it's not. The family calls and we set
18 up a meeting to have a family member come back with the
19 patient to get the true story.

20 So to answer your question, she never gave me
21 indication of any type of a delusional system that was
22 this sick. In fact, the last two visits I saw her,
23 when you look from the standpoint of bipolar disorder,
24 standpoint of absence of paranoia, standpoint of
25 concentration and focus being good, standpoint of her

1 anxiety being well controlled where she was doing
2 excellent, so that's why we went from three months to
3 four months. The duration between the appointments is
4 a direct correlation of how well the patient is doing.
5 So she looked great on the 22nd -- I mean on the last
6 visit in 2013.

7 Q So in February of 2013, she's doing great?

8 A Yes.

9 MR. MAULDIN: Nothing further.

10 THE COURT: Thank you.

11 Any redirect?

12 MR. WILKINS: No, your Honor.

13 THE COURT: Thank you, sir. You may step down.

14 Any objection to this witness leaving?

15 MR. WILKINS: No, your Honor.

16 THE COURT: All right.

17 Thank you, sir. You're free to leave.

18 THE WITNESS: Thank you.

19 THE COURT: All right. Any further witnesses from
20 the State?

21 MR. WILKINS: None from the State.

22 THE COURT: Thank you.

23 Ladies and gentlemen, let's take about a
24 ten-minute comfort recess, and then we'll get you back
25 in here and we'll move on to the next phase.

1 Thank you very much. Don't talk about the case.

2 (WHEREUPON, the jury exited open court at

3 11:22 a.m.)

4 THE COURT: All right. Court's in recess.

5 (WHEREUPON, a recess was taken from 11:23 a.m. to

6 11:33 a.m.)

7 (WHEREUPON, Defendant's Exhibit Number 17

8 was marked for identification.)

9 THE COURT: All right. Let's come to order.

10 We're back on the record. All right. Before we

11 bring the jury in for closing arguments, I do wish to

12 go over with the lawyers the proposed charge. I have

13 provided, due to the uniqueness of this trial -- I

14 don't normally provide a written copy of the jury

15 charge to counsel to sit on overnight, but I thought

16 I'd do that. So now you have had it, you have had an

17 opportunity to look at it. So each page is numbered.

18 So at this time, first I want to hear from the

19 State. Any objections to proposed charges? If there

20 are any, just refer to page number, or if you wish for

21 me to add something, tell me that. All right.

22 Solicitor.

23 MR. WILKINS: Your Honor, I didn't have any major

24 objections or any specific objections. I didn't get my

25 red pen out and put verbiage and terminology, which is

1 basically syntax, not substance, so I don't have any
2 substance objections to this. I think Mr. Mauldin
3 does. He's looked at it, so we can deal with his.

4 THE COURT: So we'll go to Mr. Mauldin then. So
5 none from the State.

6 Mr. Mauldin, we'll go to you, then, in regards to
7 the proposed charges.

8 MR. MAULDIN: Your Honor, if the record could
9 reflect that I have renewed my motion for a directed
10 verdict.

11 THE COURT: Motion for a directed verdict has been
12 renewed. You are clearly protected in the record, and
13 that motion is denied.

14 MR. MAULDIN: Thank you, Judge.

15 THE COURT: Yes, sir.

16 MR. MAULDIN: The instructions, Judge, page 18.

17 THE COURT: Okay.

18 MR. MAULDIN: Beginning with the word of the last
19 paragraph, "inferred malice."

20 THE COURT: Yes, sir.

21 MR. MAULDIN: "May also arise when the deed is
22 done with a deadly weapon. A deadly weapon is," and I
23 don't need to read it all. We object to that in that
24 it, essentially, read in conjunction with the rest of
25 the charge, it basically means that if there was a

1 weapon used, their burden to prove malice beyond a
2 reasonable doubt is resolved. It's like that takes --

3 THE COURT: Is that the *Belcher* case?

4 MR. MAULDIN: Yeah. And I'm not --

5 THE COURT: Is it the *Belcher* case that says you
6 can't charge inferred malice with use of a deadly
7 weapon when there's evidence of any type of
8 self-defense or anything? But, of course, in this case
9 there's none of that, which is why I left it in there.

10 But your point on the objection is?

11 MR. MAULDIN: We object because -- to the
12 inference of malice based upon the use of a deadly
13 weapon. We object that.

14 THE COURT: Okay.

15 Solicitor.

16 MR. WILKINS: Your Honor, it says "may," so the
17 jury still has the option either way. It's for
18 inferred malice, so we don't see any problem with it.

19 THE COURT: So if I took that out and just said
20 that, "Malice may be inferred from conduct showing a
21 total disregard for human life," period, what's the
22 State's position?

23 MR. WILKINS: I don't have a problem with it.

24 THE COURT: All right. I will take -- I will just
25 say that sentence, and I will not instruct inferred

1 malice from use of a deadly weapon.

2 MR. MAULDIN: The next one, Your Honor, is page
3 19, specifically the last paragraph, first sentence.

4 THE COURT: Yes, sir.

5 MR. MAULDIN: "Specific intent to kill is not an
6 element of attempted murder." We object to that. We
7 believe that attempted murder is a specific intent
8 crime, and proof of specific intent in the attempted
9 murder charge of Mr. Simpson, that the victim is
10 required as an element of the offense.

11 THE COURT: Solicitor.

12 MR. WILKINS: I think he's right. I think
13 attempted murder is a specific intent crime.

14 THE COURT: So you want me to keep that in there?

15 MR. WILKINS: I think specific intent to kill is
16 an element of attempted murder.

17 MS. STROM: I think it's in the statute.

18 MR. WILKINS: I think it's in the statute.

19 THE COURT: All right. This is right out of the
20 charge book.

21 MR. WILKINS: Is it?

22 THE COURT: Of course, this may be the older
23 version of the charge book.

24 MR. WILKINS: I think specific intent is required
25 for attempted murder, Your Honor.

1 THE COURT: Okay. "A specific intent to kill
2 is" -- so you want me to say, "is an element of
3 attempted murder"?

4 MR. WILKINS: Uh-huh.

5 MR. MAULDIN: Yes, sir.

6 MR. WILKINS: And then just --

7 THE COURT: "Specific intent to kill is an element
8 of attempted murder," period.

9 MR. WILKINS: Period.

10 THE COURT: Okay. All right. So the State and
11 the defense agree on that. And I will get rid of the
12 serious bodily injury. And then I'll talk about,
13 "Intent means intending the result," blah, blah, blah.

14 MR. WILKINS: That's right.

15 THE COURT: You okay with that, Mr. Mauldin?

16 MR. MAULDIN: Yes, sir.

17 THE COURT: Okay. All right. Next.

18 MR. MAULDIN: One moment, Your Honor. Let me -- I
19 made a note on this one, but I don't understand my own
20 note, so let me try to -- I think I understand what I'm
21 trying to say, but we'll see.

22 THE COURT: What page?

23 MR. MAULDIN: It's the page 24 involving the
24 guilty but mentally ill.

25 THE COURT: Yes, sir.

1 MR. MAULDIN: And I think it's more -- instead of
2 language, it's more just a general objection to that
3 being included in this case.

4 THE COURT: Yes, sir.

5 MR. MAULDIN: The -- and, of course, this has to
6 some extent changed on account of the admission of this
7 last witness' testimony. I think last night when I was
8 preparing this argument, Dr. Smith had not testified.
9 I get that. I get the fact, but even I have objected
10 to Dr. Smith, and what I would like to do is at least
11 put on the record that had that objection been
12 sustained, then it becomes relevant what my argument is
13 about the guilty but mentally ill. So I don't know if
14 that's --

15 MR. WILKINS: Sorry?

16 THE COURT: I understand where you're going with
17 this. Previously you had -- you had asked me not to
18 include guilty but mentally ill in the verdict form as
19 a choice of verdicts. And that was based upon the
20 evidence that had been received in the record where the
21 State, in its case-in-chief, had not, based upon your
22 argument, introduced evidence satisfying that burden.

23 MR. MAULDIN: Satisfying the portion about not
24 being able to conform your conduct.

25 THE COURT: Yes, sir.

1 MR. MAULDIN: And that's what -- and I know this
2 is somewhat convoluted, and this has been a hard week
3 for all of us, but I do feel like I have to protect
4 this record.

5 THE COURT: Yeah.

6 MR. MAULDIN: The testimony of Dr. Smith is
7 clearly in contest. I am preserving all of my
8 objections, and I think that because of that, for
9 example, Your Honor, the appeals court can say
10 Dr. Smith should not have been allowed to testify.
11 However, the guilty but mentally ill issue was not
12 adequately expounded on, and so that's why I feel like
13 I've got to put something here.

14 THE COURT: Sure.

15 MR. MAULDIN: Had Dr. Smith not testified, then
16 the record would not have had reference to the standard
17 inability to conform conduct to the requirements of the
18 law. That was not in this case until this morning.
19 Therefore, if Dr. Smith had not testified, that would
20 not have been in this case. And what I say is under
21 those circumstances, giving a jury the option of guilty
22 but mentally ill would have been legal error because it
23 is not supported by the record. And reliance upon the
24 statute that we've talked about about the four verdicts
25 is a violation of separation of powers.

1 THE COURT: Correct. I got that. You are clearly
2 protected on the record.

3 Mr. Wilkins, what is your response to that?

4 MR. WILKINS: Same argument. I think you have
5 already ruled on that, Your Honor.

6 THE COURT: Right. And I do believe there was
7 enough evidence in the record prior to Dr. Smith
8 testifying for the jury to make that decision as to the
9 issue of guilty but mentally ill. Okay? So that's the
10 position of the court reflected in the record. All
11 right.

12 MR. WILKINS: Thank you, your Honor.

13 THE COURT: All right. What next?

14 MR. MAULDIN: Couple more quick ones, Your Honor.
15 We have passed up --

16 THE COURT: Defendant's 17, which is the proposed
17 charge. This is not an exhibit which goes back to the
18 jury. This is an exhibit for argument, plus to protect
19 your record.

20 "Upon entry of this verdict, the court will
21 implement the not guilty -- in the event of a verdict
22 of not guilty by reason of insanity, the court will
23 implement the NGRI procedures/protocol in effect in
24 this state." That's what the defense wishes for me to
25 charge.

1 MR. MAULDIN: That's what we want.

2 MR. WILKINS: We absolutely object to any of that.
3 You want to open -- you can't crack the door, Your
4 Honor. Let's crack it. How long does she go? What
5 are the procedures? Where does she go? What does she
6 do? How long does she stay there? Can she get out?
7 What's going to happen if she's guilty but mentally
8 ill? Where does she go? You can't open the door. You
9 can't crack the door.

10 THE COURT: The State's objection is sustained. I
11 will not charge that over defense's motion. All right.
12 What's next?

13 MR. MAULDIN: We do continue to express an
14 objection to the verdict form.

15 THE COURT: Yes, sir.

16 MR. MAULDIN: And that's about all I can object
17 to.

18 THE COURT: That's good. I just want -- I
19 understand. In all seriousness, and I understand -- I
20 want you to make a complete record, okay. This is a
21 highly unusual case, tragic case, as everybody
22 understands, and that's why I'm -- I call it bending
23 over backwards to allow the defense to make an adequate
24 record. And I want to make sure everything you want to
25 bring up is in this record because you can't appeal

1 something that ain't in the record in the event of an
2 adverse verdict. Okay? I'm going to give you a few
3 moments before we --

4 MR. MAULDIN: Just a couple.

5 THE COURT: I'll give you a couple of minutes to
6 confer with your co-counsel. Y'all let me know if
7 there's anything else you want me to deal with before
8 we go to closing arguments. Okay?

9 (WHEREUPON, a recess was taken from 11:45 a.m. to
10 11:47 a.m.)

11 THE COURT: All right. Anything further from the
12 State?

13 MR. WILKINS: Your Honor, nothing from the State.

14 THE COURT: Thank you.

15 And, Mr. Mauldin, anything further from the
16 defense as far as issue preservation?

17 MR. MAULDIN: No, sir.

18 THE COURT: Before we proceed, in case I forget to
19 tell all of you, I want to thank the lawyers for a very
20 thorough presentation of this case. Specifically, I'm
21 speaking to you, Mr. Mauldin, and your co-counsel. I
22 believe no stone has been left unturned. And I think
23 that's certainly necessary in a case like this. So
24 thank you very much for all your efforts, for what
25 that's worth.

1 MR. MAULDIN: Thank you, Judge.

2 THE COURT: All right.

3 Quarter till 12:00. Any possibly of the jury
4 getting the case by 1:00? I'm going to take
5 20 minutes.

6 MS. STROM: Judge, generally, I'm no longer than
7 30.

8 THE COURT: Okay.

9 MR. MAULDIN: Mine's going to be tough. I talk
10 slow, Judge.

11 (WHEREUPON, the jury entered open court at
12 11:49 a.m.)

13 THE COURT: All the members of the jury are
14 present.

15 Ladies and gentlemen of the jury, thank you again
16 so much for your patience. We have finished the
17 testimony and evidence phase of the trial, okay. We're
18 now moving into the final stage of the trial, which is
19 closing arguments, okay.

20 Both sides will be allowed to present closing
21 arguments to you. At the conclusion of that, that's
22 when I will instruct you on the law of South Carolina
23 as it pertains to these issues.

24 Now, ladies and gentlemen, please pay very close
25 attention to the lawyers as they're presenting their

1 arguments to you. Okay? Thank you very much.

2 Mr. Mauldin.

3 MR. MAULDIN: On May the 14th of 2013 in
4 Dacusville, a breathtaking and horrible incident
5 occurred. Carly and Sawyer, two beautiful and innocent
6 children, were shot and killed in their home and their
7 father was seriously wounded. I told you that Monday
8 and I tell you that again because it's true and it was
9 an insane and senseless act that brought us to this
10 court.

11 Anna Simpson killed her children. On Monday I
12 said, "How can that be? How can a mother kill her own
13 children?" And for the last four days now you've heard
14 testimony from witnesses in an attempt to draw some
15 sense into this terrible tragedy, some sense into this
16 senseless tragedy. I asked you then to be patient with
17 this case. I asked you to be prepared for a
18 heartbreaking story about innocent children, about a
19 family completely just imploding, a very emotional, a
20 very graphic and very sad case. I talked to you at
21 that time about testimony from doctors, about
22 complicated issues that are really not issues that are
23 in our day-to-day vocabulary.

24 This is stuff, when you came for jury service on
25 Monday, you probably had no idea you were going to hear

1 all of this technical stuff. But this is really stuff
2 that is around us every day, all the time. You know,
3 these kinds of conditions and these kinds of
4 impairments exist in our society. And, you know, you
5 had to hear it from the witness stand, and I hope you
6 had a sense of understanding. We knew this would be
7 difficult for you. It is difficult for us. But it's
8 really hard work for the jurors in this case to attempt
9 to serve in such an emotional and chaotic, and it's
10 just a hard situation. And to do that without any
11 passion or emotion and set it aside and try to be
12 impartial and fair, that's a pretty tall order. It's a
13 pretty tall order.

14 I thank you for giving Anna a fair trial. That's
15 what she is entitled to. That's what we are all
16 entitled to. Nothing more, nothing less. We've got no
17 friends to reward, no enemies to punish in this court
18 of law. So I express my appreciation. I express my
19 appreciation for your tolerance for a wild guy like me.
20 I apologize about getting kind of crazy sometime. If
21 you think I've handled myself inappropriately, blame
22 me, blame the governor, do whatever you want to but
23 don't penalize my client for it.

24 This case is about criminal responsibility. It's
25 about criminal responsibility. It's about the state of

1 mind of the person accused of clearly committing a
2 violation of a fundamental law. When that person could
3 not distinguish between right and wrong, the law says
4 they're not to be held responsible. That's just really
5 the rule. That's the rule of law. And that's one of
6 the tough questions that you folks are going to be
7 deliberating about after the judge gives you your
8 instructions.

9 Let me speak as I go for a minute or two into the
10 testimony. Let me speak a minute about motive.
11 Whenever we watch television and we see these cases and
12 everybody is kind of curious about, well, why did that
13 happen? Let me say, Mr. Wilkins or whoever is going to
14 be speaking, they don't have a burden of proving
15 motive. That's not an element of the offense. You've
16 got to check off the elements, and motive doesn't --
17 isn't on that list. But what motive does is it's
18 persuasive. When you know why somebody did something,
19 then it kind of, "Oh, okay. That kind of makes sense.
20 Oh, I see." And, you know, it kind of reminds me
21 20 years ago, 20 or more years ago, the girl over in
22 Union drown her children in that lake, and everybody,
23 "Oh, gosh, it's horrible. Mother killed her children."
24 But it turned out she had a motive. She wanted to get
25 rid of those children so she could run off with that

1 rich boyfriend whose daddy owned the mill over there in
2 Union. And that's how that thing, you know, it was
3 like, "Oh, okay." It connected the dots in the case.
4 That's why she did it.

5 Anna Simpson has no motive. She has no motive to
6 kill her children. She wasn't -- she didn't have some
7 rich boyfriend that she was going to run off with. She
8 didn't have life insurance she was going to try to
9 collect. Anna was driven by delusion. Anna at that
10 time and right now today, is already encaged with a
11 life sentence in a prison of insanity. She's already
12 there. And she had nothing to gain. She tries to kill
13 herself. She can't get that done. She tries to wreck
14 her car and kill herself like the man had done a couple
15 of months before right at the same tire tracks. The
16 guy said, "Well, those are the old tire tracks. These
17 are the new tire tracks." She tried to kill herself.
18 I mean, so the motive was to kill everybody and kill
19 herself and they would all go wherever people go. It
20 was an insane and senseless act.

21 Talk a little bit now about the evidence you
22 heard. You saw the witnesses. You heard them. They
23 testified from this witness stand, and I'm not going to
24 go witness by witness and talk about one witness said
25 this, one witness said that. I'll rely on what you

1 heard. You're the trier of fact in this case. The
2 judge has already told you that. And I have confidence
3 that you'll do the right thing.

4 But looking at the facts, and I'll talk a little
5 bit about this information regarding paranoia,
6 information about what other little facts in this case
7 that indicate that Anna Simpson was extraordinarily
8 paranoid. It was in everybody's records, even this
9 doctor that came in here this morning. His records
10 were full of references to paranoia, paranoid, paranoid
11 ideations -- paranoid ideations. I mean, they're all
12 over the case. This case, there's no question there's
13 serious mental illness. There's no question that
14 illness includes paranoia. There's no question about
15 that.

16 Camera in the garage. She tells her husband, "Got
17 to put a camera in the garage. People coming in our
18 house, going on our computer, putting bugs in the
19 ceiling fan." Drug dealers across the street. Not an
20 ounce of evidence of any of that. There's not an ounce
21 of evidence of any drug dealer. In-laws mistreating
22 the children. In-laws molesting the children, in-laws
23 teaching the children all kind of horrible things.
24 These are all good people. There's no evidence of
25 that. Not one ounce of evidence of it in terms of it

1 being true. But the doctors said we know they're not
2 true, but the person who has the condition, they're
3 real to them.

4 Security guard in her hospital room at
5 St. Francis. People following her out of parking lots.
6 She didn't want to tell her husband about the paranoid
7 delusions because she thought he might put her back in
8 the state hospital. She thought he might lock her back
9 up, put her back in the forensic ward. She didn't want
10 to tell her doctor about it. He said today, "I didn't
11 see anything about that." Didn't want to tell him
12 about it because she thought he might put her away. I
13 mean, but that's paranoid. That's why -- I mean, that
14 is exactly a perfect example of being paranoid.

15 Her paranoia escalated. July of 2012 she goes to
16 St. Francis through the emergency room. Dr. Smith said
17 there was no record of them making that referral, but
18 that's how she ended up there. I don't know how he
19 keeps his records, but that's how she got there. Ends
20 up going to Carolina Center for Behavioral Health. And
21 you heard the testimony about those visits. So I'm not
22 going to go into the paranoid ideation stuff and what
23 they were finding. And Carolina Center recommended
24 they secure the guns, secure the guns in the house,
25 secure the guns. I mean, this is a red flag the size

1 of a doublewide.

2 Mother's Day of 2013, the day before the incident,
3 Anna goes to dinner with her two children and her
4 husband and her mother and father. And her mother told
5 you that there was -- she -- something wasn't right.
6 Something wasn't right. And I put into evidence
7 Defendant's Exhibit Number 12 and you looked at it when
8 I put it in, and Anna's mother said something just
9 wasn't right. And I want you, as you deliberate, to
10 take a look at the face of Anna Simpson. This is just
11 staring and just blank. Something's not right. And,
12 unfortunately, of course, we know that things were
13 horribly wrong. But it just wasn't handled.

14 Carly out of school the next day. She's scared
15 for her children. The school shooting, reference to
16 some other school shooting when somebody was out of
17 school. It was just an imagination gone completely
18 wild. And it was delusional. It was unreal to me and
19 you, but real to her. She believed it.

20 The shooting, folks, that occurred in that house
21 is essentially beyond description. There was so many
22 guns, so much ammunition, so much loss, so much
23 tragedy. It was like -- I mean, there were gun shells
24 everywhere from different guns and three guns in
25 evidence and ammunition and misfires and, you know, and

1 Michael, of course, cannot testify to tell us what he
2 recalls and Anna can't testify, so we just -- I mean, I
3 can tell you one thing. I can tell you that Anna
4 killed her children. I can tell you that Anna shot her
5 husband, that the prosecution, perhaps -- I don't know.
6 I don't know what they're going to say. They get to
7 speak last and then I'm done, so I ain't going to get
8 to come up here and say, "Hey, wait a minute. That
9 ain't right." I don't get that right. They get the
10 last word.

11 But if they say she wasn't trying to kill herself,
12 I want you to look at the photos that I put in about
13 that car wreck. And I want you to look at that truck
14 and the broken back. I want you to take into account
15 the misfired ammunition. I mean, that is not credible.
16 It really is not credible. The fact that there was a
17 9mm that was fully loaded in the safe or on the carpet
18 there. The fact that she didn't pick that up and try
19 that gun, I don't know. Nobody knows. Nobody will
20 ever know and it's obviously pure speculation. But I
21 think there's pretty good, solid evidence that there
22 was an attempt to kill herself.

23 Did Anna really believe that she was going to
24 somehow join her children and her husband in some
25 better place? That's what Dr. Frierson said that he

1 had concluded, that she went up the road in that truck
2 and that she came back to that scene to die right
3 there, right down the road, and this picture is very
4 small but you'll have these pictures in the jury room.
5 This is the house where those children died. And here
6 is Anna's truck in the ditch. It's 100 yards maybe.
7 Is that what she was doing when she went back and
8 attempted to mimic that wreck because she wanted to die
9 right there at the same place? I'm not a psychiatrist
10 so I'm not going to try to speculate. But if she, with
11 the misfires in this case, if that was some sort of
12 effort for her to try to get away with this, if her
13 running that truck literally over a tree and into a
14 ditch was somehow an effort to try to fool people about
15 her intention, then that just does not make sense. How
16 are we supposed to make sense of that? How are we
17 supposed to make sense of that? The prosecutor called
18 Scott Hart. He's the first witness. Scott Hart is the
19 neighbor from across the street. Scott Hart is the
20 person who made the 911 calls. Scott Hart testified
21 about, "Well, she was complaining about her back and,
22 you know, and then every time would I say something
23 about her family, 'I don't know. I don't know. I
24 don't know.'"

25 There was no 911 call played for you. But let me

1 tell you what the 911 calls said because this is what
2 Dr. Frierson told you. He was provided the 911 calls
3 because in order to do an evaluation like this, you
4 need as much information as you possibly can have from
5 every source possible to make your evaluation correct
6 or as close to correct as possible. Dr. Frierson said
7 that the 911 caller, Scott Hart, said she didn't know
8 who she was. She didn't know where she was, and she
9 didn't know what was going on. This was the moment,
10 the first piece of evidence. Dr. Frierson testified
11 that he listened to the 911 call from Mr. Hart and he
12 said she did not know who she was, she did not know
13 where she was, and she did not know what was going on.

14 Mr. Sanders is another witness that I'd like for
15 you to rethink. Mr. Sanders was the witness at
16 Dacusville Elementary School. And the concern that I
17 want to raise with you on Mr. Sanders is this: The
18 prosecutor called him and the prosecutor had in his
19 file a copy of Mr. Sanders' written sworn statement
20 that Mr. Sanders gave to the police on the 16th of May,
21 the next day. He gave a sworn statement to
22 recollection about Dacusville, about the bookbag, the
23 interaction at the office there waiting on Carly. And
24 here's the problem. They had a copy of that statement.
25 I had a copy of the statement, and when Mr. Sanders was

1 testifying, I was looking and following along. And
2 here's what Mr. Sanders said from the witness stand
3 based on his questions. Asked the question about the
4 book, he said, "Well, she's going to get her bookbag."
5 And Mr. Sanders said Anna Simpson said, "Where she's
6 going, she won't be needing a bookbag." That's what
7 Mr. Sanders testified under oath Monday or Tuesday.
8 And I looked at his statement, said why is he saying
9 that? Why would he say such a thing? Why would he
10 embellish the statement against Anna Simpson three
11 years after he had given the police the statement the
12 day after it happened? So I had him look at his
13 statement. "She doesn't need her bookbag. We just
14 need to go." I guess you can say, "Well, so, what's
15 the big deal?" What is the big deal? Why didn't the
16 prosecutor correct him? If they really want justice in
17 this case, if they want truth in this case, are they
18 going to sit there and let a witness make something a
19 hundred thousand times worse when they had given a
20 sworn statement to police and they called this witness
21 and they're vouching for this witness' credibility and
22 I have to get up and correct him? Is that what this
23 kind of justice is all about?

24 The State referenced marital problems. The State
25 referenced, "Well, they must have been having marital

1 problems." Nate Stegall, "Oh, I didn't want to get
2 involved, get in the middle of all that stuff."
3 Michael Simpson could not testify. And he was a victim
4 in this case. Mike Simpson had given a sworn statement
5 to the police one month after this incident after he
6 had made the initial report from his injury. And
7 Michael Simpson, the victim in the case, the victim
8 that the prosecutor is in here prosecuting for, "I do
9 not recall having searched Zillow for any homes, nor do
10 I recall there ever having been any marital problems
11 between Anna and I." That was the truth. Why do they
12 want to give inferences that there's something other
13 than that when their own victim is telling them that?
14 Just because he can't testify, does that mean we don't
15 get to know that and I have to bring it out on the
16 questions to my doctor who reviewed those records in
17 deciding his forensic evaluation? I mean, is that what
18 kind -- what kind of hide the ball is this? That's not
19 fair. It's not fair.

20 Michael Weight was an EMS worker. I mean I think
21 the fire department got there first and then the
22 ambulance got there and Michael Weight was in that
23 ambulance and he's there trying to get her out, put her
24 on the board. I mean, he's the first person,
25 basically, except for the 911 call. He's the first

1 person in contact with this psychotic woman. What did
2 Michael Weight tell you? Wait. Before I go into what
3 he told you, who subpoenaed Michael Weight? I did. I
4 subpoenaed Michael Weight because the State chose not
5 to. Because the State didn't want this into evidence.
6 How much of that do we have to take? Michael Weight
7 told the prosecutor back in May of this year, a month
8 before this trial, and that prosecutor wrote me this
9 letter summarizing what Mr. Weight said. And as he is
10 required by law to do, he's required by law to send me
11 this. The defendant stated what? What? "I did what
12 they told me to do. I didn't do anything wrong. I did
13 what my family told me to do." And in describing her
14 appearance, Mr. Weight says, "She was just not all
15 there. You could tell something was just not right."
16 That witness you heard from because I subpoenaed him
17 and I put him on the witness stand because I think
18 you're entitled to know that.

19 And is this a win-at-all-costs situation? Is this
20 just a winning-and-losing proposition that we're
21 dealing with in this case? I think not. This
22 courtroom is not about winning and losing. This
23 courtroom is a place of honor, it is a place of
24 justice. And you don't do things in order to try to
25 win at all costs.

1 We, and I'm going to just be brief about the
2 forensic testimony because you heard Dr. Mulbry, you
3 heard Dr. Price, you heard Dr. Frierson. I realize
4 that you heard a lot of repetition and so forth, but
5 that's what the complications of this mental illness
6 was all about. You needed to hear that. You needed to
7 try to understand that so we put the best doctors you
8 can find. These doctors have reputations of absolute
9 first quality. These are expert forensic psychiatrists
10 and psychologists. They're the best I could find.
11 Because the first day I met Anna Simpson, I knew she
12 was insane and I ain't got no doctor degree. I know it
13 when I see it. I know it when I see it. The
14 prosecutor, when I had my two doctors, the prosecutor
15 said, "Hey, wait. We need another doctor," so they got
16 Dr. Frierson an order from the judge, Dr. Frierson. I
17 said "no objection" because it was obvious and
18 Dr. Frierson said they're right. They could have asked
19 for another doctor if they wanted. They could go
20 doctor shopping all they want to. But they knew that
21 Dr. Frierson was going to come in here and say that
22 Anna could not distinguish between right and wrong, and
23 they knew the power of that testimony.

24 So what they do, what they do, after my case was
25 over, after I finished my case, they bring in

1 Dr. Smith. And I'm going to let you just -- you can
2 evaluate his testimony all you want to. He has never
3 been qualified as a forensic evaluator. Never has. He
4 decided, apparently, when he got subpoenaed, and then
5 he talked to the prosecutor a week ago this Tuesday,
6 and they decided he was going to become, basically, a
7 forensic psychiatrist. He's going to come in here and
8 start testifying to all that stuff. And I'm going to
9 let you measure his credibility. I know one thing he
10 didn't do. He didn't correctly treat that woman.
11 He can come in here and talk to you about all his
12 opinions until the cows come home, but he made a major
13 mistake. And he's talking about civil court, that's
14 probably where he's going to end up because he just
15 blew that. He didn't even know what was in his own
16 records. I had his records, and I had to show him his
17 records, and he said, "Oh, I don't think I have ever
18 seen that before." Well, what kind of records is that
19 for a psychiatrist? This woman was put in the
20 emergency room of St. Francis and held under a guard.
21 She then went to a mental facility for three days, the
22 Carolina Center for Behavioral Health, for three more
23 days, and he is her psychiatrist and he doesn't know
24 nothing about it? I mean -- and then he still doesn't
25 know nothing about it so he has to get the records from

1 the prosecutor? I mean, what kind of railroad is that?

2 And I apologize. I apologize for my demeanor. I
3 get a little excited, so please.

4 Give me a few more minutes, Your Honor. I
5 apologize.

6 THE COURT: Yes, sir.

7 MR. MAULDIN: Talk for a minute -- I'm going to
8 talk -- I'm going to talk for a minute about the burden
9 of proof. And this is something the judge is going to
10 explain to you. And if I say something that's
11 different from him, he's the law.

12 The burden of proof in a criminal case is always
13 on the prosecutor. We're all presumed innocent of any
14 wrongdoing, and the prosecutor has to come forward with
15 the evidence and prove to your satisfaction to the
16 exclusion of any and all reasonable doubt the guilt of
17 the defendant. That's the rule.

18 Reasonable doubt is a doubt that would make a
19 reasonable person hesitant to act. It's a doubt that
20 you have a reason for having, basically. If you have a
21 doubt about something and you say the reason I doubt
22 that is so and so, then that's a reasonable doubt.

23 Now, in this particular case, it's unusual because
24 we have claimed or asserted a not guilty by reason of
25 insanity issue into the case. Where is the burden on

1 that? We have that burden. I have the burden of
2 establishing to your satisfaction that Anna Simpson did
3 not know the difference between right and wrong the
4 morning hours of May the 14th. But not beyond a
5 reasonable doubt. That burden -- and, again, it
6 switches back and forth so you have to pay attention to
7 the Court's instructions. The burden on the defendant
8 is by what's called a preponderance and that is kind of
9 like a scale. You put all the evidence over here and
10 all the evidence over here, and if it tilts, basically
11 that's what that means by a greater weight of the
12 evidence. There's absolutely no question, at least,
13 and I'm a little biased about this, obviously, but
14 there appears to me to be no question that the three
15 doctors you heard from yesterday were pretty emphatic
16 about their opinions and that Anna did not know the
17 difference from right and wrong at the moment of the
18 incident. That's the key. That's the critical key.
19 So we're confident that you're going to decide that she
20 has established that.

21 The prosecutor, then, has the burden of proving
22 beyond a reasonable doubt her sanity. And that is that
23 that's wrong. They have to prove that beyond a
24 reasonable doubt. And here is the important fact I'll
25 finish with on that. If you have a doubt as to whether

1 we have proved the preponderance, you must give the
2 benefit of the doubt to the defendant. In other words,
3 if you're not sure Anna is entitled to the benefit of
4 the doubt, if you're not sure that they have proven
5 their case beyond a reasonable doubt, you must give
6 every benefit to the defendant. That's the presumption
7 of innocence part. And I want you to listen to the
8 judge about that.

9 The verdict form that the judge will give you is
10 going to have four possible verdicts on each one of the
11 charges. It will be not guilty, not guilty by reason
12 of insanity, guilty, and guilty but mentally ill, and
13 they will be listed on each one of the offenses. Let
14 me talk a minute about that and then I'm going to
15 close.

16 Guilty in this case, guilty or guilty but mentally
17 ill is prison.

18 MS. STROM: Objection, your Honor.

19 MR. WILKINS: Objection.

20 THE COURT: Sustained. Just stay within the
21 record. Stay within the record.

22 THE COURT: Have a seat.

23 MR. MAULDIN: One of the verdicts would be guilty
24 of murder. And I'll just let the judge give you
25 instructions on what that means. Are we, in this

1 society, are we in this society going to sign on to
2 warehouse people who have severe --

3 MS. STROM: Objection, Your Honor.

4 THE COURT: Sustained.

5 Mr. Mauldin, that's inappropriate to talk about
6 with the jury.

7 MR. MAULDIN: No, I --

8 MS. STROM: I request --

9 THE COURT: No. No. I don't need to hear any
10 argument about that. Stay within the record. Finish
11 your closing. Thank you.

12 MR. MAULDIN: All right, Your Honor.

13 THE COURT: Thank you.

14 MR. MAULDIN: You know, guilty but mentally ill,
15 the judge will give you a definition of it for you to
16 consider. Let me give you another definition of it.
17 Guilty but mentally ill means responsible but not
18 responsible. Guilty but crazy means responsible but
19 irresponsible. It makes no sense. It makes not one
20 ounce of sense. But the prosecutor is going to offer
21 you the easy way out of this case --

22 MS. STROM: Objection, your Honor. That is
23 totally inappropriate.

24 MR. MAULDIN: I want to be heard on that, Your
25 Honor.

1 THE COURT: All right. Ladies and gentlemen, go
2 back to your jury room. Do not discuss the case.

3 (WHEREUPON, the jury exited open court at
4 12:28 p.m.)

5 THE COURT: All right.

6 MS. STROM: Your Honor, that is highly
7 inappropriate. We went over this prior to -- we've
8 been going over this since the beginning of this trial.
9 There was to be no mention -- no mention of the
10 consequences of any verdict, and for him to lessen a
11 verdict by calling it the easy way out is astonishing
12 to me that he would be allowed to get away with that in
13 front of this jury.

14 THE COURT: All right.

15 MR. MAULDIN: I'm not trying to get away with
16 anything. What I'm saying to this jury is that they're
17 going to have a tough choice. They're going to have a
18 choice of guilty, not guilty by reason of insanity, or
19 guilty but mentally ill. And that the easy way out is
20 to just sign off and go on home. That's the -- and
21 then I'm going to follow with how difficult the not
22 guilty by reason of insanity verdict is. It has
23 nothing to do with the sentence. It has nothing to do
24 with what the judge is going to do to her or the
25 protocol. It is a question --

1 THE COURT: See, the problem is -- I understand
2 where you're going with that. The problem is,
3 Mr. Mauldin, you have already twice inappropriately
4 argued to the jury what the possible consequences are
5 of a guilty but mentally ill verdict. Okay? You have
6 already indicated to them that that means prison.
7 Okay? And, you know, I thought we were all crystal
8 clear that neither side could do that. Okay? And
9 you've done it twice. And, you know, my patience is
10 about right there, and I have the patience of Job, I
11 believe, and I'm not going to allow it any further.
12 Okay? So here is what's going to happen.

13 Anything further from the State?

14 MS. STROM: Your Honor, I'm going to consider
15 requesting a specific charge. I'm thinking about that
16 right now as to a specific charge to the jury that the
17 consequences of the various verdicts are of no concern
18 to them.

19 THE COURT: Those are matters of law.

20 MS. STROM: Those are matters of law.

21 THE COURT: Okay. Here is what's going to happen.
22 We're going to bring the jury back in -- not yet.
23 We're going to bring the jury back in. You're going to
24 wrap up your closing argument. Okay? You're not going
25 to mention again what the consequences of any verdict

1 are, and I am going to entertain and grant the State's
2 motion to specifically charge that, based upon what
3 I've heard, short of a mistrial, I think that's the
4 proper remedy in this case. Okay?

5 MR. WILKINS: Your Honor, will you give us time to
6 discuss the curative charge because it's a little bit
7 of a catch-22 for us.

8 THE COURT: Obviously, to protect the record, I'll
9 let the defense have input into the curative charge as
10 well and make a record.

11 MR. WILKINS: I don't want to make it any bigger
12 deal than it already is, but I also want a curative
13 charge.

14 THE COURT: Simple as, "The consequences of any
15 verdict are not an issue to be determined by the jury."
16 That's specifically an issue of law for the Court.
17 "You are the judge of the facts, not the judge of the
18 verdict." Does that sound good? Write that down or
19 I'll forget it.

20 MR. WILKINS: I'll get it from her.

21 MR. MAULDIN: Your Honor, in looking at my notes
22 to complete, I don't have any other references with
23 regard to that. I'm telling the -- I do intend to tell
24 the jury that I understand that the addressing of
25 mental illness is difficult, it's -- that's a hard

1 thing and I understand that.

2 THE COURT: You can say that and you can implore
3 them and ask them for a verdict of not guilty by reason
4 of insanity.

5 MR. MAULDIN: Right. Right. Right.

6 THE COURT: But you can't talk to them about what
7 the consequence of that verdict is.

8 MR. MAULDIN: All right.

9 THE COURT: You can't -- just like the guilty but
10 mentally ill means prison. That's an inappropriate --
11 you understand where I am on that?

12 MR. MAULDIN: All right, sir.

13 THE COURT: All right. Y'all get that charge from
14 Diane.

15 All right. Before we bring them back in, any
16 objection from the defense as to that curative charge?

17 MR. MAULDIN: Could you read it?

18 MR. WILKINS: Basically, it will say, "The
19 consequence of any verdict are not an issue to be
20 determined by the jury. That specifically is an issue
21 of law for the Court. You are the judge of the facts."

22 THE COURT: "And I am the judge of the law."

23 MR. WILKINS: "And the judge is the judge of the
24 law."

25 THE COURT: Period.

1 MR. MAULDIN: I have to restate the objection
2 because I have asked you to charge them on consequence
3 of the verdict.

4 THE COURT: Yes, sir.

5 MR. MAULDIN: So I can't consent to that, so I do
6 object.

7 THE COURT: You're protected in the record
8 Objection overruled.

9 Are we ready?

10 Write that down for me.

11 MR. WILKINS: All right.

12 (WHEREUPON, the jury entered open court at
13 12:34 p.m.)

14 THE COURT: All members of the jury are present.

15 Again, thank you very much for your patience.

16 Mr. Mauldin.

17 MR. MAULDIN: Thank you, Judge. I'm going to make
18 a few final remarks to you, but I did forget something,
19 and so I'm going to kind of fly back just a second,
20 then I'll finish.

21 We were talking about the evidence and what we
22 brought in on our side. And we brought in the
23 photograph of Nate Stegall's telephone, the hell on
24 Earth message. And Dr. Frierson described the
25 significance of that to you and how it was essentially

1 consistent with the flaming paranoid schizoaffective
2 that was going on with her that night. So I did want
3 to mention that.

4 This week good families have filled this
5 courtroom. Good families have filled both sides of
6 this courtroom. And the fact of the matter is there
7 are no winners in this tragedy. Everybody in this
8 courtroom, in their own way, is suffering. There have
9 been lives lost, there has been lives changed forever
10 including jurors' lives, I suspect. I think the
11 experience is something you folks will never forget.

12 Mental illness exists in our society and it is
13 real. The testimony that you've heard in this
14 courtroom comes from reality not technicality. This is
15 a harsh reality of psychotic conditions, and it's hard
16 for us, as what I will describe normal people, even
17 though my wife would say maybe I'm not all that normal,
18 but it's hard for us, as normal people, to understand
19 how this can be possible.

20 What is obvious to us as total fantasy is
21 absolutely real in the mind of the mentally ill. We
22 have to stop denying it. We have to stop turning our
23 back on it. We have to stop ignoring it. We have to
24 stop thinking, "Well, he just ain't right." Or, "Well,
25 that's just the way he acts." And I understand that

1 this jury is not empowered to send out notice to the
2 world that from now on mental illness is going to be
3 dealt with in a different way. That's not your job.
4 That's not my job, his job, his job. But we've got to
5 start somewhere.

6 This morning, when I looked in the mirror getting
7 ready to come over here, and I wondered, quite frankly,
8 if I was worthy to stand before you and advocate for
9 Anna Simpson, who obviously can't advocate for herself,
10 and I thought when I was having these thoughts about
11 this responsibility. I thought, okay. I imagined
12 growing up in Ware Shoals. I was little and being in a
13 classroom with a group maybe of 12 year olds. I'm just
14 imagining, you know, along and look in the mirror and
15 imagining. And I'm thinking about sitting in a
16 classroom, a bunch of young kids like me, and I'm
17 thinking and imagining that a teacher in that classroom
18 might say to the class, "Which of you, which of you
19 will stand up when times are their toughest and plea
20 for what's right? Which of you kids? Which one of you
21 kids are going to be willing to stand up and speak in
22 the toughest times for what's really right?" And I
23 imagined John Mauldin would have stood up. But that
24 was all just a delusion, I guess. I never really
25 imagined that I would actually really be doing it. But

1 that's what I'm doing.

2 It is an honor, it is a privilege for me to have
3 an opportunity to present this statement for Anna
4 Simpson. Because it's right. Whatever you do to the
5 least of my brothers you do unto me. Whatever we do in
6 our society to the least of us we do to ourselves. I'm
7 going to ask you to take the hard road in this case.
8 I'm going to ask you, I'm going to challenge you to
9 take the hard road, the road less traveled, if you
10 will. I'm going to challenge you to take the high
11 road. I'm going to ask you to stand up for what is
12 right and it's going to take courage. But nothing this
13 important would ever be easy. And I'm going to ask you
14 to find Anna Simpson not guilty by reason of insanity.

15 THE COURT: Thank you, Mr. Mauldin.
16 Solicitor.

17 MS. STROM: May it please the court, Your Honor.

18 THE COURT: Yes, ma'am, Madam Solicitor.

19 MS. STROM: I'm going to move this podium. I'm
20 not quite as tall as Mr. Mauldin, even in these heels.
21 So I'm going to move this out of my way.

22 Probably one of the few things that Mr. Mauldin
23 and I agree with, and we've been trying cases against
24 each other for years, is that this is a tragic and
25 horrific case. The mere fact that two little children

1 are shot in the head in their beds after their mother
2 has gone and shot her husband, that is horrific. That
3 is tragic. And it's instinctive to sometimes want to
4 go, "Well, only a crazy person would do that. Only
5 someone in their -- not in their right mind would do
6 that."

7 But, unfortunately, ladies and gentlemen, we see
8 it all the time. We see it all the time. And nobody
9 is up here in this courtroom trying to tell you that
10 Anna Simpson did not have mental illness. She had
11 mental illness. There's no doubt she had a mental
12 illness. But mental illness does not equal insanity.

13 People walk around every day working, raising
14 families, doing everything right, doing everything
15 within the law, because they're not insane. Mental
16 illness, psychosis, bipolar, ADHD, all those are mental
17 health terms, psychiatric terms. Insanity is a legal
18 term. We're going to get to all of that a little bit
19 later, and you've been hearing about it, but I think we
20 just have to have the fundamental understanding that
21 mental illness, bipolar, schizoaffective does not
22 equal, does not mean insanity.

23 His Honor is going to charge you the law on what
24 is insanity and what is guilty but mentally ill, what
25 we've been talking about. So I just wanted to sort of

1 get that baseline started. And I know. We've
2 watched -- we watch y'all as you come in, as you go
3 out, we watch you as the testimony is being heard and
4 the evidence is being received. We notice how
5 attentive all of y'all have been, and everyone here
6 appreciates that because we do recognize this was hard
7 evidence to hear. This was hard testimony to hear.
8 And we appreciate the attention that you gave it.

9 Now, as we talked about, I want to address one
10 thing. Mr. Mauldin got up here and started talking
11 about hiding the ball and fairness and all this about
12 the witnesses and, well, Mr. Sanders didn't put that in
13 his original statement. Why is he up here exaggerating
14 today? Well, it's not an exaggeration. People
15 remember things differently from the moment when it
16 first happens to later. Mr. Weight, the EMS guy -- the
17 EMS guy -- what he testified to on the stand was not in
18 his statement. How do we know that? Because we wrote
19 Mr. Mauldin the letter to tell him.

20 Mr. Weight also says this. Nobody is hiding the
21 ball from anybody, all right. And it is -- it was
22 surprising. It was surprising that that's the best
23 they've got. That's the best they've got, accuse me of
24 hiding the ball.

25 Ladies and gentlemen, also on that point, he

1 accused me of hiding the ball because we talked about
2 marital discord, okay. Said, "The prosecutor is up
3 here talking about marital discord, and even Mike
4 Simpson, in his statement, said it was a happy
5 marriage." Mike Simpson took multiple bullets to the
6 head, one of which is still in his head. Dr. Frierson
7 said, "I expect his memory to be altered." That's not
8 where we're getting the marital discord. We're getting
9 it from Anna Simpson's own mouth. What does she say
10 that night? "Mike is done with me. He is done with
11 me. He says I can no longer take care of these
12 children." So for Mr. Mauldin to sit here and stand
13 before you and try to lay that out, again, it just
14 absolutely surprises me.

15 But let's get to the facts of this case and what
16 we've got to do here today. The judge is going to
17 charge you as to the particular crimes in this case.
18 And the first one is murder. Anna Simpson is charged
19 with two counts of murder.

20 Murder, the judge will tell you, is the unlawful
21 killing of another person with malice aforethought,
22 okay. Malice aforethought. Doesn't require any
23 premeditation. Doesn't require any, "Oh, I'm going to
24 kill you," boom, anything like that, but malice
25 aforethought.

1 Malice is ill will towards another person. It
2 is -- sometimes it's often charged as a heart fatally
3 bent on mischief. But what it is, it's meanness. It's
4 just meanness. And in this case, you're sitting here
5 going, "But what about all this mental illness we're
6 hearing about?" Yeah. She's got mental illness. She
7 has bipolar. Doesn't affect her ability to form malice
8 because when you look at the facts of this case, and
9 we're going to go through it a little bit later, there
10 is malice all over this case.

11 When she goes into the master bedroom and shoots
12 Mike Simpson six times -- she shoots at him six times.
13 We're not sure how many times he's hit. But he's shot.
14 She goes and gets a different gun -- a different gun --
15 and shoots those children. She pulls the trigger four
16 times towards Sawyer's head. She pulls that trigger
17 towards Carly five times, hitting her once in the back
18 and at least twice in the head. That is malice. That
19 is malice.

20 She's also charged with attempted murder. And
21 attempted murder is simply you intend to kill someone
22 but you don't succeed. And that's exactly what she did
23 with Mike. She didn't succeed.

24 Now, as to -- you'll also have a charge of
25 possession of a weapon during the commission of a

1 violent crime. His Honor will charge you that's if you
2 commit a violent crime and you do so with a weapon, a
3 pistol, whatever, then you can also be found guilty of
4 that. I think it pretty much speaks for itself.

5 But as to all of those charges, each of those
6 charges, you will decide each one individually. There
7 are four verdicts. Four verdicts, possible verdicts.

8 First one, not guilty. Anna Simpson did not
9 commit these murders. If you find she didn't commit
10 them, find her not guilty.

11 You've got not guilty by reason of insanity. Not
12 guilty by reason of insanity means she did not --
13 because of a mental disease or defect at the time of
14 the murder she did not know the difference between
15 right and wrong. She did not know that her particular
16 actions were wrong.

17 You have guilty. Guilty is Anna Simpson committed
18 these murders, and either, A, she has no mental
19 illness, or that mental illness did not affect her
20 abilities. Okay. If you find she's just straight-out
21 guilty, you can find her guilty.

22 Then you have guilty but mentally ill. Guilty but
23 mentally ill is the defendant has a mental disease or
24 defect, okay. She committed the crimes, no doubt she
25 committed the crimes, but because of a -- she has a

1 mental disease or defect, but it does not affect her
2 ability to know right from wrong. She knows right from
3 wrong, but she just can't control herself. She just
4 can't conform. She can't follow the law. She knows
5 it's wrong, she just can't follow the law because of
6 that mental disease or defect.

7 Ladies and gentlemen, as I said before, no one is
8 denying that she has mental illness. No one is denying
9 that she was having paranoid thoughts. No one is
10 denying that she was having racing, jumbled thoughts.
11 That is clear from all of the evidence. She's been
12 diagnosed since 2010 with Dr. Smith of bipolar. She
13 was diagnosed prior to that with depression.

14 And like I said before, just because it's a mental
15 illness doesn't mean you're insane. Look at all those
16 years, all those years she functioned, she ran her
17 household, she worked. Mental illness does not equal
18 insanity.

19 Mr. Mauldin would have you believe that, okay, I
20 put up these three doctors, and these three doctors
21 said she's insane, so okay. All right. You don't add
22 up witnesses and say, Okay. They put up three people
23 to say X, and this one put up one person to say Y, so
24 it must be X.

25 Ladies and gentlemen, as the judge charged you

1 from the moment you heard from the first expert, the
2 first expert, which I believe was the SLED agent who
3 processed the crime scene -- I think she was the first
4 expert -- he said, "An expert is just someone who gives
5 an opinion, who's allowed in this courtroom to give an
6 opinion." And you know the old adage about opinions.
7 We've all got one, okay. All right. Their opinion is
8 no more important than your opinion. And, in fact your
9 opinion collectively as a jury and as a juror carries
10 far more importance than any opinion from that witness
11 stand. And that judge will tell you that you can
12 believe all of that expert's opinion, you can believe
13 none of it, you can believe parts of it, not believe
14 other parts of it. It's what you feel the weight
15 should be given to that testimony.

16 And then, ladies and gentlemen, you look at you're
17 going to have to form an opinion. You, as a jury
18 collectively, are going to have to form an opinion as
19 to whether Anna Simpson knew right from wrong. Did she
20 know right from wrong at the time of this crime.

21 Before I get to those facts, I want to say a
22 couple more things about those experts because, like I
23 said, experts are experts. They're going to say what
24 they're going to say. All right.

25 Dr. Mulbry and Dr. Price, they both talked to you

1 about -- this is 98 percent of their practice now is
2 just doing these forensic evaluations, okay. You go,
3 "Wait a minute. What about Dr. Frierson? Dr. Frierson
4 was the court-ordered psychiatrist." And I started
5 thinking. And I started looking at this. And
6 Dr. Frierson talked -- stated that he was court ordered
7 about late 2014, I think he says somewhere near
8 December of 2014. He first met with her in February of
9 2015.

10 Now, remember, this crime occurred May of 2013.
11 Her psychiatrist doesn't even talk to her until October
12 of -- no, it was even later than that. It's about ten
13 months after that. It was ten months after the murders
14 that her doctors first talked to her.

15 But by the time Dr. Frierson has the opportunity
16 to talk to her, she has been seen by Dr. Price seven
17 times. Seven times. She had been seen by Dr. Mulbry
18 twice.

19 They want to say that Jeff Smith didn't review the
20 autopsy reports, he didn't review the police reports,
21 he didn't review the witness statements. He had been
22 treating her for over two years. Who is in a better
23 position to know the mental state? What did he tell
24 you? Not one time, not one time did she mention these
25 delusional thoughts. She talked about paranoid

1 thoughts. "People are talking about me. There is a
2 conspiracy out to get me." But never these delusional
3 thoughts, never these hallucinations, never these
4 shapeshifters that came up sometime when she was
5 talking to Dr. Price, I think. None of that was ever,
6 ever revealed. Not only not by Anna Simpson, but not
7 by any member of either family.

8 When you look back at the fact at that Anna
9 Simpson was hospitalized, who was it that took her? It
10 was her mother, Ms. Brown. Because she was having
11 these racing thoughts. She was having this racing
12 speech. She was jumping from topic to topic to topic.
13 It was so bad that her mother said, "We've got to take
14 her to the hospital. We've got to do that."

15 Does anybody do that this time? And it sounds
16 like I'm blaming them. I'm not. I'm not at all. What
17 I'm saying is it wasn't there. We know that if it was
18 as severe, if it were as severe as it was before, they
19 would have been taking her to the hospital.

20 Yes, she's having thoughts. But not to the extent
21 that these psychiatrists want y'all to believe that she
22 is in this psychosis, this total loss with reality that
23 she does not know right from wrong.

24 And one of the things that the doctor said is that
25 you look at evidence and actions consistent with the

1 delusions. So we're going to be talking about that a
2 little bit when we get into the facts, and I'm going
3 there now.

4 It may seem a little funny that, you know, we put
5 in all these casings and projectiles and all that.
6 They got up and said she did it. We still have to
7 prove that she did it. Okay. We still have to prove
8 it. But more importantly, that's where you're going to
9 get your information to determine whether she knew
10 right from wrong is from the facts of this case.
11 Because Anna Simpson can tell these doctors whatever
12 she wants ten months after the event, ten months after
13 the murders, two years after the murders. The facts
14 are going to stay the same. The evidence is going to
15 stay the same.

16 And let's look at what we know about the evidence
17 in this case. First of all, we know that the day
18 before she went and got Carly out of school. All
19 right. She didn't go down there, jerk Carly off the
20 playground, stick her in the car and go home. What did
21 she do? She followed the rules. The rules are you go
22 to the office, you sign her out, they go and get her,
23 and you go home. That's what she did. She's following
24 the rules.

25 But what also does she do? She lies. She lies.

1 She says she's getting Carly out because Sawyer is sick
2 and Carly may be sick or is sick or whatever. She
3 tells her psychiatrist that it was something about the
4 last time the kids stayed out, that was the day of
5 Sandy Hook so I thought there was going to be this
6 problem at the school, this big shooting at the school.

7 Well, ladies and gentlemen, if you're in the
8 delusion and you're in the psychosis as deeply as these
9 doctors want you to believe that she is, when people
10 are that sick, they believe it. And they don't care
11 whether you believe it or not. Okay. When they're
12 that sick, they believe it. It is their reality. And
13 they don't hear that you don't believe it. "You're just
14 not as smart as I am. You're just not as insightful as
15 I am when you don't believe what I believe."

16 You believe that there is going to be a shooting
17 at an elementary school, and what you decide to do is
18 go down there and get your one child out of school? If
19 you believe -- I mean I'm talking if you believe there
20 is going to be a shooting in that school, you don't
21 care whether people think you're crazy. You go and
22 say, "There is something bad going to happen at this
23 school. I want my kid. I want it now. And y'all need
24 to get these other kids out of here." That's not what
25 she did. She lied. She manipulated. And why?

1 Because she didn't really believe it. She may have
2 been having a thought, but she knew it wasn't real.

3 And then she comes back home. And they're out
4 playing in the yard. And Nate Stegall comes by. And
5 what she told her psychiatrist is Nate Stegall is the
6 devil incarnate. He's the devil. Well, actions
7 inconsistent with your delusion. You believe Nate
8 Stegall to be the devil, and you are going to sit there
9 and chit-chat with him about how his daughter is doing?
10 You're going to sit there and talk to him for 20 to
11 30 minutes out in the yard? To the devil himself?
12 That is -- that is not consistent with being in that
13 psychotic delusional state. That is not consistent.

14 And what does Nate say? He talks about the
15 fact -- and I didn't particularly like the term, but
16 it's his term, not mine -- she looked like an angry
17 wife. Okay. She was acting like an angry wife and
18 fussing at the kids, saying, "I don't want to have to
19 tell Mike when he comes home." Does that sound like a
20 woman who is concerned about something horrible
21 happening to her children? Come on.

22 And then later on after Nate leaves, later on that
23 day, she's having phone conversations with, first of
24 all, I think she had some with her mother, but then she
25 calls Alison Simpson, the mother-in-law, the woman who

1 is supposedly molesting her child. That's one of the
2 delusions she talks about is that, "My mother-in-law
3 was grooming my child for sexual industry or sexual
4 games. She's molesting my child." Do you call that
5 woman and say, "Hey, why don't y'all come over and help
6 us more often? Y'all come over and help us more
7 often." That would be the last person, if you truly
8 believed that delusion. If you truly believed that,
9 that would be the last person would you call. And call
10 to invite over.

11 And then she has conversations with her own
12 mother. First, it was about the fact that she and Mike
13 were going to talk to someone. And she asked her
14 because they were going to talk to Alison and John.
15 She said, "Well, do you trust Alison and John?" And
16 her mother said yes. If you truly believe the
17 delusion, you don't just go, "Oh, okay, Mama. You
18 trust them, okay." You go, "Well, wait a minute, Mama.
19 Why are you trusting them?"

20 And that's my point. I'm not saying she doesn't
21 have thoughts, but it's not to the extent that these
22 psychiatrists are wanting you to believe it is. She is
23 not having a loss of touch with reality. She is not.

24 The second call to her mother, which was about 9
25 o'clock, 8:45 was, "Mike is done with me. He is done

1 with me. He says I can no longer take care of my
2 children." And that's consistent with what she told
3 Frierson, what she told Price, what she told Mulbry,
4 what she told Dr. Wade Harris in the emergency room
5 that day. "I was afraid to talk to my husband about
6 this. I was afraid he would lock me back up again."
7 Her biggest fear was going back to that hospital. "I
8 was afraid he would lock me back up again."

9 And what does she tell her mother at 9 o'clock?
10 "He's done with me. He says I can no longer take care
11 of my children." It's not a leap, ladies and
12 gentlemen, to sit here and think what's going to happen
13 tomorrow? What's going to happen tomorrow?

14 What happened that night? She says they went to
15 bed. She got some sleep, woke up at 4:00 panicked. I
16 bet she was panicked knowing you have only a few more
17 hours before you're going to be sent back to a
18 hospital, someone else raising your children. And what
19 does she do? And these are all going to go to did she
20 know right from wrong.

21 The first thing she does, she says she does, is
22 she goes and gets this headlamp. I call it a runner's
23 lamp. Some people call it a hunter's lamp or whatever.
24 Stick it on your head. Why? Why? She doesn't turn on
25 a single light in that house. Not one light. Why?

1 You don't want to wake anybody up. What happens if
2 somebody wakes up? They are going to stop you.
3 They're going to stop you.

4 So she goes, puts on a headlamp. Then she goes to
5 this safe, the safe, and manipulates the combination to
6 the safe. She's in this deep psychosis and she's going
7 to manipulate a combination to a safe?

8 She gets the .22 and goes back to this area right
9 here and loads it. How do we know that? There is a
10 live round found right here. Remember Tony Robinson
11 talking about finding it in the sink in the laundry
12 room? And what's right here? The holster to that .22.

13 Why not just load it out there in the living room?
14 Get farthest away from Mike. Because who's going to be
15 the first person most likely to wake up if he hears
16 something? Not those kids. It's going to be Mike.
17 It's going to be Mike.

18 And what does she do? She walks down that hallway
19 with that headlamp on, and she goes into that master
20 bedroom and she shoots Mike. And she shoots him in the
21 head. What delusion did she have about Mike? Nobody
22 was molesting him, no. She had to kill him first. She
23 had to kill him first because otherwise he would have
24 stopped her. If she had shot one of those kids first,
25 he would have awakened, he would have come and he would

1 have stopped her and she knew that. She knew what she
2 was doing was wrong.

3 And then, ladies and gentlemen, she goes and gets
4 another weapon. All right. Why? Why get the .40? I
5 submit to you, remember what Tommy Camp said when he
6 came in, he was the first officer on the scene. He
7 said, "When I walked in that kitchen door, I could hear
8 somebody struggling to breathe. I could hear somebody
9 struggling to breathe."

10 You know what, ladies and gentlemen, if he could
11 hear it there, she heard it in that house. And she's
12 walking around that house. That .22 didn't do the job.
13 He's still alive. He's still breathing.

14 She goes and gets that .40. That 40-caliber
15 weapon. Ladies and gentlemen, that's a pretty heavy
16 gun. And what did the ballistics expert tell you about
17 it? You had to pull that trigger every single time.
18 Every single shot to those children.

19 Oh, but wait a minute, now. She tried to kill
20 herself. She tried to kill herself because we have
21 misfired bullets. Well, we do. We have misfired
22 bullets.

23 Before we go there, I want to go back to one thing
24 on this. She shoots Sawyer four times, shoots at Carly
25 five times, and then right here we have a fired

1 40-caliber casing. And right here at M we have a fired
2 .22 casing. We have got two holes in the wall right
3 here. And remember the fragments that they talked
4 about that were right there that were consistent with
5 .40 and consistent with .22? Why shoot down the hall?
6 Why shoot down the hall? Are you manipulating the
7 crime scene, make it look like something that it's not?
8 Are you clearing the weapons? Are you clearing the
9 weapons so that then you can reload it? She knew about
10 guns. She had been shooting with Mike. "Oh, well, you
11 know. This was just frantic. It was frantic. She
12 just, you know." Well, when you want to kill your
13 husband, you load the right bullets. When you want to
14 kill your children, you load the right bullets. But
15 when you want to kill yourself, you don't?

16 And let's say, let's just for argument's sake it
17 was incidental that she loaded the wrong bullets. What
18 do we know about that gun that was found down by the
19 truck? It had two misfired rounds in it, correct?
20 What did that ballistics expert say? You're going to
21 have to manually eject those misfires. They don't come
22 out automatically.

23 We also have a misfired 9 right here in the foyer.
24 You go, "Well, what does that mean? That's a misfire."
25 Ladies and gentlemen, she would have had to eject,

1 manually eject those misfired rounds, pick them up,
2 take out the magazine, load them back in, put it back
3 into the gun. She knows before she leaves that house
4 that gun is not working. She knows before she leaves
5 that house. Otherwise we wouldn't have the misfired in
6 the foyer. But what am I going to do? I'm going to go
7 walk back through here past this arsenal of weapons to
8 include this loaded 9mm. I'm going to pass all this so
9 I can go get in a truck and try to kill myself. No.
10 No. If you truly want to kill yourself, you grab that
11 9 and you put it to your head.

12 Oh, but wait a minute. She was going to go to
13 Nate's, all right, because the kids were reincarnated
14 in Nate's garage. Okay. She goes, and what does she
15 tell the psychiatrist? "I didn't go in because there
16 were too many cars." And that goes back to actions
17 inconsistent with the delusion. If you are delusional
18 and you are in that psychosis and your children have
19 been reincarnated in that garage, there is nothing
20 stopping you from getting in that garage. If you want
21 to be reunited with your children, nothing would stop
22 you from getting in that garage.

23 But no, what she tries to do, according to her, is
24 to kill herself by driving down a particular pathway
25 that someone else had driven down months before. But

1 interestingly, and you'll have these with you, she
2 missed the tree that killed the fellow before.
3 Mr. Hart said she clipped the side of one tree, she
4 missed these other trees, went between these trees and
5 the telephone pole, okay.

6 And then what happens when the people get there?
7 First thing she said is, "My back. Oh, my God, my
8 back." Not, "Oh, my God, I've just saved my children.
9 I have just sent my children to a better place." No.
10 Her words were, "Am I going to be okay?" Begging Scott
11 Hart not to leave her. And when asked specifically,
12 "What about your husband and your children?"

13 "I don't know. I don't know. I don't know."

14 You do know. If you believe that delusion, you
15 say, "I just sent them to a better place. Why am I not
16 with them? Take me to them." Not, "Am I going to be
17 okay."

18 And that self-protective, self-preservation
19 selfish attitude continued. She gets to the hospital.
20 Well, even with the EMS guy, Michael Weight. What
21 happened? She won't answer. She won't tell anything.
22 Okay. Well, it's only until Weight tells her, "I can't
23 help you unless you let me know what happened."

24 "Oh, okay. All right. I shot my family. I shot
25 my family."

1 All right. Still self-protecting. She can't get
2 the help she needs unless she tells what's going on.
3 And that happened in the ER as well. But even more
4 importantly in the ER, it's not she just doesn't
5 answer. She's asked specifically by John Conway and
6 Dr. Wade Harris, "What happened?"

7 "I don't want to talk about it. I don't want to
8 talk about it."

9 Ladies and gentlemen, if someone is in a psychotic
10 delusional state such that they believe it and it's
11 their reality, they would be yelling it from the
12 mountaintop. "I just saved my children. I saved my
13 children from this hell on Earth." But no. It was, "I
14 don't want to talk about it."

15 And what did Conway say with regards to her being
16 in there? She talked more when law enforcement wasn't
17 near. It's when law enforcement either went out of the
18 room or went closer to the door that she would talk
19 more. Those are things that you can use, and I've
20 missed some. I keep trying to refer to my notes. I
21 know I missed some.

22 You get back in that jury room, and you look for
23 that evidence, what it tells you. If collectively you
24 do not believe she knew right from wrong, sign that
25 verdict not guilty by reason of insanity.

1 We have talked a lot about Anna Simpson's state of
2 mind because that's -- it can somehow be looked at
3 that, you know, that's the issue in the case. Well, it
4 is. And Mike Simpson, Carly Simpson, Sawyer Simpson
5 deserve their day in court as well. They deserve
6 justice. And not based on any passion, not based on
7 any sympathy. That's justice for no one. I'm speaking
8 of justice based upon the facts of this case. And the
9 facts of this case tell you she knew what she was doing
10 was wrong, she did everything she could not to be
11 detected. Now, granted she may not have been able to
12 control herself, but she knew what she was doing was
13 wrong.

14 Thank you, your Honor.

15 THE COURT: Thank you, Madam solicitor.

16 Ladies and gentlemen, my charge to you is going to
17 take approximately 20 minutes, okay. And because of
18 that, there may be some of you who need to refresh
19 yourselves. I know I do, okay.

20 So let's take a quick five minutes. Lunch is
21 going to be back there waiting for you as soon as I
22 charge you the law. It may already be there. So hold
23 off on eating until I give you the law. Give me five
24 minutes and we'll reconvene. Don't talk about the
25 case. You have not heard the law yet.

1 (WHEREUPON, the jury exited the courtroom
2 at 1:23 p.m.)

3 (WHEREUPON, recess taken from 1:23 p.m.
4 to 1:30 p.m.)

5 (WHEREUPON, the jury entered open court at
6 1:30 p.m.)

7 THE COURT: All members of the jury are present.

8 Ladies and gentlemen, I'm going to ask that you
9 pay close attention to what I tell you because this is
10 the law that you must go by in order to reach your
11 verdict. And I know it's a little difficult because
12 I'm not right up on you like the lawyers are.
13 Typically, I do when I have the opportunity to talk to
14 juries that way when I charge, but I feel like I'm
15 close enough to you. So y'all just please pay
16 attention. You're going to see me look down from time
17 to time referring to my notes. I know there's nothing
18 worse than just looking at a talking head talking at
19 you, okay. So I promise you I'll try to look at you as
20 much as possible. But what I tell you is very
21 important, and I want to make sure I get it absolutely
22 correct, so I will be looking down from time to time,
23 okay.

24 Now, Madam Forelady, members of the jury, you've
25 heard the testimony and the evidence and the arguments

1 of both the State and the defense. I will now explain
2 to you the law that applies to this case.

3 Under the constitution and laws of South Carolina,
4 you are the finders of fact in this case. I do not
5 have the right to pass upon the facts or even to
6 express any opinion that I may have as to what the
7 facts are because that's a matter solely for you, the
8 jury, to determine.

9 As jurors, then, it is your duty to determine the
10 effect, the value, the weight, and the truth of the
11 evidence presented during the trial. As the trial
12 judge, it has been my responsibility to preside over
13 the trial and to rule upon the admissibility of various
14 evidence that has been offered during this trial.

15 Like I've told you numerous times this week, you
16 are to consider only the testimony which has been
17 presented from this witness stand together with any
18 other exhibits which have been made part of the record.
19 You will have those back in the jury room.

20 I have the additional duty, as I am doing now, to
21 charge you the law applicable to this case, and as the
22 presiding judge, I am the sole judge of the law. It's
23 your duty as jurors to accept as correct and to apply
24 the law as I now state it to you and use that to reach
25 a verdict. Now, the fact that I may instruct you on

1 various subjects in this case must not be taken by you
2 as indicating what you think my opinion of the facts
3 are.

4 Finally, I charge you you should not be concerned
5 with what you think the law ought to be or, rather,
6 what I charge you the law is. Now, the fact that the
7 defendant was arrested, charged, and indicted is not
8 evidence in this case and cannot be considered by you
9 as evidence of guilt in this case, nor does it create
10 any presumption or inference of guilt.

11 The indictment, as I've told you several times, is
12 simply the formal written instrument which contains the
13 charges made against the defendant. An indictment is
14 merely the formal written document by which a case is
15 brought into court.

16 You're the judges, the sole judges, of what's
17 called the credibility, also known as the believability
18 of the witnesses who have testified and of the
19 credibility of the evidence which has been presented
20 during this trial. In passing upon credibility, you
21 could take into consideration many things such as the
22 demeanor or the manner in which the witness testified,
23 whether or not a witness had reason to be biased or
24 prejudiced, whether or not a witness' testimony was
25 contradicted on the one hand or maybe supported or

1 corroborated on the other hand. All of these things
2 you will consider bearing in mind that you should give
3 the defendant the benefit of any reasonable doubt. It
4 becomes your duty, then, as jurors to analyze and to
5 evaluate the evidence and determine that evidence which
6 convinces you of its truth.

7 Let's talk about evidence in general. There's two
8 types of evidence presented during the trial. The
9 first is called direct evidence. Secondly is
10 circumstantial evidence, okay. Direct evidence -- I'm
11 going to give you some law school definitions, then
12 I'll explain it to you.

13 Direct evidence directly proves the existence of a
14 fact and doesn't require any deduction. Circumstantial
15 evidence is proof of a chain of facts and circumstances
16 which indicate the existence of a fact, okay.

17 For example, if on a winter night -- I also use
18 this example -- you go to bed and you wake up and --
19 well, you go to bed. Before you go to bed, you look
20 out at your front lawn. You see your brown grass in
21 your front lawn. You wake up the next morning and see
22 snow and you see some footsteps through your front lawn
23 in the snow. Well, you know, you can infer that it
24 snowed. Secondly, you can infer that somebody has been
25 walking on your lawn. See, these are things you can

1 infer even though you didn't see it snow and even
2 though you didn't see somebody on your lawn. All
3 right? That's a good way to illustrate circumstantial
4 evidence.

5 Now, crimes can be proven by circumstantial
6 evidence. And the law makes no distinction between the
7 weight or value to be given to either direct or
8 circumstantial evidence. Now, however, to the extent
9 the State relies on circumstantial evidence, all of the
10 circumstances must be consistent with each other, and
11 when taken together, point conclusively to the guilty
12 of the excused beyond a reasonable doubt. Now, if
13 these circumstances merely portray the defendant's
14 behavior as suspicious, the proof has failed.

15 The State has the burden of proving the defendant
16 guilty beyond a reasonable doubt. This burden rests
17 with the State regardless of whether the State relies
18 on direct evidence, circumstantial evidence, or some
19 combination of the two, okay. So that's evidence in
20 general.

21 Let's talk about expert witnesses. Of course, I
22 gave you the charge on those two days ago, I believe.
23 Let me give you the long charge on expert witnesses,
24 okay.

25 The rules of evidence ordinarily do not permit

1 witnesses to testify as to opinions or conclusions.
2 Normally, when a person testifies, they have to testify
3 about what they saw or heard or smelled or something
4 like that. However, there is an exception when someone
5 is qualified because of education or experience. Those
6 witnesses are permitted to give their opinion in
7 certain areas if the court qualifies them that way.

8 This exception exists for witnesses called expert
9 witnesses. Y'all heard several expert witnesses in
10 this case. It's a witness who, by education and
11 experience, has been become an expert in some art,
12 science, profession, or calling may state an opinion as
13 to a relevant and material matter in which the witness
14 claims to be an expert who may also state his or her
15 reasons for at that opinion.

16 Ladies and gentlemen, this doesn't mean that you
17 have to accept the opinion. But it is evidence for you
18 to use -- remember, as judges of the facts -- for you
19 to use in any way you see fit and give it the weight
20 and credibility you believe is appropriate.

21 An expert witness' testimony is to be given no
22 greater weight than that of other witnesses simply
23 because the witness is an expert. Further, you are not
24 required to accept an expert's opinion even though it
25 may not be contradicted.

1 Now, the indictments in this case allege four
2 different offenses or charges against the defendant.
3 The charges are: Murder, murder, possession of a
4 weapon during a violent crime, and attempted murder.
5 Each indictment charges a separate and distinct
6 offense. You must decide, ladies and gentlemen, each
7 indictment separately on the evidence and the law
8 applicable to it uninfluenced by your decision as to
9 any other charge or indictment.

10 The defendant can be convicted or acquitted on any
11 or all of the offenses charged. You will be asked to
12 mark a separate verdict for each indictment. And I'll
13 explain that to you when you get down to the verdict
14 form.

15 Now, let's talk about presumption of innocence.
16 The defendant has pled not guilty to the charges in the
17 indictments, okay, and that plea has placed the burden
18 on the State to prove the defendant guilty.

19 Now, a person charged with committing a criminal
20 offense in South Carolina is never required to prove
21 herself innocent. I charge you, ladies and gentlemen,
22 that it is an important rule of law that a defendant in
23 a criminal trial, no matter what the seriousness of the
24 charge may be, will always be presumed to be not guilty
25 of the crime for which the indictment was issued unless

1 guilt has been proven by evidence satisfying you, the
2 jury, of that guilt beyond a reasonable doubt.

3 Now, this presumption of innocence does not end
4 when you begin your deliberations, but it accompanies
5 the defendant throughout the trial until you have
6 reached a verdict. Imagine -- you see the robe I'm
7 wearing now. Imagine that robe placed about the
8 shoulders of the defendant. We call it the robe of
9 righteousness, okay. Imagine that robe around the
10 shoulders of the defendant, and that robe of
11 righteousness will remain with her until it has been
12 stripped from her or from the defendant by evidence
13 satisfying you of the defendant's guilt beyond a
14 reasonable doubt.

15 Now, this presumption of innocence, ladies and
16 gentlemen, is not just a mere legal theory. It's not
17 just a legal phrase. It is a substantial right to
18 which every defendant is entitled unless you, the jury,
19 are satisfied from the evidence of the defendant's
20 guilt beyond a reasonable doubt.

21 I've said "beyond a reasonable doubt" at least 20
22 times. Let's finally define what a reasonable doubt
23 is, okay.

24 A reasonable doubt is a doubt which makes an
25 honest, sincere, conscientious juror in search of the

1 truth to hesitate to act. Proof beyond a reasonable
2 doubt must, therefore, be proof of such a convincing
3 character that a reasonable person would not hesitate
4 to rely and act upon it in the most important of his or
5 her own affairs.

6 Now, proof beyond a reasonable doubt can also be
7 described as proof that leaves you firmly convinced of
8 the defendant's guilt. Now, there are very few things
9 we know in this world with absolute certainty. And in
10 criminal cases, the law does not require proof that
11 overcomes every possible doubt. If, based upon your
12 consideration of the evidence, you're firmly convinced
13 that the defendant is guilty, then you must find her
14 guilty. If, on the other hand, you think there is a
15 real possibility that she is not guilty, you must then
16 give her the benefit of the doubt and find her not
17 guilty. The same standard applies to the issue of the
18 defendant's sanity as well which I will define in
19 greater detail in a few moments.

20 Now, I instruct you, ladies and gentlemen, and
21 emphasize to you that the fact that the defendant did
22 not testify is not a factor to be considered by you in
23 any way in your deliberations and in your consideration
24 on the question of the guilt or innocence of the
25 defendant. It must not be considered by you in any

1 manner whatsoever.

2 A defendant has the constitutional right to remain
3 silent, and the assertion of this right must not be
4 considered by you in your deliberations. So I repeat:
5 Under your oath, you are to draw no conclusion
6 whatsoever from the fact that the defendant in this
7 case did not testify. The fact that the defendant did
8 not testify should not even be discussed in the jury
9 room.

10 The burden of proof, as I have stated to you
11 several times, is on the State. The defendant is not
12 required to prove innocence. The burden of proof
13 remains on the State to prove guilt beyond a reasonable
14 doubt.

15 Let's talk about intent, and then we'll get into
16 the crimes, and then we'll talk about sanity and
17 insanity.

18 In order to establish criminal liability, criminal
19 intent is required. For example, the mental state
20 required to be proven by the State for a particular
21 crime might be purpose, intent, knowledge,
22 recklessness, criminal negligence. Criminal intent
23 must be proven by the State beyond a reasonable doubt.

24 Criminal intent is always a matter that must be
25 determined by a jury from the circumstances surrounding

1 a situation. There is no way to prove intent to a
2 mathematical certainty. There's no way that medical
3 science can dissect a person's brain and determine what
4 the person had in mind so the law says that criminal
5 intent may be inferred from the circumstances which
6 have been shown to have existed.

7 This is how you make a determination of whether or
8 not the element requiring intent was present. It's not
9 necessary to establish intent by direct and positive
10 evidence, but intent may be established by inference in
11 the same way as any other fact, by taking into
12 consideration all the facts and circumstances of the
13 case. Criminal intent is a mental state, a conscious
14 wrongdoing. It is up to you to determine what the
15 defendant intended to do based on the circumstances
16 shown to have existed.

17 The defendant is charged with murder. The State
18 must prove beyond a reasonable doubt that the defendant
19 killed another person with malice aforethought. Malice
20 is hatred, ill will, or hostility towards another
21 person. It is the intentional doing of a wrongful act
22 without just cause or excuse and with an intent to
23 inflict an injury or under circumstances that the law
24 will infer an evil intent.

25 Malice aforethought does not require that malice

1 exist for any particular time before the act is
2 committed, but malice must exit in the mind of the
3 defendant just before and at the time of the act being
4 committed. Therefore, there must be a combination of
5 the previous evil intent and the act.

6 Malice aforethought can be express or inferred.
7 Now, these terms, "express" and "inferred" do not mean
8 different kinds of malice but merely the manner in
9 which the malice may be shown to have existed. That's
10 either by direct evidence or by inference from the
11 facts and circumstances which have been proven.

12 Express malice is shown when a person speaks words
13 which express hatred or ill will for another or when
14 the person is prepared beforehand to do the act which
15 was later accomplished. For example, express malice is
16 like lying in wait for a person or any other acts of
17 preparation going to show that the deed was within the
18 defendant's mind, that's an example of express malice.
19 Malice can also be inferred from conduct showing a
20 total disregard for human life.

21 The defendant is charged with attempted murder.
22 In order to prove this crime, the State must prove the
23 defendant attempted to kill another person with malice
24 aforethought, either expressed or implied. I've
25 already given you the standards and definition of

1 malice.

2 If facts are proved beyond a reasonable doubt
3 sufficient to raise an inference of malice to your
4 satisfaction, ladies and gentlemen, this inference
5 would simply be an evidentiary fact to be considered by
6 you, the jury, along with the other evidence in this
7 case, and you may give it the weight you decide it
8 should receive.

9 A specific intent to kill is an element of
10 attempted murder. An intent means intending the result
11 which actually occurs, not accidentally or
12 involuntarily. Intent may be shown by acts and conduct
13 of the defendant and other circumstances from which you
14 may naturally and reasonably infer intent.

15 Evidence of the character of the act, the
16 character of the instrument used, the manner in which
17 it was used, the purpose to be accomplished, and the
18 resulting wound or injuries may be considered by you in
19 determining intent with which the act was committed.

20 Intent may also be inferred when it is
21 demonstrated that the defendant voluntarily and
22 willfully commits an act, a natural tendency of which
23 is to destroy another's life.

24 The last crime for you to consider is possession
25 of a weapon during the commission of a violent crime.

1 The defendant has been charged with possession of a
2 weapon during the commission of a violent crime. The
3 State must prove beyond a reasonable doubt that the
4 defendant was in possession of a firearm during the
5 commission of a violent crime. A firearm means any
6 revolver, pistol, or weapon which will, is designed to,
7 or may be readily converted to expel a projectile.

8 In order to find the defendant guilty of
9 possession of a weapon during the commission of a
10 violent crime, you must first find the defendant guilty
11 of either committing a violent crime or attempting to
12 commit a violent crime. Murder is a violent crime
13 under the law. The State must prove beyond a
14 reasonable doubt that the weapon further advanced or
15 helped in the commission of the crime.

16 That's it for the crime portion of the charge.
17 We'll now move forward to the insanity portion.

18 The defendant has raised the defense of insanity.
19 I've already told you about criminal intent. Criminal
20 intent is required to prove that the defendant is
21 guilty of the crime charged. A person who is insane
22 cannot have criminal intent and, therefore, cannot be
23 found guilty of a crime.

24 In order to be found not guilty by reason of
25 insanity, it must be shown that at the time of the

1 crime or crimes, the defendant had a mental disease or
2 defect which made her unable to distinguish moral or
3 legal right from wrong or to recognize the crimes as
4 morally or legally wrong.

5 And by raising this defense of insanity, the
6 defendant does not necessarily admit the crimes were
7 committed. The State must still prove beyond a
8 reasonable doubt that the defendant committed the
9 crimes, then the defendant must prove insanity by
10 what's called a preponderance or greater weight of the
11 evident.

12 Preponderance of the evidence simply means the
13 greater weight of the evidence or more likely than not.
14 This is different from the State's higher standard of
15 proof of beyond a reasonable doubt.

16 So if you find from the evidence in the record
17 that at the time the crimes were allegedly committed it
18 is more likely than not that, because of a mental
19 disease or defect the defendant did not know the
20 alleged crimes were morally or legally wrong, the State
21 must then prove beyond a reasonable doubt that the
22 defendant was sane, in other words, that she did know
23 right from wrong or morally or legally right from
24 wrong.

25 It is for you to decide, ladies and gentlemen,

1 what the state or condition of the defendant's mind was
2 at the time the alleged crimes were committed.

3 Now, there are four possible verdicts that you
4 could return in this case: Not guilty, not guilty by
5 reason of insanity, guilty, guilty but mentally ill.

6 There is no significance whatsoever in the order
7 in which I state these possible verdicts. It's simply
8 that one must be stated first.

9 If you have any reasonable doubt as to the
10 defendant's guilt after considering all the evidence,
11 then you must find her not guilty.

12 If you have no reasonable doubt that the defendant
13 committed the crimes, but you find that it is more
14 likely than not that, because of a mental disease or
15 defect the defendant could not distinguish moral or
16 legal right from wrong or recognize the crimes as
17 morally or legally wrong, you must find her not guilty
18 by reason of insanity.

19 Another possible verdict is guilty but mentally
20 ill. A defendant is guilty but mentally ill if, at the
21 time of the crimes, the defendant was able to
22 distinguish moral or legal right from wrong or to
23 recognize her act as being morally or legally wrong,
24 but because of a mental disease or defect the defendant
25 did not have the sufficient ability to follow the law.

1 If you have no reasonable doubt that the defendant
2 committed the crimes and you find that the defendant
3 had the mental capacity to distinguish moral or legal
4 right from wrong or to recognize the crimes as morally
5 or legally wrong, but it's more likely than not because
6 of a mental disease or defect that the defendant could
7 not follow the law, you would find the defendant guilty
8 but mentally ill.

9 The final possible verdict in the case is guilty.
10 You may only find the defendant guilty if the State has
11 proven beyond a reasonable doubt that the defendant
12 committed the crimes and that the defendant was able to
13 distinguish moral and legal right from wrong and to
14 recognize the crime as morally and legally wrong and
15 that the defendant was able to follow the law.

16 Now, ladies and gentlemen, the consequence of any
17 verdict is not an issue to be determined by you, the
18 jury. That is specifically an issue of law for the
19 court. You are the judge of the facts. I am the judge
20 of the law.

21 Now, let me say something about your
22 deliberations. The word "deliberation," ladies and
23 gentlemen, is defined as a careful consideration,
24 weighing up with a view to a decision. The genius of
25 our jury system is that it allows 12 good people, both

1 men and women, from differing backgrounds, life
2 experiences and perspectives to consider the evidence,
3 talk about it, and ultimately reach a verdict.

4 The task of a juror is called deliberations for a
5 reason. You, the jurors, are to consider the evidence
6 in this case carefully and deliberately and to discuss
7 it in a calm, thorough, and courteous manner. Now,
8 remember you're not partisans or advocates for either
9 side, favoring one side over the other. You are the
10 judges of the facts. Your sole duty is to sort through
11 the information that you've received in this trial and
12 find the truth from the evidence presented in this
13 courtroom.

14 The supreme law of our land, the United States
15 Constitution, affords everyone a day in court and a
16 fair trial. So this case is very important to both
17 sides because it is their day. I charge you, ladies
18 and gentlemen, to listen to the views of your fellow
19 jurors, carefully consider their viewpoints, and
20 courteously discuss the evidence. Remember, if you're
21 doing something deliberately, you're in no big hurry,
22 and you are tasked with a duty of utmost importance.
23 Further, your verdict cannot be based on sympathy,
24 passion, prejudice, emotion, or any other consideration
25 that's not in evidence in this case.

1 In conclusion, ladies and gentlemen, you have been
2 selected by both the State and the defense to be fair
3 and impartial jurors. It is your duty, then, in your
4 deliberations to determine the truth in this case,
5 giving the defendant the benefit of every reasonable
6 doubt on these charges and from the facts which you
7 determine to be true, you take and apply the law which
8 I've just given you and thus arrive at a verdict which
9 speaks the truth in this case.

10 I've told you the standards you have to apply to
11 the charges in the indictments as well as the standards
12 you have to apply to the four possible verdicts.

13 You've heard the evidence, and now you've heard
14 the law. Whatever your verdict is as to the
15 indictments, either guilty, not guilty, not guilty by
16 reason of insanity, or guilty but mentally ill, Madam
17 Forelady, you will indicate it by marking the jury's
18 decision in the respective blanks on the verdict form.
19 You will then sign and date the verdict form down at
20 the bottom.

21 Now, remember, everybody, that although the
22 forelady is the only juror who can write on the verdict
23 form, it is not her verdict alone.

24 Madam Forelady, you are not authorized to write on
25 the verdict form until there is a unanimous verdict.

1 That means all 12 of you must agree to each verdict
2 under each charge, okay.

3 And, again, here is the verdict form. I know it's
4 kind of hard to see from where you are, but you will
5 see it lists each charge: Murder, murder, possession
6 of a weapon during the commission of a violent crime,
7 and attempted murder. And then under each one of
8 those, beside each one, it says "mark one." You can
9 either mark it with a checkmark, an X, your initials,
10 doesn't matter. Just mark beside each possible
11 verdict, then sign it and date it down at the bottom.

12 All right. Now, ladies and gentlemen, I'm going
13 to send you to your jury room, but do not begin to
14 discuss the case until you receive the exhibits, all
15 those exhibits, and the verdict form.

16 Once you receive those exhibits and the verdict
17 form, that's going to be your signal to start
18 deliberating. And once you start deliberating, you're
19 going to deliberate until you have reached a verdict at
20 which time you will knock on the door, advise the
21 bailiff, and we'll bring you out here to receive your
22 verdict. Thank you very much.

23 You may now retire to the jury room except for the
24 alternates. If my alternates will please stay here
25 with me.

1 (WHEREUPON, the jury exited open court at
2 1:58 p.m.)

3 THE COURT: This is Oglesby and Ms. Bargeron.
4 Y'all stay here with me.

5 Y'all look like you're cold.

6 Madam Alternates, your service as jurors has now
7 ended. Thank you so very much for your service on this
8 case.

9 It's almost 2 o'clock. I know you may be hungry.
10 The Pickens clerk of court here has provided lunch for
11 you today, so please feel free to enjoy that. You
12 can't go back to the jury room, okay.

13 ALTERNATE JUROR: Can we get our purses?

14 THE COURT: The bailiff will be able to get your
15 purses and stuff.

16 If you wish to stick around, you may certainly do
17 that if you want to. But you don't have to, okay.

18 Also, you don't have to discuss your feelings or
19 opinions about the case either with anybody if you
20 don't want to, okay. So don't feel pressured about
21 doing that, okay.

22 So at this time you're free to leave. Thank you
23 very much for your service to Pickens County and the
24 State of South Carolina, okay. Thank you very much.

25 (WHEREUPON, the alternates were excused.)

1 THE COURT: Yes, sir.

2 MR. MAULDIN: Your Honor, once again, I want to
3 renew our request for the protocol charge that we've
4 asked for regarding not guilty by reason of insanity.
5 We understand that's on the record, but I do renew it.

6 THE COURT: Yes, sir. Motion denied.

7 MR. MAULDIN: And we also, once again, enter our
8 objection to the guilty but mentally ill charge that
9 resulted from the testimony of Dr. Smith's offer in
10 rebuttal.

11 THE COURT: Yes, sir. You're protected in the
12 record. That motion is denied as well or objection
13 overruled.

14 MR. MAULDIN: And then finally, I guess just to be
15 on the safe side, renew our motion for a directed
16 verdict.

17 THE COURT: All right. All motions are in, and
18 that motion is denied.

19 Any other exceptions to the charge other than what
20 we've previously talked about?

21 MR. WILKINS: None from the State, Your Honor.

22 THE COURT: Your position on the guilty but
23 mentally ill is in the record and protected. That
24 motion is denied.

25 MR. MAULDIN: Yes, sir.

1 THE COURT: All right. Y'all come check out the
2 evidence and we're in recess until we have a verdict.

3 (Court in recess, pending verdict, from 2:15 p.m.
4 until 3:16 p.m.)

5 THE COURT: All right. We're back on the record.

6 I received a note from the jury. It's been marked
7 and entered as Court Exhibit Number 2. And it says the
8 following, "We want a clarification between guilty and
9 guilty but mentally ill."

10 So, in response to that question, I plan on
11 charging -- recharging the jury on what guilty but
12 mentally ill means as well as what guilty means, and
13 that would be contained on pages 24 and 25 of the
14 court's instructions.

15 MR. MAULDIN: All right. I'm going to ask that
16 the court reinstruct on all four of the verdicts as
17 opposed to just those two.

18 THE COURT: All right.

19 Anything further from the State on that?

20 MR. WILKINS: No objection, Your Honor.

21 THE COURT: Okay. I'll instruct on all four,
22 then.

23 All right.

24 (WHEREUPON, the jury entered open court at
25 3:24 p.m.)

1 THE COURT: All right. All members of the jury
2 are present.

3 Madam Forelady, I received your note. You want a
4 clarification between guilty and guilty but mentally
5 ill.

6 What I'm going to do is I'm going to go ahead and
7 recharge all the possible verdicts to you at this time.
8 Listen very carefully as we go through them, okay.

9 There are four possible verdicts that you may
10 return in this case: Not guilty, not guilty by reason
11 of insanity, guilty but mentally ill, or guilty.

12 There's no significance whatsoever in the order
13 which I state in the verdicts. It's simply one has to
14 be started first. All right.

15 If you have any reasonable doubt as to the
16 defendant's guilt after considering all the evidence,
17 then you must find the defendant not guilty. All
18 right.

19 The next one is if you have no reasonable doubt
20 that the defendant committed the crimes, but you find
21 that it is more likely than not that, because of a
22 mental disease or defect, the defendant could not
23 distinguish moral or legal right from wrong or
24 recognize the crimes as morally or legally wrong, you
25 must find the defendant not guilty by reason of

1 insanity.

2 The third option is guilty but mentally ill. A
3 defendant is guilty but mentally ill if, at the time of
4 the crimes, the defendant was able to distinguish moral
5 or legal right from wrong or to recognize the act as
6 being morally or legally wrong, but because of a mental
7 disease or defect the defendant did not have the
8 sufficient ability to follow the law. If you have no
9 reasonable doubt that the defendant committed the
10 crimes, and if you find the defendant had the mental
11 capacity to distinguish moral or legal right from wrong
12 or recognize the crimes as morally or legally wrong but
13 that it's more likely than not, because of a mental
14 disease or defect she could not follow the law, you
15 would find the defendant guilty but mentally ill.

16 The final possible verdict in this case is guilty.
17 You may only find the defendant guilty if the State has
18 proven beyond a reasonable doubt that the defendant
19 committed the crimes, that the defendant was able to
20 distinguish moral and legal right from wrong and to
21 recognize the crimes as morally and legally wrong and
22 that the defendant was able to follow the law.

23 Okay? So there's my answer to your question.
24 Please return to your deliberations. Thank you.

25 (WHEREUPON, the jury exited open court at

1 3:27 p.m.)

2 THE COURT: All right. We'll remain in recess.

3 (Court in recess, pending verdict, from 3:27 p.m.
4 until 4:26 p.m.)

5 THE COURT: All right. Everyone is present. It's
6 my understanding we have a verdict.

7 Bring the jury in.

8 (WHEREUPON, the jury entered open court at
9 4:38 p.m.)

10 THE COURT: All right. All members of the jury
11 are present.

12 Madam Forelady, it's my understanding the jury
13 has been able to reach a verdict; is that correct?

14 JURY FORELADY: Yes, sir.

15 THE COURT: And is the verdict unanimous?

16 JURY FORELADY: Yes, sir.

17 THE COURT: Did you mark it accordingly on the
18 verdict form?

19 JURY FORELADY: I did.

20 THE COURT: If you will please hand it at this
21 time to the clerk of court.

22 All right. Mr. Clerk, you may publish the
23 verdict.

24 THE CLERK: This is Case Numbers 2014-GS-39-396,
25 397 and 398, State of South Carolina versus Suzanna

1 Simpson. We, the jury, unanimously find as follows for
2 Defendant Suzanna Brown Simpson:

3 As to the charge of murder, Indictment Number
4 2014-GS-39-396, guilty.

5 As to the charge of murder, Indictment Number
6 2014-GS-39-397, guilty.

7 As to the charge of possession of a weapon during
8 the commission of a violent crime, Indictment Number
9 2014-GS-39-397, guilty.

10 As to the charge of attempted murder, Indictment
11 Number 2014-GS-39-398, guilty.

12 Is this your verdict and still your verdict, so
13 say y'all by raising your right hand.

14 Thank you very much.

15 THE COURT: All right. Ladies and gentlemen of
16 the jury, thank you very much again for your service to
17 Pickens County and the State of South Carolina. Your
18 jury service has now ended.

19 I will ask you at this time that you please go
20 back to your jury room for just a few moments, okay.
21 Thank you very much.

22 (WHEREUPON, the jury exited open court at
23 4:40 p.m.)

24 THE COURT: All right. Anything further for the
25 record --

1 MR. MAULDIN: Your Honor --

2 THE COURT: -- prior to sentencing?

3 MR. MAULDIN: -- defendant does renew motions
4 previously made during the trial regarding directed
5 verdict and other matters. We move at this time to set
6 aside the verdict and request a new trial for the
7 record.

8 And the only additional motion, Your Honor, is
9 that we would move that the court take note that the
10 jury chose to find Anna guilty and not guilty but
11 mentally ill, and we think that that's relevant in
12 terms of what I would consider to be an act of
13 nullification on the part of the jury so we do make a
14 motion for a new trial.

15 THE COURT: All right.

16 Anything on behalf of the State?

17 MR. WILKINS: No, your Honor.

18 THE COURT: All right. Those motions are taken
19 under advisement. Those motions are denied. And all
20 objections previously overruled are overruled, remain
21 overruled, and those sustained remain sustained.
22 You're protected in the record. All right.

23 That concludes the actual trial of the case.
24 We'll now move forward to sentencing. As to that,
25 we're going to take a brief recess while y'all prepare

1 whatever you need to prepare. And if y'all wish to
2 have people speak on behalf of your client, you can
3 arrange that now. We'll be down for about ten minutes
4 while we prepare for sentencing. Thank you very much.

5 (WHEREUPON, a recess was taken from 4:42 p.m. to
6 4:54 p.m.)

7 THE COURT: All right.

8 Solicitor, I'll be glad to hear from the State
9 first before I hear from the defense regarding any
10 possible sentence.

11 MR. WILKINS: Okay. Your Honor, yes, sir. May it
12 please the Court. Ms. Alison Simpson is here
13 representing the family, and she has a brief statement
14 on behalf of the entire family and her son Michael.

15 THE COURT: All right.

16 Yes, ma'am.

17 MS. ALISON SIMPSON: My name is Alison Simpson.
18 I'm the mother of Michael and the grandmother of Carly
19 and Sawyer. Our family has been impacted forever in
20 ways that we could never have imagined. We lost two of
21 the most beautiful grandchildren who had great
22 potential for their futures. Carly was my little
23 soulmate. She was a gifted artist and dancer, full of
24 life, and loves school. Sawyer was full of fun and
25 loved to be outdoors with his daddy. We have two holes

1 in our heart that can never be filled. They will never
2 be forgotten. We never had the chance to tell them how
3 much we loved them before they were taken. Our lives
4 have been shattered. We think of them every day.

5 Michael's critically injured, and even though the
6 miracle of his survival is amazing to witness, his
7 potential as a father and a provider have been brutally
8 ended. His whole family has been taken away from him.
9 He is totally dependent on others for support. He was
10 a true outdoorsman, hunting, fishing, kayaking,
11 gardening, civil war history, and loved to take family
12 and friends along. His short-term memories have been
13 erased. His recollection of his children's lives have
14 been severely impacted as well as the activities he
15 really enjoyed. He loved his job. He had a great
16 career potential and was very successful in developing
17 new opportunities for his employer.

18 Our retirement years were brutally interrupted by
19 Anna's actions. Instead of nurturing and supporting a
20 young and growing family like Michael's, we are now
21 full-time caregivers and therapists for Michael.
22 Family holidays and birthdays are strained events. His
23 brother and sister and their families find it difficult
24 to freely celebrate without the lost children that they
25 miss and are not here.

1 THE COURT: Thank you, ma'am.

2 MR. WILKINS: That's all we have from the State.

3 THE COURT: Mr. Mauldin.

4 MR. MAULDIN: Your Honor, I'm going to recognize
5 Anna's uncle who is here and been here through the
6 trial. He has expressed an interest in making comments
7 to the court.

8 THE COURT: Yes, sir. Thank you, sir.

9 MR. GOLDSTEIN: If it please --

10 MR. MAULDIN: Identify yourself.

11 MR. JERNIGAN: I'm Russ Jernigan. I'm Susan
12 Brown's brother, Anna's uncle.

13 I hadn't planned to speak, but I just want to say
14 to the Simpson family that our hearts are heavy for you
15 all. I have been very close to Mike and his daddy.
16 Alison even was nice enough to hand paint me a picture.
17 They're good people.

18 But I want everybody in here to know that the
19 Simpson family is not the only persons that has lost.
20 My wife and I don't have any children. And we love
21 those kids like they were ours. And our whole life has
22 been disrupted and saddened and changed, and we want
23 the same things. And if there was ever a case in which
24 there are no winners, no practical remarks, I think
25 this is a classic example. I hope that all of the

1 parties involved can have a healing process. Thank
2 you.

3 THE COURT: Thank you, sir.

4 MR. MAULDIN: Your Honor, I would only repeat that
5 there are -- that this courtroom's filled with good
6 families and that the good families suffered an
7 extraordinary loss. And there truly are no winners.

8 And we understand the court's responsibility to
9 impose sentence. We respect that. We respect this
10 trial. We respect this court, and we commend -- to the
11 extent that it's appropriate, we commend the State for
12 their presentation in this case. We made every effort
13 to make sure that Anna's case was presented, and we
14 just feel that the room is filled with losses at this
15 point, and we understand the court will impose
16 sentence.

17 THE COURT: Thank you, sir.

18 Y'all give me a moment.

19 All right. At this time, I'll ask that the
20 defendant please stand.

21 I'm going to keep my comments short. Everybody in
22 this courtroom is aware of what's happened here this
23 week, and I can tell you in my 11 years on the bench,
24 this is probably the worst thing I've ever heard. The
25 jury has spoken. I cannot imagine a worse scenario

1 than what I've heard here this week.

2 Having said that, I'm obligated to impose the
3 harshest sentence that I could impose, and I'm going to
4 do that.

5 As to Indictment 14-GS-39-396, having been
6 convicted of murder, the sentence of the court is life
7 in prison.

8 As to Indictment 14-GS-39-397, having been
9 convicted of murder, the sentence of the court is life
10 in prison consecutive.

11 As to Indictment 14-GS-39-398, having been
12 convicted of attempted murder, the sentence of the
13 court is 30 years in the South Carolina Department of
14 Corrections consecutive.

15 As to Indictment 14-GS-39-397, Count Two,
16 possession of a weapon during commission of a violent
17 crime, the sentence of the court is five years
18 consecutive.

19 Good luck to you, ma'am, and God have mercy on
20 your soul.

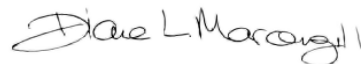
21 That concludes the trial of this case.

22 (WHEREUPON, proceedings adjourned at 5:04 p.m.)
23
24
25

Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete certified copy of the transcript of record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 23rd day of June 2016. This transcript may contain quoted material. Such material is reproduced as read by the speaker. I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 10, 2017



Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

State of South Carolina,

vs.

Suzanna Brown Simpson,

Defendant.

IN THE COURT OF GENERAL SESSIONS

THIRTEENTH JUDICIAL CIRCUIT

VERDICT FORM

Case Numbers: 2014-GS-39-0396

2014-GS-39-0397

2014-GS-39-0398

We the jury, unanimously find as follows for the Defendant, Suzanna Brown Simpson:

1. As to the charge of **Murder** (Indictment No. 2014-GS-39-0396). (Mark One)

☐ Not Guilty
☐ Not Guilty by Reason of Insanity
☒ Guilty
☐ Guilty but Mentally Ill

2. As to the charge of **Murder** (Indictment No. 2014-GS-39-0397 Count 1). (Mark One)

☐ Not Guilty
☐ Not Guilty by Reason of Insanity
☒ Guilty
☐ Guilty but Mentally Ill

3. As to the charge of **Possession of a Weapon During the Commission of a Violent Crime** (Indictment No. 2014-GS-39-0397 Count 2). (Mark One)

☐ Not Guilty
☐ Not Guilty by Reason of Insanity
☒ Guilty
☐ Guilty but Mentally Ill

4. As to the charge of **Attempted Murder** (Indictment No. 2014-GS-39-0398). (Mark One)

☐ Not Guilty
☐ Not Guilty by Reason of Insanity
☒ Guilty
☐ Guilty but Mentally Ill

I certify this decision was the unanimous decision of the jury.

Deresa Durham
Foreperson

June 23, 2016

Certified Copy
Heath P. Walker
Clerk of Court
Pickens County, SC
Dated June 2016

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.Suzanna Brown Simpson

AKA:

Race: WHITE Sex: F Age: 38DOB: 01-26-1978 SS#: 251-71-4998Address: 307 Cherokee TrlCity, State, Zip: Easley, SC 29640-7923DL#: 007383605 SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3900396A/W#: 2013A3910300227Date of Offense: 5/14/2013S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

30-life☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Suzanna Brown Simpson

15305

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Certified Copy

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Suzanna Brown Simpson

AKA:

Race: WHITE Sex: F Age: 38

DOB: 01-26-1978 SS#: 251-71-4998

Address: 307 Cherokee Trl

City, State, Zip: Easley, SC 29640-7923

DL#: 007383605 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder (gs)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3900397

A/W#: 2013A3910300228

Date of Offense: 5/14/2013

S.C. Code §: 16-03-0010, 0020

CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Strom, Betty

15305

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of LIFE days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Dinae Mawson

SCCA/217 (03/2011)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☒ Certified Copy

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Clerk of Court

Other: Pickens County, SC MB

Dated June 2014

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 16/8

Sentence Date: 6/23/2014

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

Suzanna Brown Simpson

AKA:

Race: WHITE Sex: F Age: 38

DOB: 01-26-1978 SS#: 251-71-4998

Address: 307 Cherokee Trl

City, State, Zip: Easley, SC 29640-7923

DL#: 007383605 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. Weapon During Violent Cr

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3900397

A/W#: 2013A3910300231

Date of Offense: 5/14/2013

S.C. Code § : 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

0-5

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §17-25-45 w/minor 1st or Lewd Act

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Betty Strom

15305
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.90</u>
TOTAL	\$	\$ <u>133.90</u>

Certified Copy

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court

Pickens County, SC

Dated: June 20, 2016

Clerk of Court/ Deputy Clerk

Court Reporter: Diane Marcangill

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2-1-6-8

Sentence Date: 6/23/2016

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Suzanna Brown Simpson

AKA:

Race: WHITE Sex: F Age: 38

DOB: 01-26-1978 SS#: 251-71-4998

Address: 307 Cherokee Trl

City, State, Zip: Easley, SC 29640-7923

DL#: 007383605 SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder/Attempted Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS3900398

A/W#: 2013A3910300229

Date of Offense: 5/14/2013

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

0-30

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029

of the S.C. Code of Laws, bearing CDR Code # 3410

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Siron, Betty

15305

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 30 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
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§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 100.00
§ 56-5-2995 (DUI Assessment)	\$12	\$
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§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 25.00
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Certified Copy

Handwritten signature

Clerk of Court

Pickens County, SC

Dated June 23, 2014

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Diane Mancangill

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2168

Sentence Date: 6/23/14

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SUZANNA BROWN SIMPSON,

APPELLANT

Appellate Case No. 2016-001387

FINAL BRIEF OF RESPONDENT

RECEIVED

NOV 20 2017

SC Court of Appeals

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court err in admitting forensic testimony of the state's expert witness?
- II. Did the trial court err in excluding testimony of the defense expert?
- III. Did the trial court err in refusing to direct a verdict for the defendant or grant a new trial?
- IV. Did the trial court err in admitting forensic testimony where state expert was not qualified as a forensic expert?

COUNTER STATEMENT OF ISSUE ON APPEAL

- I. The trial court properly admitted the testimony of Appellant's treating psychiatrist in the State's reply when Appellant placed her mental health at issue with an insanity defense, revealed the contents of the psychiatrist's notes during the defense's expert testimony, and waived her privacy interest in her remaining mental health records by disclosing that information to her experts.
- II. The trial court properly sustained the State's objection to the defense witness' bolstering of his own testimony by claiming the State's expert "agreed with his opinion," when Dr. Smith's purported agreement was not used as a basis for Dr. Price's opinion of Appellant's sanity.
- III. The State presented substantial evidence Appellant shot her husband and children while knowing right from wrong and with the ability to conform her conduct to the requirements of the law when Appellant failed to disclose her purported delusions to her doctor, understood the consequences of failing to take her medication, remediated quickly following the resumption of medication, carefully chose the order of and weapon for her victims, evasively answered questions in front of law enforcement, and staged an attempted suicide.
- IV. Dr. Smith's qualification as an expert in psychiatry allowed him to opine on Appellant's criminal responsibility, even though he was not qualified as an expert in forensic psychiatry, because Dr. Smith had the requisite knowledge and skill to offer his opinion of Appellant's capacity to distinguish right from wrong.

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant, Suzanna Brown Simpson, in February of 2014 for two counts of murder, possession of a weapon during the commission of a violent crime, and attempted murder. (R. pp. 725-734.) On June 20, 2016, Appellant's case proceeded to trial before the Honorable Brian M. Gibbons and a jury. (R. p. 1.) John Mauldin, Esq., Teal Johnson, Esq., and Jacob Goldstein, Esq. represented Appellant. (R. p. 1.) Solicitor W. Walter Wilkins and Deputy Solicitor Betty Strom represented the State. (R. p. 1.) At the conclusion of the trial, the jury returned a verdict of guilty on all charges. (R. p. 717, lines 1-11.) Judge Gibbons sentenced Appellant 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 the possession of a weapon during the commission of a violent crime. (R. p. 723, lines 2-18.)

This appeal follows.

STATEMENT OF FACTS

The Shootings and the Aftermath

In the early morning of May 14, 2013, a neighbor of Suzanna and Michael Simpson heard a commotion in his yard, ran outside, and saw Suzanna Simpson's truck in a ditch near some downed trees. (R. p. 127, lines 2-13.) As a former paramedic, the neighbor drove down the scene of the accident to assist the driver, and he saw Simpson slumped down in the driver's seat. (R. p. 128, lines 1-25.) When the neighbor approached the vehicle, Simpson recognized him, calling him by name and telling him her back hurt. (R. p. 129, lines 6-11.) The neighbor repeatedly asked Simpson where her husband and children were, and Simpson would respond by asking the neighbor, "Am I going to be okay?" (R. p. 129, lines 14-20.) Anytime the neighbor tried to walk away to talk to the other first responders, Simpson would grab his arm and ask him not to leave her. (R. p. 130, lines 1-8.) Simpson did not appear to be hallucinating or incoherent, and the neighbor had no trouble communicating with her. (R. p. 131, lines 8-17; p. 132, lines 7-11.) Both the neighbor and his daughter noticed Simpson would either ask if she was going to be okay or say, "I don't know" when anyone asked her about her husband and children. (R. pp. 129-146.) Because Simpson would not respond to his repeated questions about her family, the neighbor knocked on the doors and windows of Simpson's house to check on her husband and children. (R. p. 132, lines 13-22.) Concerned, the neighbor called 911 to request the police. (R. p. 133, lines 3-5.)

Interestingly, the path Simpson took through the neighbor's yard when she wrecked her car was the same path involved in a fatal wreck months before. In that wreck, a young man died when his car struck a large oak tree. (R. p. 133, lines 14-20.) When Simpson drove through the

path, she managed to avoid the large oak tree and a telephone pole, running over several smaller trees and then crashing into the ditch. (R. p. 133, lines 15-23; p. 137, lines 4-13.)

The nurse who treated Simpson at the hospital following the accident described walking into Simpson's treatment room, finding her lying on the table strapped to the back board and neck brace, and asking her what happened. (R. p. 152, line 22 – p. 154, line 19.) Simpson said very little at first, while the police were in the room, but as they began to leave, Simpson started to talk. (R. p. 156, lines 2-8.) Simpson told the nurse, in a flat voice, "I shot my husband and kids. And then I had an accident." (R. p. 154, lines 7-23.) When the nurse questioned Simpson why, she responded, "Because it's an awful world." When the nurse asked why she did not kill herself instead, Simpson said, "I thought about it and tried, but I couldn't do it." (R. p. 155, lines 5-9.) The nurse was frustrated and asked Simpson how she could shoot her children and not herself. Simpson told him she tried but "it wouldn't shoot" and then decided to try to kill herself in a car accident the same way the young man had died before. (R. p. 155, lines 11-21.) Once the police noticed Simpson was talking to the nurse, they came back into the room. Simpson refused to talk after the police were present. (R. p. 156, lines 19-25.) The nurse was able to determine Simpson was alert, knew where she was and the time, and spoke clearly, but did not want to talk about the accident and shootings while the police were in the room. (R. p. 161, lines 6-15.)

While Simpson was receiving treatment, police rushed to the scene to check on the well-being of Michael Simpson and the children. (R. p. 164, lines 5-12.) The responding officer first noticed the open gun safe, with multiple firearms lying on the floor. (R. p. 169, line 17- p. 170, line 10.) The officer began to clear the house and found the bodies of Simpson's son and daughter in their bedrooms, both shot in the head. (R. pp. 166-168.) Michael Simpson was on the floor of the master bedroom, breathing heavily, but still alive. (R. p. 168, line 24 – p. 169, line 4.)

The little boy, who was still in his bed, had several gunshot wounds to the head, as did the little girl. In the little girl's room, there were also two bullet holes in the wall. In the master bedroom, officers saw multiple fired cartridge cases. (R. p. 184, lines 4-25.) In the kitchen, crime scene analysts found a still illuminated head lamp and a cell phone right nearby. (R. p. 186, line 5 – p. 187, line 2.) Analysts found .40 caliber spent casings on the floors of the children's bedrooms and 22 caliber casings on the floor of the master bedroom. (R. pp. 201-206.) Investigators later found the .40 caliber handgun at the scene of the wreck down the street. The gun ejected from the vehicle during the collision. (R. p. 208, lines 11-19.) The .40 caliber handgun was loaded with a magazine filled with .9 millimeter cartridges. (R. p. 209, lines 7-10.)

The Events Leading to the Shootings

On the day before the shooting, a friend of the couple, Nathan Stegall, stopped by the Simpson's house to borrow Michael's truck. (R. p. 271, lines 5-13.) Simpson could not find the key, so Stegall waited for Michael to return home with the spare key. (R. p. 272, lines 2-12.) While he waited, Stegall tried to initiate conversation with Simpson, but noticed she seemed angry. (R. p. 272, lines 15-25.) Stegall believed Simpson and her husband were arguing. (R. p. 273, line 22 – p. 274, line 2.) Stegall borrowed the truck, ran some errands, and returned the truck to Michael at the end of the day. (R. p. 275, line 9 – p. 333, line 15.) Later that evening, Stegall received a text message from Simpson that read, "Hell on earth?" (R. p. 277, lines 3-5.)

At the Simpson children's school, another parent saw Simpson in the school office the day before the shootings. (R. p. 282, lines 9-17.) The parent was checking his child out from school and walked in behind Simpson, who was withdrawing her daughter. (R. p. 283, lines 1-3.) When asked for the reason, Simpson said she was getting her daughter because her son was sick, and she was afraid her daughter might be sick, too. (R. p. 284, lines 11-16.) The little boy, who

was with Simpson, said, "I'm not sick, Mom." (R. p. 283, lines 3-6; p. 284, lines 9-16.) The parent noticed Simpson pacing back and forth and growing impatient. (R. p. 285, lines 1-8.) When the parent suggested the child probably needed to collect her backpack, Simpson replied, "Where she's going to go, she don't need no backpack." (R. p. 285, lines 10-21.) Simpson also appeared angry and snapped at the parent as they left the building with their children. (R. p. 286, lines 4-14.)

Simpson's mother in law, Allison, recalled an unusual conversation the night before the shootings in which Simpson asked her why her mother and father-in-law did not come to visit them much anymore. (R. p. 296, lines 1-3.) Allison recalled another unusual conversation with Simpson the previous year following her release from a behavioral care center. In the same month she was discharged, Michael left on a hunting trip, and Simpson called her mother in law asking if she thought Michael would return home to his family. (R. p. 298, line 17 – p. 301, line 8.)

Simpson's mother testified Simpson called her the day before the murders and asked her if her parents really wanted her. (R. p. 307, lines 1-14.) Later that day, Simpson called again and asked her mother if various relatives who were deceased were better off in heaven. (R. p. 307, line 19 – p. 308, line 4.) In another call Simpson spoke to her mother about the evils of the world and how you could not protect your children from those evils. (R. p. 308, lines 14-18.) When Simpson called her again that evening, her mother said Simpson sounded happy, saying she and her husband were going to seek marital counseling. (R. p. 308, line 23 – p. 309, line 5.) Later that evening, however, Simpson called her mother and said, "Mike's through with me. He thinks I can't take care of the children." (R. p. 309, lines 23-25; p. 322, lines 14-17.) When her mother pressed her for details, Simpson said her husband told her she stares into space all the time.

Simpson also told her mother the couple was not seeking counseling. (R. p. 310, lines 1-10.) Simpson told her mother she loved her and said she needed to go put the kids to bed. (R. p. 310, lines 7-10.)

Simpson's mother testified about an episode the previous year in which Simpson appeared to have a psychotic, paranoid break from reality following a trip to Ashville, North Carolina. (R. p. 313, line 2 – p. 315, line 10.) Simpson was hospitalized for five days after this episode. (R. p. 315, lines 5-13.) Simpson then transferred to the Carolina Center for Behavioral Health, where she remained for three more days. (R. p. 316, line 18 – p. 315, line 4.) Simpson's mother recalled several instances in which her daughter told her she believed the family was being watched. (R. p. 317, line 13 – p. 318, line 17.)

The Defense Presents Its Case

Dr. Leonard William Mulbry, one of the defense's expert, testified he met with Appellant three times and examined her medical records prior to the shootings. (R. p. 377, line 10 – p. 378, line 10.) Dr. Mulbry diagnosed Appellant with schizoaffective disorder bipolar type. (R. p. 380, lines 19-20.) Dr. Mulbry outlined her medical treatment in the years before the shooting, beginning with some mild depression in college, followed by episodes of post-partum depression. (R. pp. 383-385.) In 2010, Appellant began seeing Dr. Smith, a local psychiatrist, who treated Appellant with several medications in an effort to control her symptoms. (R. p. 386, line 15 – p. 387, line 12.)

According to her medical records and Dr. Smith's notes, Dr. Mulbry explained Appellant's moods began cycling through depression, sleeplessness, confusion, and paranoia. (R. p. 387, line 16 – p. 388, line 1.) Dr. Mulbry opined Appellant was unable to distinguish right from wrong at the time of the shootings. (R. p. 390, line 21 – p. 391, line 6.) On cross

examination, Dr. Mulbry said he examined Appellant nine months after the shootings and determined that at the time of his meetings with her, Appellant did know right from wrong. (R. p. 408, lines 1-11.) Dr. Mulbry also acknowledged he never consulted with Appellant's treating psychiatrist, Dr. Smith, instead, relying on Smith's notes for the basis of his opinion. (R. p. 408, line 12 – p. 409, line 7.) Dr. Mulbry said Appellant's prominent delusion around the time of her admission to the treatment facility in 2012 was that her mother in law was grooming the children to be victims of sexual molestation. (R. p. 410, lines 3-20.) Dr. Mulbry noted Appellant received treatment for her bipolar disorder at the Behavior Health facility, and she improved. (R. p. 411, line 5 – p. 469, line 17.) Appellant was also educated about her bipolar disorder and attended group sessions, where she would have been taught how to manage her medications and talk to her family about her symptoms. (R. p. 413, line 2 – p. 414, line 8.) In fact, when Appellant was discharged from the facility, her mood was improved, she had no hallucinations, no mention of concerns for the children, and no suicidal or homicidal ideations. (R. p. 417, lines 3-21.) In contrast with Dr. Mulbry's opinion, when Appellant was discharged in 2013, she was not diagnosed with schizoaffective disorder. (R. p. 418, lines 1-5.)

Dr. Mulbry admitted that during the period he believed she suffered from schizoaffective disorder in the hours before the shooting, he could not opine whether Appellant knew right from wrong when she lied to the officials at the children's school, interacted with the neighbor for about thirty minutes shootings, and had several conversations with her mother and mother in law. (R. p. 418, line 19 – p. 421, line 22.)

Appellant's second expert, Dr. David Price, also evaluated Appellant's "criminal responsibility" by reviewing her extensive medical records. (R. p. 436, line 15 – p. 437, line 16.) Dr. Price met with Dr. Smith, who first diagnosed Appellant as bipolar, having Attention Deficit

Disorder (ADD), and another unspecified anxiety disorder. (R. p. 442, line 24 – p. 443, line 4.) Dr. Price testified he discussed Appellant’s diagnosis with Dr. Smith and, “as part of reaching [his] opinion ... Dr. Smith agreed with [his] opinion.” (R. p. 443, lines 8-12.) Dr. Price also acknowledged Appellant was a patient of Dr. Smith when the shootings occurred. (R. p. 444, lines 6-14.) Dr. Price said Appellant told him about her paranoid ideations after the shootings occurred, but these paranoid thoughts were not documented in Dr. Smith’s notes at the time Appellant supposedly suffered from the delusions. (R. p. 453, line 8 – p. 454, line 3.)

Dr. Frierson, the court appointed psychiatrist, also diagnosed Appellant with Schizoaffective disorder, bipolar type. Dr. Frierson explained Appellant suffered from episodes of mania and depression, and also had bouts of delusional or paranoid thinking. (R. pp. 470-473.) These moods and abnormal thought processes could coincide or appear at different times. (R. p. 472, lines 10-18.) Dr. Frierson opined Appellant could not distinguish right from wrong at the time of the shootings. (R. p. 493, lines 16-19.)

On cross examination, Dr. Frierson agreed Appellant told the treating emergency room physician she did not tell her husband about her delusions because she was afraid he would “lock her up.” (R. p. 495, lines 1-9.) Appellant admitted to Frierson she did not tell Michael about the paranoid thoughts because it would upset him. (R. p. 495, lines 22-24.) Appellant also told Dr. Frierson she would take excessive amounts of her proscribed Adderall when she had an “important task to complete.” (R. p. 498, lines 14-16.) Dr. Frierson said he was surprised Dr. Smith’s records did not reflect Appellant’s extensive paranoid delusions. (R. p. 502, lines 16-24.)

HOW THE ISSUES PRESENTED AT TRIAL

Appellant’s Pre-Trial Motions

During pre-trial motions, Appellant moved for a directed verdict, arguing that once Appellant informed the State she intended to plead not guilty by reason of insanity, the State was then required to put Appellant on notice of an expert to rebut the claim of insanity. (R. pp. 23-29.) Because the State had not given Appellant notice of its intention to call an expert witness, Appellant argued the State would not meet its burden to prove guilt. (R. 24, line 6 – p. 25, line 24.)

The State responded by arguing the motion for a directed verdict was not appropriate as a pre-trial motion because the defense of insanity is an affirmative defense requiring Appellant to present some evidence. (R. p. 29, line 18 – p. 30, line 4; p. 31, lines 3-17.) The State also pointed out it was not obligated to give Appellant notice of an expert witness and an expert witness was not required to combat the affirmative defense of insanity. (R. p. 30, lines 5-20.) The trial court denied Appellant's motion for a directed verdict. (R. p. 33, lines 1-4.)

Appellant also sought to limit the opinion testimony of lay witnesses, again arguing the State could not prove its case Appellant was sane without expert testimony. (R. p. 41, line 12 – p. 44, line 12.) The State countered again that they could prove their case with lay witnesses, and with the testimony of the witnesses' perceptions of Appellant's actions. (R. p. 45, lines 8-17.) In denying Appellant's motion, the trial court compared the testimony of an officer being questioned about the potential intoxication of a driver, such as whether the driver appeared intoxicated, and the basis for the perception such as slurred speech or the smell of alcohol. (R. p. 45, lines 18-25.)

Appellant went on to argue the State could not prove through lay witnesses that Appellant had a mental impairment and, due to that mental impairment, could not conform her conduct to the requirements of the law. (R. p. 46, line 21 – p. 47, line 5.) The basis of the argument was the

jury could not “practice psychiatry” because they were not qualified to make that finding. (R. p. 47, lines 6-20.)

Solicitor Wilkins countered that the role of the jury is to make the factual determination of whether Appellant could conform her behavior based on the evidence presented and the trial court’s instruction on the law. (R. p. 48, lines 8-17.) The trial court then denied Appellant’s motion to limit the witness testimony, but noted the objection for the record. (R. p. 48, lines 18-20.)

Appellant next moved to bar the testimony of Appellant’s treating physician, Dr. Jeff Smith. (R. p. 50, lines 14-22.) Appellant’s expert consulted Dr. Smith and he was a known witness. Solicitor Wilkins informed the court he might ask to qualify him as an expert in psychiatry, but he was not sure how he would use his testimony yet. (R. p. 51, lines 1-10.) The solicitor also mentioned the emergency room physician who treated Appellant after the murders, but told the court that although he was not certain who exactly he would call and the extent of their testimony, he did not intend to call an expert unknown to the defense. (R. p. 51, line 12 – p. 109, line 1.)

Appellant indicated she was aware of both witnesses and understood the role they played in her treatment. (R. p. 52, lines 4-11.) The trial court decided to rule on any objections to the testimony at the appropriate time. (R. p. 52, lines 2-15.)

The Close of the State’s Case

At the close of the State’s case, Appellant again renewed her motion for a directed verdict, arguing the State had given the defense no notice of their intent to call an expert witness and thereby could not prove their case. The solicitor argued the law presumes the defendant is sane, and an affirmative defense requires them to prove by a preponderance of the evidence that

Appellant was insane at the time of the murders. (R. p. 343, lines 9-15.) After the defense shows that, the State must prove beyond a reasonable doubt that she was not sane. (R. p. 343, lines 13-15.) The solicitor went on to explain to the trial judge that Appellant filed a limited Rule 5 motion approximately three weeks before the trial. (R. p. 344, lines 20-25.) Because the defense filed a limited Rule 5 motion, the State was not entitled to reciprocal discovery. (R. p. 345, lines 1-3.)

The solicitor explained that days before the trial, the defense gave the State one report of their experts, and another expert would not talk to the solicitor. (R. p. 345, lines 3-16.) The trial court asked the solicitor if he intended to call an expert witness to reply to Appellant's defense she was insane at the time of the murders. (R. p. 346, lines 1-7.) The solicitor said he could not be sure without knowing how Appellant would present her case, but if it did call a witness, it would be one of Appellant's treating physicians, Dr. Jeff Smith. (R. p. 346, lines 16-21.) The trial court again denied Appellant's motion for a directed verdict. (R. p. 348, lines 5-7.)

The Close of the Defense's Case

At the conclusion of the defense's case, in which Appellant presented three witnesses who formed opinions based on Dr. Smith's records, the State informed the court it sought to call Dr. Smith as a reply witness. (R. p. 505, lines 2-11.) Appellant again renewed her motion for a directed verdict, then again argued 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. (R. p. 507, lines 1-16.) Appellant then went on to argue that she did not consent to Dr. Smith's testimony, nor had she waived her physician/client privilege. (R. p. 509, lines 17-22.) The trial court inquired whether it could order Dr. Smith to testify because his testimony would be relevant to the issue at hand. (R. p. 510, lines 4-14.)

The solicitor argued Appellant waived her privilege in accordance with S.C. Code § 44-22-90 when she released her medical records to her retained experts. The solicitor also argued the State was entitled to call Dr. Smith pursuant to Rules 703 and 705 because Appellant's expert's relied on Dr. Smith's treatment of Appellant in forming their opinions about her diagnosis. (R. p. 529, lines 6-10.) The solicitor said Dr. Smith would be qualified as a psychiatrist and as a fact witness to his treatment of Appellant in the years prior to the shootings. (R. p. 512, lines 1-9.) The solicitor told the court he also expected Dr. Smith to explain that Appellant's remediation within 48 hours of the shooting was atypical, and that he would not expect to see that in a patient with a true psychosis. (R. p. 512, line 15 – p. 513, line 6.)

Appellant argued Dr. Smith should not be permitted to testify whether Appellant knew right from wrong or could conform her behavior. (R. p. 513, lines 13-16.) The trial court replied, "Because you say he's not qualified to because he's not a forensic psychiatrist." (R. p. 513, lines 17-18.) The court informed Appellant he would make that determination after voir dire. (R. p. 513, lines 19-22.)

The Trial Court's Ruling on the Testimony

The following day, the State argued Dr. Smith was qualified to testify about Appellant's ability to conform her behavior to the requirements of the law because of his qualifications as a psychiatrist. The solicitor argued any distinction between a treating psychiatrist and a certified forensic psychiatrist would be a matter of weight for the jury to determine. (R. p. 538, line 18 – p. 596, line 23.) Appellant countered that it would be unethical for the State to call a treating physician to testify "in a forensic manner against his own patient." (R. p. 540, lines 6-13.)

The trial court issued several rulings. First, the court found the State was entitled to present reply evidence. (R. p. 540, lines 21-24.) The trial court also found Appellant waived her

privileged medical information because that information was used by three defense experts to aid in Appellant's defense. (R. p. 541, lines 7-17.) The trial court specifically made no finding concerning the manner SLED obtained Appellant's medical records. (R. p. 541, lines 18-22.) Judge Gibbons further ruled he would allow Dr. Smith to testify. (R. p. 541, lines 22-24.) The court also found Dr. Smith would likely be qualified in the expertise of psychiatry, and the court would make its determination of his qualifications as set forth in *State v. Council*. (R. p. 542, lines 1-25.) The trial court found that beyond its role as gatekeeper, it was the purview of the jury to weigh the credibility of the expert's opinion on the matter. (R. p. 543, lines 1-7.)

Voir Dire of Dr. Smith

During the State's voir dire, Dr. Smith testified he had been in private practice for twenty-eight years and exclusively treats patients of all ages and with a variety of diagnoses. (R. p. 554, lines 1-23.) As part of his practice, Dr. Smith must evaluate whether his patients suffer from mental illness and must determine their state of mind. (R. p. 555, lines 17-25.) Dr. Smith had given opinions on patients' criminal responsibility and their ability to conform their behavior. (R. p. 556, line 23 – p. 557, line 14.)

Dr. Smith's Testimony

Dr. Smith began treating Appellant in March of 2010. Over the course of his treatment, he saw Appellant as a patient 34 times. (R. p. 588, lines 4-17.) At times over the years, Appellant's condition appeared stable, and at other times Dr. Smith would adjust her medications to treat her three separate conditions: bipolar disorder, ADD, and anxiety. (R. p. 584, lines 7-17; p. 588, line 21 – p. 589, line 3.) Dr. Smith said 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. (R. p. 589, lines 1-8.) In fact,

in one of three instances in which Appellant admitted having paranoia, she also told Dr. Smith she had stopped taking her mood stabilizer. (R. p. 589, lines 11-17.) Dr. Smith said Appellant's decision to continue taking the stimulant medication for ADD without the stabilizer would significantly contribute to her psychosis. (R. p. 591, lines 1-4.)

Dr. Smith reviewed the report of Dr. Frierson, and he spoke to Dr. Price, but told Dr. Price that Appellant presented entirely differently in the 34 visits with Smith than she did during their evaluation. (R. p. 592, line 17 – p. 593, line 3.) Dr. Smith said he told Dr. Frierson, "it was like we were talking about two different individuals." (R. p. 593, lines 11-12.) Dr. Smith explained Appellant only complained, vaguely, of paranoid thoughts along the lines of "I think people are talking about me." (R. p. 593, lines 17-21.) Smith said the extensive delusions reported by Appellant and her family were never mentioned to him during the course of his treatment. (R. p. 593, lines 17-25.) Dr. Smith had no recollection of any family members accompanying Simpson to her visits. (R. p. 595, lines 11-13.) Dr. Smith noted the hospital records from the treating emergency room psychiatrist, who saw Appellant directly after the shootings, did not indicate Appellant wanted to kill herself or heard any voices. (R. p. 596, lines 1-23.) Further, the ER psychiatrist's description of her psychosis was not nearly as severe as the forensic psychiatrists' reports. (R. p. 596, line 23 – p. 597, line 2.) Further, Dr. Smith believed Appellant'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. In other words, typically, a functional psychosis such as schizophrenia, bipolar disorder with psychosis, or depression with psychosis would not react that quickly and positively to medication. (R. p. 597, lines 7-21.)

Dr. Smith also found it unusual for Appellant's five statements to her mother the day before the shootings to sound normal in one call, then psychotic in another. Dr. Smith said it would be unusual for someone who is psychotic to come in and out of psychosis throughout the day. (R. p. 598, lines 3-13.) Dr. Smith also pointed out the comment about her husband being "done with her" and her decision to withdraw the children from school indicated some organized planning on her part. (R. p. 598, line 18 – p. 599, line 5.) Dr. Smith opined Appellant knew right from wrong but was unable to conform her conduct to the behavior of the law. (R. p. 599, lines 14-17.)

ARGUMENT

- I. **The trial court properly admitted the testimony of Appellant's treating psychiatrist in the State's reply when Appellant placed her mental health at issue with an insanity defense, revealed the contents of the psychiatrist's notes during the defense's expert testimony, and waived her privacy interest in her remaining mental health records by disclosing that information to her experts.**

The crux of Appellant's first issue on appeal is her attempt to limit the testimony of her treating psychiatrist, even though three of her witnesses told the jury about the information in Dr. Smith's notes and then based their expert opinions on Dr. Smith's assessment of Appellant. In effect, Appellant sought to use Dr. Smith's notes and treatment to her advantage, but did not want the jury to hear Dr. Smith's interpretation of his own treatment notes. In support of this argument, Appellant claims she was not given notice of the basis of Dr. Smith's testimony, and suggests the State illegally obtained and seized her medical records from other treating physicians. However, although it was not required, the State notified Appellant it might call Dr. Smith, depending on the defense testimony. The only other documents Dr. Smith reviewed were medical records already in Appellant's possession. Simply put, no discovery violation occurred. Further, the State was entitled to Appellant's other mental health records when she waived

privilege in her records and submitted her information to her retained experts and the court appointed psychiatrist. By putting these experts on the stand, Appellant opened the door to Dr. Smith's testimony by presenting her mental health information to the jury. Appellant's efforts to limit Dr. Smith's testimony because of the actions of SLED¹ are merely a distraction. Had Appellant truly sought to suppress the information in her medical records as protected by her State and Constitutional privacy rights, she would not have presented that information to the jury via the testimony of her expert witnesses.

Standard of Review

The admissibility of the testimony of an expert on a fact in issue is largely within the discretion of the trial court. *Hundley ex rel. Hundley v. Rite Aid of S. Carolina, Inc.*, 339 S.C. 285, 295, 529 S.E.2d 45, 50-51 (Ct. App. 2000). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion. To warrant reversal, any error by the trial court in admitting or excluding expert testimony must result in prejudice." *State v. Cope*, 385 S.C. 274, 287, 684 S.E.2d 177, 184 (Ct. App. 2009).

- a) **The State was not required to disclose its expert, but did so as a curtesy, and was certainly not required to disclose the substance of the expert's testimony. The State committed no discovery violation because the expert's opinion was based, in part, on documents already within Appellant's possession and submitted to their own experts.**

Appellant's medical records were central to her defense of insanity. Appellant signed her waiver and HIPAA releases of her medical information shortly after trial counsel was appointed to represent her, and counsel received her records within 30 days. (R. p. 517, line 18 – p. 518,

¹ The provision of §44-22-90 and §44-22-100 protect communications with health care providers and limits the disclosure of the protected information. The statutes create penalties for the **provider** who violated these provisions, not for the recipient. See § 44-22-100(C). Appellant's reliance on this provision to attack the recipient of the records (SLED) is misplaced.

line 3.) Necessarily, Appellant's medical records were then disclosed to the defense experts and the court appointed psychiatrist to aid in the formation of their opinion. Indeed, Appellant already disclosed her medical records to her own expert and the court appointed expert in formulating her defense before the State's reply witness, Dr. Smith, requested the information. (R. pp. 603-604.) Appellant cannot argue the State violated Rule 5, SCRE and *Brady* by its failure to disclose the **documents** as the basis for Dr. Smith's opinion, when the documents were in the possession of the defense and were willingly submitted to numerous experts to prepare their assessment. Appellant appears to argue the State was required to disclose the exact opinion testimony of their expert, when the State is under no such obligation to do so.

It is well settled that an expert witness may state an opinion based on facts not within his firsthand knowledge. *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432 (1997); *State v. Franklin*, 318 S.C. 47, 456 S.E.2d 357 (1995); *Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1990). An expert may base his opinion on information; whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field to make opinions. *Halbersberg*, 302 S.C. at 97, 394 S.E.2d at 7. Also, an expert may testify as to matters of hearsay for the purpose of showing what information he relied on in giving her opinion. *State v. Slocumb*, 336 S.C. 619, 636, 521 S.E.2d 507, 516 (Ct. App. 1999) (finding Rules 703 and 705, SCRE "permit[s] the disclosure of otherwise hearsay evidence for the purpose of illustrating the basis of the expert witness' opinion."); *Halbersberg*, 302 S.C. at 97, 394 S.E.2d at 7 (citing *United States v. 5139.5 Acres of Land in Aiken and Barnwell Counties*, 200 F.2d 659 (4th Cir. 1952)).

With respect to notice to the defense, the State is not required to provide its witness list to a criminal defendant, and the disclosure of a witness to the defense before trial is nothing more

than a professional courtesy. *State v. Nicholson*, 366 S.C. 568, 579, 623 S.E.2d 100, 105-106 (2005). There is no right to discovery in a criminal trial in South Carolina beyond what is provided by statute, case law, or court rule. See *State v. Miller*, 289 S.C. 316, 317, 345 S.E.2d 489, 490 (1986); *State v. Flood*, 257 S.C. 141, 184 S.E.2d 549 (1971) (holding there is no general discovery in criminal cases in South Carolina). See also, *Brady v. Maryland*, 373 U.S. 83 (1963) (requiring the State to divulge to a criminal defendant material exculpatory or mitigating information); Rule 5, SCRCrimP (requiring the State to disclose, upon request of the defendant, certain statements of the defendant, the defendant's prior record, certain documents and tangible objects, and certain reports of examinations or tests and witnesses to be called in response to an alibi defense).

The *Nicholson* case is instructive. In *Nicholson*, the State intended to call an expert to testify about the general characteristics of a sex abuse victim. *Nicholson*, 366 S.C. at 579, 623 S.E.2d at 105. The State provided notice of the expert to the defendant, but the defendant requested a continuance claiming the notice was too close in time to trial for him to fully prepare his defense. *Id.* The Court of Appeals found the trial court acted within its discretion in denying the motion for a continuance, finding the notice provided to the defendant was a "professional courtesy" because a witness list is not required to be provided. *Id.* at 579, 623 S.E.2d at 105-106. Here, the defense was fully aware of Dr. Smith as a potential witness because he was the only treating psychiatrist of Appellant. Further, the defense's own experts relied on Dr. Smith's records in performing their evaluation. Dr. Price even sought out Dr. Smith to discuss the case. The solicitor informed the court he might call Dr. Smith, depending on the defense's evidence, but he could not be certain. *Nicholson's* holding should apply here when the professional courtesy was extended but not required.

In the instant case, Dr. Smith reviewed the following information: 1) Dr. Smith's own clinical notes from Appellant's 34 visits; 2) the treatment notes of the emergency admission to St. Francis hospital in 2012, provided by the State; 3) the treatment notes of Appellant's subsequent admission to the Carolina Behavioral Health Center in 2012, provided to him as a matter of practice because he was her treating psychiatrist; 3); the emergency room notes of Dr. Harris, provided by State; and 4) the reports of Dr. Frierson, the court appointed psychiatrist, and Dr. Price, the defense retained expert, provided to him by the defense's expert. (R. p. 563, line 18 – p. 564, line 10.) The documents provided by the State, Appellant's emergency room notes in 2012 and the day of the shootings, were provided by the State after Dr. Smith was subpoenaed in the days before the trial. (R. p. 562, lines 1-9, p. 605, lines 13-24.) Further, Dr. Smith was not subpoenaed until after he discussed Appellant's case with Dr. Price. (R. p. 565, lines 3-14.) Dr. Smith denied he received any records from SLED in his review of Appellant's case. (R. p. 566, lines 16-21.) In sum, Dr. Smith did not review Appellant's St. Francis and emergency room records, the only documents provided by the State, until long after Appellant submitted those same records to her own experts and the court appointed expert.

Appellant argues the State was required to disclose the basis of Dr. Smith's opinion, pursuant to Rule 5 and *Brady*, but the law does not support this contention. Rule 5 does not obligate the solicitor to notify the defendant of the substance of the expert's testimony, particularly when the expert is relying on information within Appellant's possession. Further, the record does not reflect that Appellant requested the State provide copies of her own medical information in accordance with Rule 5, presumably because Appellant already had that information within her control. Instead, Appellant argues the State was required to disclose whether Dr. Smith took her medical records into consideration. However, even if the State had

disclosed the entire basis for Dr. Smith's opinion, upon Appellant's request, the disclosure still would not have informed Appellant of Dr. Smith's opinion.

Further, Appellant cannot show she was prejudiced by the State's failure to disclose the basis for Dr. Smith's opinion. Determining whether evidence withheld by the state should have been disclosed under *Brady* turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *State v. Hill*, 368 S.C. 649, 661, 630 S.E.2d 274, 280 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419, 433 (1995)). The information in Appellant's medical records was clearly within the possession of Appellant. Her witnesses presented that information to the jury. She cannot show that had she known Dr. Smith would base his opinion on that information, she would have changed the proceedings at trial and opted not to call her defense experts.

In sum, although the State was not required to turn over the information prior to trial, Appellant's counsel was well aware of the possible expert testimony available for reply by the State. The solicitor committed no discovery violations for failing to disclose the basis for Dr. Smith's opinion, particularly when that basis was the same information presented to the defense witnesses.

- b) Appellant waived her privacy interest in her mental health records when she consented to the disclosure of the medical records to her experts and opened the door to her mental health by placing it at issue before the jury.**

Appellant opened the door to the disclosure of the privileged information within her medical records when she raised the defense of insanity. The Court implicitly found she waived the statutorily protected information when he ordered the appointment of a psychiatrist to

examine Appellant following notice of her defense of insanity, pursuant to S.C. Code Ann. § 44-22-90(A)(4) and §44-22-100 (A)(2). Later, at trial the Court again found Appellant waived her confidential communications with her treating physician by presenting that evidence to the jury through the testimony of the defense experts, pursuant to S.C. Code §19-11-95. Even if the trial court erred in making such a finding, there can be no prejudice when Appellant relied on these records and the testimony of corroborating witnesses in presenting her case to the jury. Because Appellant waived her claim of privilege in her records and her confidences to her treating physician, Appellant's argument SLED obtained her records improperly had no bearing on the issue before the trial court.

Two things are evident from the record: 1) SLED submitted a form requesting medical information from Appellant's providers and the form cited an inapplicable state statute,² and 2) the solicitor's office was unaware of the document submitted by SLED to Appellant's providers. (R. pp. 516-526.) What is not clear from the record is whether the hospitals complied with the request in violation of S.C. Code Ann. § 19-11-95, whether SLED obtained the records via warrant or other means at a later time, or whether the hospitals complied with the request from SLED only after consulting Appellant's signed release to her defense attorneys. Appellant made no request for a suppression hearing, no records custodian from the hospital testified about when the documents were disclosed, and no representative from SLED testified about how the information ultimately came into its possession. The trial court specifically refrained from

² The Child Fatality Unit with SLED is empowered to "expeditiously investigate child deaths in all counties of the State" in accordance with S.C. Code Ann. §63-11-1940. S.C. Code Ann. § 63-11-1960 authorizes the unit to obtain the medical records of a child whose death is being reviewed by the department. Here, SLED did not request the children's records, but Appellant's.

making a finding on that issue undoubtedly because the evidence before the court supporting Appellant's claim was inadequate to make that determination. (R. p. 541, lines 18-24.)

However, the trial court did find Appellant waived her privilege to protect her medical information by disclosing the information to her own experts, then calling those experts to testify to the contents at trial:

All right. First of all, after considering all arguments of counsel, I am going to allow the State to present reply evidence. I believe the statutory scheme is clear.

Again, I make this decision taking seriously into consideration the defendant's position of fundamental due process possible violation with the way the statutory scheme is drafted of burden shifting. Okay. I understand that 100 percent. But I'm constrained by the arguments and by fundamental fairness both -- well, to the State as well to allow the reply testimony.

All right. Having considered -- having ruled that I am going to allow the reply testimony, I specifically find for the record that the privilege, if -- the privilege that Ms. Simpson would have had with the doctor that's going to be testifying for the State has been waived.

(R. p. 540, line 21- p. 541, line 7-17.)

The court's finding that Appellant's mental health record was necessary for the conduct of the proceedings, both prior to trial and following the defense's case, were supported once Appellant opened the door to her mental health by claiming an insanity defense. The State became entitled to Appellant's mental health records from her admission to St. Francis in 2012 and her emergency room records when the trial court ordered the appointment of a psychiatrist to examine Appellant. *See* S.C. Code Ann. § 44-22-90 (A)(4)(allowing disclosure of information related through the course of a court-ordered psychiatric examination); *and* S.C. Code Ann. § 44-22-100 (A)(2) ("mental health records may be disclosed when a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest.") Further, S.C. Code Ann. § 19-11-95 (D) (mandating disclosure by court order when the patient's mental illness are reasonably at issue in a proceeding) authorized the trial court to find Appellant waived her confidences in Dr. Smith. In allowing Dr. Smith to

testify, the trial court found Appellant placed the issue of her mental health squarely before the jury.

The concept of waiver by opening the door to mental health claims has been explored in our common law. For example, the Supreme Court has found where insanity is interposed as a defense in a criminal prosecution, compulsory examination of the accused by experts for the purpose of determining his mental condition does not violate either the constitutional protection against self-incrimination or the constitutional guaranty of due process of law. *State v. Locklair*, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000) (citing *State v. Myers*, 220 S.C. 309, 67 S.E.2d 506 (1951)). Although Locklair claimed an unlawful intrusion into his constitutional right to due process, the Court found he waived that right with the nature of his defense. Similarly, in *State v. Bixby*, the defendant informed the court before his capital trial that he intended to present mitigation evidence concerning his mental health. *Bixby*, 388 S.C. 528, 557, 698 S.E.2d 572, 587 (2010). The court then ordered a mental health evaluation. *Id.* Bixby argued the compulsory mental health evaluation violated his Fifth Amendment right against self-incrimination. The Supreme Court disagreed, finding Bixby opened the door to his mental health issues. *Id.* at 559, 698 S.E.2d at 588. Applying the logic of *Locklair* and *Bixby*, if the defense can open the door to mental health issues, and thereby waive a constitutional protection, Appellant can certainly waive any statutory protection of her otherwise confidential communications with her treating physician.

With respect to the underlying mental health records, the Court has offered recent guidance in *State v. Blackwell*, 801 S.E.2d 713, 2017 WL 2350965, which was filed May 31, 2017, almost one year after Appellant's trial. In *Blackwell*, the South Carolina Supreme Court recognized the dearth of case law on this issue and outlined a new procedure for the disclosure of

privileged mental health records in accordance with S.C. Code Ann. §44-22-100(A). Specifically, the Court addressed the circumstances in which the witness (patient) did not consent to the release of medical information, but a party sought access to the records by court order after a finding the disclosure necessary for “public interest.” *Blackwell*, 801 S.E.2d at 727; S.C. Code Ann. § 44-22-100 (A)(2). The Court said:

If the witness does not consent, the judge alone should review the contents of the records to determine whether “disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest.” *Id.* § 44-22-100(A)(2). In making this determination, the judge should assess the importance of the witness to the prosecution's case and whether the records contain exculpatory evidence, including, but not limited to, evidence relevant to the witness's credibility.

Id. at 727-728 (emphasis added). Significantly, in *Blackwell*, the witness whose medical records were the subject of the opinion was not the defendant, but one of the victims of the defendant's crime. Blackwell murdered an eight year old child in front of the witness, then sought the witness's access to the mental health records of the therapist treating the victim after the murder. *Id.* at 725. Though the circumstances of the case at hand are vastly different, *Blackwell* is helpful because the Court recognized the policy interest in balancing the relevance of the mental health records to both the State's and the defense's cases. Of course, the trial court must make this determination only if the witness **does not consent**.

Intuitively understanding this rationale, the trial court in Appellant's case found Appellant constructively consented to the release of her medical records when she raised insanity as a defense and turned over her information to defense experts. In his reasoning, the court also performed the kind of balancing test outlined in *Blackwell* in noting, as a matter of “fundamental fairness,” Appellant used the records “to help establish her defense” and “opened the door” for the State to use the evidence. (R. p. 541, lines 5-16.)

Other jurisdictions state this rationale more precisely. In Washington, a defendant who raises the insanity defense has “abandoned his right of medical privacy and waived the statutory physician-patient privilege as to any medical testimony which tends to contradict or impeach his medical evidence.” *State v. Brewton*, 744 P.2d 646, 647 (1987) (the “assertion of a privilege would deprive the State, and ultimately the jury, of important evidence on that issue.”) Confidentiality remains important, but a patient who could select among various physicians’ opinions, and claim privilege as to the remainder, would make a mockery of justice. *State v. Tradewell*, 515 P.2d 172, (1973). Iowa and California have recognized the absurdity of a rule recognizing the privilege in such cases, and have required disclosure. See e.g., *State v. Cole*, 295 N.W.2d 29, 35 (IA, 1980) and *People v. Arcega*, 651 P.2d 338, 348 n. 8, (Ca. 1982) (referring to a statutory exception to the physician-patient privilege for patients who place their medical condition in issue.)

Although in South Carolina, *Locklair*, *Bixby*, and *Blackwell* did not confront this exact issue, South Carolina’s rules of discovery and statutory framework for disclosure support this policy. Rule 705, SCRE allows a party to require the disclosure of the underlying facts or data supporting an expert opinion. The South Carolina Court of Appeals confronted the admissibility of protected information under this rule in *State v. Slocumb*, 366 S.C. 619, 521 S.E.2d 507 (1999). In *Slocumb*, the Court discussed the disclosure of otherwise inadmissible evidence of prior bad acts referenced in a psychiatric report when the defendant put his mental health at issue by raising an insanity defense to a criminal sexual conduct charge. *Slocumb* sought to restrict the cross examination of his own defense expert when the State tried to cross-examine the expert on an inconsistent juvenile mental health assessment considered, but disregarded, by the expert.

The Court found the earlier assessment, which addressed Slocumb's prior bad acts, would ordinarily be inadmissible as prejudicial. The Court cited Rule 705, SCRE, and reasoned:

The State's cross-examination focused on establishing that Slocumb was sane, and the records were directly related to an evaluation of Slocumb's state of mind. Furthermore, the State in its case-in-chief did not refer to these incident reports nor did it attempt to admit Slocumb's prior criminal sexual conduct conviction for which he was incarcerated at DJJ. *See State v. Faulkner*, 274 S.C. 619, 266 S.E.2d 420 (1980) (Although the State may not attack a criminal defendant's character unless he or she places it in issue, relevant evidence properly admissible for other purposes need not be excluded merely because it incidentally reflects on his or her character.)

State, at 632–33, 521 S.E.2d at 514. In other words, a defendant who seeks to claim mental incapacity may open the door to otherwise inadmissible content within those records.

Finally, Appellant can show no prejudice from the trial court's decision to allow Dr. Smith's testimony based on her underlying mental health records from other facilities. Appellant called three expert witnesses, Dr. Frierson, Dr. Mulbry, and Dr. Price, to testify about their opinions of her mental health after reviewing her records from Dr. Smith. The defense experts explained to the jury the portions of Dr. Smith's records they found relevant to their opinions. Appellant cannot show how Dr. Smith revealed information to the jury that was not previously revealed through the defense witnesses. Any error in allowing Dr. Smith's testimony about these records was harmless beyond a reasonable doubt. *See State v. Terry*, 339 S.C. 352, 360, 529 S.E.2d 274, 278 (2000)(when a defendant offers protected medical records as mitigation evidence, he cannot claim prejudice from the disclosure of the records pursuant to §44-22-100).

The State was entitled to Appellant's mental health records via the rules of discovery, common law, and statutory law. Any attempt by SLED to gain access to that information under an inapplicable state statute has no relevance to whether the State was entitled to call Dr. Smith to testify in reply. Appellant's affirmative defense of insanity, based in large part of the treatment

notes of Dr. Smith, created the necessity for the State to call Dr. Smith to explain. Appellant's attempts to distract the Court with SLED's actions, which were never developed on the record below, should not be confused as trial court error.

c) Appellant's Fourth Amendment rights were not violated by the testimony of Dr. Smith because her mental health records were not seized and she did not seek suppression of the records' contents.

Lastly, Appellant's contention the Dr. Smith's testimony should not have been allowed because SLED violated Appellant's Fourth Amendment right is also without merit. The trial judge specifically declined to make a finding the records obtained by SLED were a search or a seizure in violation of Appellant's Fourth Amendment rights. (R. p. 541, lines 18-24.) Based on the record, SLED sent the medical providers a form letter saying it was entitled to Appellant's mental health records. (R. pp. 518-519.) Whether the providers complied with that request, and whether the providers considered Appellant's release of her medical records before voluntarily submitting that information to SLED was not presented to the trial court.

The Fourth Amendment itself provides no remedy for a violation of the warrant requirement, but the United States Supreme Court fashioned the exclusionary rule, a deterrent sanction whereby the State is barred from introducing evidence obtained in violation of the Fourth Amendment. *Davis v. United States*, 564 U.S. 229, 237 (2011). A Fourth Amendment seizure "deprives the individual of dominion over his or her person or property." *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011). However, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, then the deterrence rationale has so little basis that the evidence should be received." *See Nix v. Williams*, 467 U.S. 431, 432 (1984).

Here, Appellant did not request, nor did the trial court conduct, a suppression hearing on the medical records. As discussed in the preceding section, the State was entitled to Appellant's medical records, and was entitled to call Dr. Smith as a reply witness. Appellant was not deprived of dominion over her property because she did not possess the records in question. Further, Appellant did not actually seek the suppression of the records, or even expert testimony based on the contents of the record. That suppression would have surely disqualified her experts from offering opinions on her behalf. Instead, Appellant sought to suppress Dr. Smith's opinion on the basis of Appellant's record. In other words, Appellant does not object to the disclosure of the information in her medical records to expert witnesses. Nor does she object to the information in her medical records being presented to the jury. Appellant's Fourth Amendment violation claim is neither supported by the record, nor an appropriate claim of exclusion to Dr. Smith's testimony.

In this case, the same information in the medical records was used in defense of Appellant's actions and to condemn it. The experts' interpretation of that information resulted in vastly different conclusions, which the jury was free to give whatever weight it choose in determining Appellant's guilt. Despite her assertions the medical records were improperly obtained, Appellant did not and does not want this court to suppress the medical records, or the information contained therein. Instead, Appellant asks this Court to suppress only the expert testimony of Dr. Smith because he disagreed with Dr. Price and Dr. Frierson. The Fourth Amendment does not protect Appellant's interest in stacking the deck in her favor, nor does fruit of the poisonous tree doctrine allow for such a selective remedy.

II. The trial court properly sustained the State's objection to the defense witness' bolstering of his own testimony by claiming the State's expert "agreed with his opinion," when Dr. Smith's purported agreement was not used as a basis for Dr. Price's opinion of Appellant's sanity.

All of the defense's expert witnesses relied on Appellant's medical records during her treatment by Dr. Smith to form their opinions on Appellant's sanity. To his credit, Dr. Price was the only expert who sought out Dr. Smith to discuss Appellant's case before testifying at Appellant's trial. Although he discussed his opinion with Dr. Smith, logic requires Dr. Price to have formed an opinion on Appellant's mental capacity before Dr. Smith "agreed" with his conclusion. Accordingly, Dr. Smith's purported agreement was not the basis for Dr. Price's opinion. The only explanation for Dr. Price's testimony that Dr. Smith agreed with him was to bolster Dr. Price's credibility before the jury. In fact, Dr. Smith explained the limitations of his agreement when he testified in reply. Dr. Price's testimony was thus properly objectionable as not fitting with the hearsay exception for the basis of expert testimony, and the trial court committed no error.

Expert witness testimony is a widely-recognized exception to the rule against hearsay testimony. See *U.S. v. Williams*, 447 F.2d 1285, 1290 (5th Cir 1971) ("The rationale for this exception to the rule against hearsay is that the expert, because of his professional knowledge and ability, is competent to judge for himself the reliability of the records and statements on which he bases his expert opinion."); *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432, 436 (1997) ("An expert's opinion is derived not only from records and data, but from education and from a lifetime of experience. Thus, when the expert witness has consulted numerous sources, and uses that information, together with his own professional knowledge and experience, *to arrive at his opinion*, that opinion is regarded as evidence in its own right and not as hearsay in disguise." (emphasis added)).

The trial court allowed Dr. Price to testify to the numerous details about Appellant's prior treatment. Dr. Price discussed details such as the events that led to Appellant's prior emergency

hospitalization. The contents of the records Dr. Price examined were properly within the hearsay exception enumerated above. However, when Dr. Price tried to suggest Dr. Smith supported his conclusions, Dr. Price's testimony crossed the line. As the record indicates, Dr. Price has already formed his opinion on Appellant's sanity when Dr. Smith purportedly agreed with him:

Q Did you have an opportunity to review Dr. Smith's records and also have an interview with Dr. Smith about this patient?

A I had time to meet with Dr. Smith, I have reviewed all of his records and had time to talk about Anna, his treatment, things that happened. And as part of reaching my opinion and actually, well, within that meeting, Dr. Smith agreed with my opinion.

MR. WILKINS: Objection, Your Honor. He's about to opine as to what another doctor has – diagnosis or –

THE COURT: Objection as to hearsay.

MR. MAULDIN: Well, the evaluator obviously talked to tens of people, that he is relating what they told him about the person being evaluated. I don't know how --

THE COURT: Is this something that was contained in the records?

THE WITNESS: It's what he told me directly, Your Honor.

MR. WILKINS: It's not in his medical records. It's what he told him.

THE COURT: All right. Objection sustained.

BY MR. MAULDIN:

Q Don't say what Dr. Smith told you unless it actually is contained in Dr. Smith's records. Okay?

(R. p. 443, line 5 – p. 444, line 5:)

Here, the State objected, appropriately, to Dr. Price's testimony that Dr. Smith agreed with his opinion, which necessarily indicates Price formed his opinion after reviewing Smith's notes, perhaps sometime during his discussion with Smith at the latest, but *before* Smith "agreed with [his] opinion." Price's statement was an unnecessary attempt to bolster his credibility before the jury, did not fit within the hearsay exception for expert testimony.

A witness is not permitted to vouch for the credibility of another witness by offering testimony that bolsters the testimony of another witness. *See State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012). The prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain “the assessment of witness credibility ... within the exclusive province of the jury.” *Id.* at 464, 725 S.E.2d at 141; *see also Maddox v. State*, 275 Ga.App. 869, 622 S.E.2d 80 (2005) (“improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror.”). The ultimate issue for the jury in this case was Appellant’s sanity at the time she shot her family. Dr. Price’s testimony another expert agreed with his assessment of her sanity served no other purpose than to convince the jury he was correct about the ultimate issue of fact for the jury.

Even if the statement had been admissible, Appellant cannot show she was prejudiced by the trial court’s refusal to allow Appellant to question Dr. Price on Dr. Smith’s opinion. First, the State objected after Dr. Price told the jury Dr. Smith agreed with him, so Appellant obtained the benefit of the jury hearing Dr. Smith concurred with Dr. Smith’s assessment. Second, Appellant cannot argue she was denied an opportunity to expound on Dr. Smith’s agreement with Dr. Price, because she had the opportunity to question Dr. Smith about any agreement when he took the stand in reply. Further, when Dr. Smith testified, he discussed the meeting he had with Dr. Price, in which Price told Dr. Smith his findings. (R. p. 592, lines 16-21.) Dr. Smith said he told Dr. Price, “Well, based on upon what you were seeing at that time, I can see how you arrived at your decision.” (R. p. 592, lines 22-24.) Dr. Smith went on to say he adamantly told Dr. Price Appellant presented entirely differently in the 34 visits he had with her, and there was “nothing

similar in clinical presentation.” (R. p. 593, lines 1-3.) Thus, Dr. Smith explained the underlying circumstances in which he agreed with Dr. Price’s conclusion on the basis on what Dr. Price reviewed, but put that agreement within the framework of the larger conversation about Appellant. Thus, Appellant cannot show she was prejudiced by the trial court’s refusal to allow Dr. Price to testify about Dr. Smith’s opinion, unless she also concedes she sought to distort the context of the agreement before the jury.

III. The State presented substantial evidence Appellant shot her husband and children while knowing right from wrong and with the ability to conform her conduct to the requirements of the law when Appellant failed to disclose her purported delusions to her doctor, understood the consequences of failing to take her medication, remediated quickly following the resumption of medication, carefully chose the order of and weapon for her victims, evasively answered questions in front of law enforcement, and staged an attempted suicide.

Appellant argues the trial court erred in denying her motion for a directed verdict because the evidence at the close of the State’s case and the defense’s case failed to show Appellant knew right from wrong when she killed her two children and attempted to kill her husband. Despite Appellant’s assertions, sufficient evidence supported submitting the case to the jury. In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The evidence showed Appellant concealed her purported delusional thoughts from her family and physician, meticulously shot her family in the order of strongest to weakest, concealed her crimes from first responders, and staged an attempted suicide. Even without the benefit of Dr. Smith’s testimony, the jury had ample evidence of Appellant’s sanity at the time of the shootings. Appellant’s motion for a directed verdict was properly denied.

In ruling on a motion for a directed verdict, the task of the trial court is to simply determine “whether the evidence presented is sufficient to allow **a reasonable juror** to find the

defendant guilty beyond a reasonable doubt.” *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016) (emphasis added). “[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury.” *Bennett*, 415 S.C. at 236-37, 781 S.E.2d at 354 (citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955); see also *Crawford v. United States*, 375 F.2d 332, 334 (D.C. Cir. 1967) (“The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court’s consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.”). Further, “a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402, 409 (2013).

It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, 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. See S.C.Code Ann. §17-24-10(A). However, a defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. See S.C.Code Ann. §17-24-20(A).

The State clearly presented sufficient evidence to convince a reasonable juror that Appellant shot her children and her husband. Appellant admitted to her neighbor, the EMS

worker, the nurse at the hospital, and the defense experts that she was the perpetrator of the crime. Appellant then raised the affirmative defense of not guilty by reason of insanity. The burden shifted to Appellant to prove by a preponderance of the evidence her culpability should be mitigated by reason of her mental illness to a finding of guilty but mentally ill, or not guilty by reason of insanity. Therefore, the question whether Appellant was entitled to a directed verdict and a new trial turns on whether there was any evidence during the State's case in chief from which a jury could find Appellant was capable of recognizing her actions as morally or legally wrong. Appellant mistakenly claims the only evidence of her sanity was offered by the expert witnesses. However, this argument ignores the testimony of the lay witnesses during the State's case who observed Appellant in the moments before and after the crime. In its case in chief, the State presented the following evidence showing Appellant understood right from wrong:

- 1) Appellant withdrew her children from school the day before she killed them, lying to the school officials by claiming her children were sick. (R. pp. 282-285.)
- 2) Stegall testified Appellant seemed irritated with her children and her husband, not worried for their safety because of a delusion someone was going to hurt them. (R. pp. 271-273.)
- 3) Appellant rose early in the morning to commit the crime, even wearing a headlamp to find her way around the darkened house before her family awoke. (R. pp. 186, 393.)
- 4) Appellant shot her husband first with a .22 caliber handgun, presumably so he could not prevent her from killing the children. (R. p. 393.)
- 5) Upon her failure to kill Michael quickly, Appellant chose another larger caliber weapon to shoot her children. (R. pp. 183-203.)

- 6) Appellant's shot each victim multiple times in the head. (R. p. 184, 335)
- 7) Appellant turned off the alarm to the house at 4:48 am so the police would not be summoned. (R. p. 327.)
- 8) Appellant refused to answer her neighbor's questions about the whereabouts of her family. (R. p. 129-131.)
- 9) When she supposedly tried to kill herself, Appellant chose a path through the woods where a driver had previously been killed in a car accident, yet she avoided striking the large tree which killed the driver before. (R. pp. 136-138.)
- 10) Appellant refused to talk to the emergency room nurse while law enforcement officers were near or in her treatment room. (R. pp. 154-156.)

When a defendant presents evidence in his own defense, he waives the right to limit the appellate court's consideration of the denial of his motion for directed verdict to only the evidence presented in the State's case-in-chief. *See State v. Hepburn*, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013). For this Court's review accordingly, the State presented the following evidence in its case on reply:

- 1) Appellant either did not suffer from extreme paranoid delusions, or if she did, she understood she needed to conceal them from her psychiatrist. (R. p. 593, line 17 – p. 594, line 11.)
- 2) Appellant understood the consequences of failing to take her medication. (R. p. 589, lines 9-17.)
- 3) Appellant may have continued to take her Adderall even after discontinuing her mood stabilizer. (R. p. 589, lines 4-8; p. 590, lines 21-25; p. 591, lines 1-4.)

4) Appellant remediated quickly after her medications were administered in an institutional setting, indicating any psychosis was medication induced. (R. p. 597, lines 3-21.)

Although the defense presented experts who opined Appellant did not know right from wrong, the jury was not required to give the expert testimony greater weight than that of the lay witnesses. Indeed, expert testimony is not required to rebut the presumption of insanity. *State v. Pitman*, 373 S.C. 527, 545, 647 S.E.2d 144, 153 (2007); *State v. Poindexter*, 314 S.C. 490, 494, 431, S.E.2d 254, 256 (1993); *State v. Smith* 298 S.C. 205, 379 S.E.2d 287 (S.C. 1989) (finding the State is not required to produce expert testimony to prove sanity; lay testimony may be sufficient.)

In *Pitman*, the South Carolina Supreme Court found lay testimony about Pitman's calm demeanor the day after he murdered his grandparents as he relayed his cover up story to investigators was sufficient to present a question for the jury as to Appellant's mental capacity. 373 S.C. at 547-548, 647 S.E. 2d at 154-155. In *Poindexter*, the State presented lay testimony showing Poindexter fled the state after murdering the victim. 314 S.C. at 493, 431 S.E.2d at 256. Hours later, Poindexter appeared normal and was cooperative during his arrest. *Id.* The State also showed Poindexter's co-workers noticed he became quieter and more reclusive and that his work quality decreased. The Court found the jury could have deduced Poindexter had the capacity to understand it was morally or legally wrong to commit the murder, saying, "the jury was free to rely on circumstantial evidence to find Poindexter sane even though expert testimony favored a finding that he was insane." *Id.* at 494, 431 S.E.2d at 256 (citing *State v. Smith*, 298 S.C. 205, 379 S.E.2d 287 (1989); *State v. Milian-Hernandez*, 287 S.C. 183, 336 S.E.2d 476 (1985)).

Here, the State presented evidence of sanity in its case-in-chief, and then again offered evidence of sanity during its case in reply. Where there is any evidence tending to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced, the refusal to direct a verdict or grant a new trial is not error. *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983). Viewing the evidence in the light most favorable to the State, a reasonable juror could conclude from Appellant's actions and statements that she knew right from wrong and could conform her behavior to the requirements of the law. The trial court committed no error in denying the motion for a directed verdict.

IV. Dr. Smith's qualification as an expert in psychiatry allowed him to opine on Appellant's criminal responsibility, even though he was not qualified as an expert in forensic psychiatry, because Dr. Smith had the requisite knowledge and skill to offer his opinion of Appellant's capacity to distinguish right from wrong.

In her claim Dr. Smith was not qualified to offer an opinion on her capacity to know right from wrong or conform her conduct, Appellant echoes a claim she made throughout her trial: A finding of incapacity requires the jury to "practice psychiatry," which she claims they are unqualified to do. (R. p. 47, lines 6-14.) Similarly, Appellant's objection to Dr. Smith's testimony focused solely on Dr. Smith's opinion concerning the ultimate issue at trial: did Appellant know right from wrong and could she control herself? Appellant mistakenly believes the determination of this question can be made only by experts qualified in forensics psychiatry. However, South Carolina law rejects this contention.

In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Watson v. Ford Motor Co*, 389 S.C. 434, 446, 699 S.E.2d 169, 175. Second, the expert must have "acquired the requisite

knowledge and skill to qualify as an expert in the particular subject matter,” although he “need not be a specialist in the particular branch of the field.” *Id.* Finally, the substance of the testimony must be reliable. *Id.* In the case before the court, neither the State nor the defense seriously disputed whether the subject matter of Appellant’s psychiatric condition was beyond the ordinary knowledge of the jury. Appellant does not challenge the reliability of psychiatric treatment as a particularized discipline of medicine. Instead, Appellant argues Dr. Smith was not qualified to testify to Appellant’s capacity to distinguish right from wrong or conform her conduct to the law. (R. p. 537, line 18 – p. 538, line 4.)

While an expert’s qualification generally goes to weight of his testimony and not its admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). If the proffered testimony is scientific in nature, then the circuit court must determine its reliability per the factors set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). The trial court correctly identified this standard, and specifically applied the *Council* factors to the testimony given at the pretrial hearing. (R. pp. 579-582.)

With respect to Dr. Smith’s qualifications in particular, the qualification of an expert witness and the admissibility of the expert’s testimony are matters largely within the trial court’s discretion. *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993). A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). To present expert testimony, a party must show the witness possesses through either study or experience the knowledge or skill in a business, profession, or science making him or her better qualified than the jury to form an opinion on the particular

subject in question. *Hall v. Clarendon Outdoor Advertising, Inc.*, 311 S.C. 185, 428 S.E.2d 1 (Ct.App.1993).

Appellant claims Dr. Smith was not qualified to give an opinion on **forensic** psychiatry. However, in the case of psychiatry, the treating physician's opinion on the patient's mental health is critical to the everyday care of the patient; it is not solely for forensic purposes. "It has been said that a forensic interviewer's purpose is to prepare for trial." *State v. Kromah*, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013); *See State v. Blue*, 717 N.W.2d 558, 564 (N.D.2006) (observing "[t]he forensic interviewer's purpose was undoubtedly to prepare for trial" as "[f]orensic by definition means 'suitable to courts,' ") (quoting *Merriam-Webster's Collegiate Dictionary* 490 (11th ed.2005)); *Black's Law Dictionary* 721 (9th ed.2009) (stating "forensic" is derived from the Latin terms "forensis" (public) and "forum" (court) and defining "forensic" as "[u]sed in or suitable to courts of law or public debate"). In short, "forensic" refers to the expert's preparation and participation in litigation. The term has little to do with the quality of the underlying opinion.

In the case of an affirmative defense of insanity, the jury must decide whether the defendant knew right from wrong based on the testimony of both lay witnesses and expert psychiatrists or psychologists. Only the doctors are directly asked to give an opinion that conclusively establishes a defendant's guilt. Regardless of whether a doctor is qualified as a "forensic" psychiatrist, which appears to mean prepares for and participates in litigation, a psychiatrist is more than qualified to conclude Appellant possessed the mental capacity to know right from wrong, particularly within the framework of serving as Appellant's treating physician for three years. In fact, no other doctor was more qualified than Dr. Smith to opine as to Appellant's mental capacity.

Dr. Smith obtained his medical degree from the University of Alabama and completed his residency at the William S. Hall Psychiatric Institute in Columbia. (R. p. 553, line 23 – p. 611, line 3.) At the time of trial, Dr. Smith practiced psychiatry for 26 years. (R. p. 554, lines 1-3.) Dr. Smith completes 30 hours a year of continuing education and treats patients “from 18 to 118” years of age with a variety of diagnoses. (R. p. 554, lines 12-24.) As part of his practice, Dr. Smith has to determine whether his patients suffer from serious mental illness and plan their treatment. (R. p. 555, lines 5-25.) Dr. Smith has been deposed “hundreds of times” in different civil cases, such as child custody, medical malpractice, and workman’s compensation. (R. p. 556, lines 6-8.) He completed a rotation in forensic psychiatry during his residency and prepared an evaluation for a criminal defendant who ultimately pled guilty. (R. p. 556, lines 8-16.) Dr. Smith offered his opinion on a patient’s criminal responsibility on 5 occasions and rendered an opinion on his patients’ ability to conform their behavior on multiple occasions. (R. p. 556, line 23 – p. 557, line 14.) Finally, most importantly, Dr. Smith saw Appellant for 34 times over a three year period. Despite Appellant’s claims the visits lasted 8 minutes, Dr. Smith said the visits were scheduled for 50 minutes and there was no way to know exactly how long the visits lasted. (R. p. 611, line 14 – p. 612, line 9.) Dr. Smith saw Appellant as recently as three months before the shootings and believed she was stable enough to extend her follow up visit for four months later. (R. p. 607, lines 17-20; p. 610, lines 7-13.) In contrast, defense expert Dr. Mulbry examined Appellant as late as nine months after the shootings, Dr. Price examined her 12 months later, and Dr. Frierson began his evaluation almost two years after the shootings. (R. p. 405, lines 6-16; p. 437, lines 2-10; p. 464, lines 13-24.) Not only was Dr. Smith qualified to opine on Appellant’s mental capacity, he also had the most direct and most recent interaction with Appellant in relation to the shootings.

Appellant cannot show the trial court abused his discretion in finding Dr. Smith qualified to opine on Appellant's state of mind. Moreover, questions going to an expert's knowledge of state of mind of the accused at the time of the crime are proper, and the expert's opinion as to state of mind is admissible. *See State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990). Dr. Smith observed Appellant 34 times in a clinical setting, and was qualified to treat her mental condition with medications and monitor her progress while she took those medications. It was his professional responsibility to determine whether she knew right from wrong and could conform her conduct to the law. The fact that Dr. Smith was not as qualified as the other experts to prepare for and testify at trial does not render his opinion as her treating psychiatrist invalid. If the jury was entitled to hear from experts who based their opinions on Dr. Smith's treatment notes, then they were certainly entitled to hear an opinion directly from Dr. Smith. Lastly, Dr. Smith's opinion on whether Appellant knew right from wrong was the same question presented to the jury. As her treating physician, Dr. Smith need not be a forensic expert to make that determination.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment, conviction, and sentence of the trial court should be affirmed.

Respectfully submitted,

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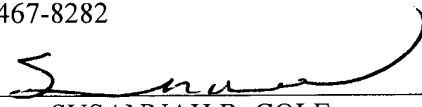
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November 20, 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
The Honorable Brian M. Gibbons, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

SUZANNA BROWN SIMPSON,

APPELLANT

Appellate Case No. 2016-001387

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 21 1(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,

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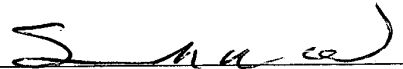
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2016-001387

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The State, ... Respondent,

v.

Suzanna Brown Simpson, ... Appellant.

APPELLANT'S BRIEF

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STATEMENT OF ISSUES ON APPEAL

- 1) Did the trial court err in admitting forensic testimony of the state's expert witness?
- 2) Did the trial court err in excluding testimony of the defense expert?
- 3) Did the trial court err in refusing to direct a verdict for the defendant or grant a new trial?
- 4) Did the trial court err in admitting forensic testimony where state expert was not qualified as an forensic expert?

STATEMENT OF THE CASE

The Appellant was indicted for the murder of her two children, and the attempted murder of her husband along with being in possession of a weapon during a violent crime. The Appellant proceeded to a jury trial in Pickens County on June 20, 2016. At trial the Appellant was represented by John Mauldin, Public Defender, Teal Johnson, and Jacob Goldstein of the Public Defender's Office. The State was represented by Walter Wilkins, Solicitor and Betty C. Strom, Deputy Solicitor, for the 13th Judicial Circuit. The case was tried before a jury, the Honorable Brian M. Gibbons, presiding. The jury returned a verdict of guilty on all charges and the Appellant was sentenced to the maximum possible sentence on the charges, two life sentences, a thirty year sentence, and a five year sentence, all consecutive. The Appellant timely appealed and J. Falkner Wilkes substituted as counsel for the Appellant. This brief follows:

STATEMENT OF FACTS

The Appellant was charged with attempted murder of her husband and the murder of her two children, ages five and seven. The Appellant did not contest that she shot her husband and children. R. 116. Appellant defended on the basis of her inability to tell right from wrong at the time of the incident. R. 117. The incident occurred at approximately 4:00 a.m. on May 14, 2013. R. 327.

On the day before the incident Nathan Stegall, a friend of the defendant's husband, came over to borrow a car while the defendant's husband was at work. He had a short conversation with the defendant. Stegall said that he "could tell she was highly agitated." R. 273, l. 25. Stegall borrowed a truck and left. At 9:11 p.m. that night Stegall received a text message from the defendant that said "Hell on Earth?" R. 277. Stegall testified that out of all the time that he had known the defendant this was the only text he had ever received from her and thought it very odd R. 280.

Kevin Sanders' son and the defendant's daughter attended the same school. The day before the incident Mr. Sanders was in the school office and recalled overhearing the defendant telling her son that she was signing out his sister because he was sick, to which the boy responded "I'm not sick,

Mom." R. 282-283. Sanders characterized her behavior that day as odd. While waiting for her daughter to come to the office the defendant was walking back and forth, real impatient. R. 285. Then when leaving, the defendant heard Sanders say something to his child and mistakenly believed that he had been speaking to her. The defendant spun around angrily and said, "What did you say to me?" R. 286, l. 8. Sanders said that "something just didn't feel right" about the defendant's actions. R. 287, l. 11-14. Sanders said that the defendant was acting very strangely. R. 288-289.

The defendant's mother-in-law, Alison Simpson, testified to the defendant's commitment to an in-patient mental health facility about a year before the incident, and that after the commitment she had openly questioned the defendant's ability to care for the children and whether she would ever hurt them. R. 295. Alison Simpson said that on the day before the incident the defendant had called and asked her about why she didn't come to the house as much. R. 297. The end of the call was bizarre with the defendant saying, "I just wanted to say hello." R. 397, L. 6-7. Simpson testified to another bizarre conversation with the defendant just after she was released from inpatient psychiatric care. R. 301.

The defendant's mother, Susan Brown, testified about the defendant's

history of mental health problems and her behavior leading up to her hospitalization at St. Francis Hospital and the Carolina Center about ten months prior to the incident. She said that during a drive to Asheville the defendant was not making sense, nothing connected, talking about friends that she had talked to that had somebody else's voices coming out of their mouth. R. 312-313. Brown testified that the defendant later called her around midnight saying to turn the lights on because her house wasn't safe. R. 314. Brown said that the defendant did not even sound like herself in the phone call. R. 314. They took her to the emergency room and she was committed based on the psychotic episode. R. 315-316. Brown said that the defendant thought she was being followed, her phones bugged, and that she was being watched through her ceiling fan. R. 317.

On the day before the incident, Brown indicated that the defendant wasn't quite herself when they went out to dinner for Mother's Day. R. 319; 746-749. Brown said that the defendant was just sitting and staring and wouldn't eat dinner. R. 321.

On the day of the incident Brown had several conversations with the defendant. R. 307. The defendant called her around 10:30 in the morning and asked one "very bizarre" question: "Did you and dad really want me?" R. 307,

l. 10-12. About noon the defendant called a second time and asked another "very bizarre" question about deceased family members being better off in heaven. R. 307. Brown testified that the defendant's tone was so strange that it almost didn't sound like herself. R. 307. Brown responded to the defendant's question about family members better off in heaven that they were because they had suffered so much. R. 307. Then around 1:30 in the afternoon the defendant called back and "was talking very fast, nonstop about the evils of the world and how you couldn't protect yourself, you couldn't protect your children from the evils of this world." R. 308, l. 14-18. At 5:45 that evening the defendant called Brown again and said that the defendant sounded so happy. R. 308-309. Then at 8:45 p.m., just hours before the incident, the defendant called back and sounded as sad and low as she had been happy hours earlier. R. 309. In that last conversation the defendant told her mother that she couldn't take care of the kids anymore. R. 310. In addition to the very bizarre nature of the calls Brown testified that it was very unusual for her to get so many calls from the defendant in one day. R. 310.

Dr. Leonard Mulbry, Jr., M.D., was qualified as an expert in forensic psychiatry. R. 376. Mulbry reviewed the defendant's extensive medical, psychiatric and associated records. R. 378. He met with the defendant on

three different occasions as part of his forensic evaluation. R. 378. Dr. Mulbry diagnosed the defendant with schizoaffective disorder bipolar type, the typical symptoms for which can include long periods of very severe depression and high rates of suicide. R. 380-381. Mulbry testified that this also includes mania where the mind races, irritability, and the inability to think clearly because thoughts don't link very well, which can result in a person not sleeping for a week or more at a time. R. 382. Mulbry testified that his review of records showed that the defendant had been treated for bipolar disorder for a long time. R. 382. Mulbry explained schizophrenia which involves the marked loss of reality. R. 382. Symptoms include hearing things that aren't there. R. 382. Symptoms also include paranoia, inability to link thoughts, and the inability to complete a sentence or thought. R. 382. Dr. Mulbry testified that the defendant suffered a major decline in mental health beginning in 2010. R. 387. In 2012 the defendant was committed to in-patient psychiatric treatment by St. Francis Hospital emergency room staff. At that time the defendant was found to be psychotically paranoid. R. 388. Dr. Mulbry testified that there is no cure for the defendant's condition. R. 390. Dr. Mulbry indicated that the photo taken of the defendant the day before the incident at the Mother's Day dinner showed a typical appearance for someone distracted

and fearful from paranoia. R. 746-749. Based on an extensive forensic review of the defendant's records, Dr. Mulbry opined that at the time of the incident the defendant was unable to tell moral and legal right from wrong. R. 391.

Dr. David Price, PhD., was qualified as an expert in forensic psychology, clinical psychology, and neuropsychology. R. 435. Dr. Price reviewed thousands of pages of medical history for the defendant and met with her on nine different occasions. R. 439. Dr. Price also interviewed the defendant's parents, and her treatment providers, including Dr. Jeffrey Smith. R. 440. Dr. Price diagnosed the defendant with schizoaffective disorder bipolar type. R. 449. After an exhaustive forensic review, Dr. Price opined that at the time of the incident the defendant did not know legal and moral right from wrong. R. 440. Dr. Price testified that he had no question about her psychosis, delusions, or paranoia, and that she was acting under the presence of a significant delusion at the time of the incident. R. 441.

Dr. Richard Lesense Frierson, M.D., was qualified as an expert in the field of forensic psychiatry. R. 463. On the motion of the State Dr. Frierson was appointed by the court to perform an evaluation of the defendant. Dr. Frierson did an extensive evaluation, reviewed records, interviewed family member, interviewed the ER physician that treated the defendant after the incident,

and met with the defendant three times. He also diagnosed the defendant with schizoaffective disorder bipolar type. R. 469. His diagnosis was wholly independent of the diagnosis of the other two defense experts. R. 470.

Frierson explained that the defendant suffered from delusions which he defined as fixed false beliefs and psychosis which he defined as "out of touch with reality". R. 471-472. Dr. Frierson opined that the defendant was, due to mental illness, unable to distinguish legal or moral right from legal or moral wrong at the time of the incident. R. 475. Dr. Frierson related the defendant's paranoid delusional thought that hell had come to earth to the text message the defendant sent to Nate Stegall the day before the incident. R. 475; 745. Dr. Frierson has conducted over a thousand evaluations for criminal responsibility. R. 492. Dr. Frierson testified that the defendant was not criminally responsible for her actions when she shot her family. R. 493.

In reply, and over the discovery violation objection by the defense, the State offered surprise forensic testimony by Dr. Jeffrey K. Smith, M.D. Dr. Smith was the defendant's treating physician leading up to the date of the incident. Dr. Smith last saw the defendant clinically three months prior to the incident, and then for only 8 minutes. R. 610-611; 626. Dr. Smith's average appointment with the defendant lasted 7.4 minutes. R. 626-627. Dr. Smith

was qualified as an expert in psychiatry. R. 583. The state chose not to offer Smith as an expert in forensic psychiatry, stating that it would not be able to have him qualified in forensic psychiatry. R. 539, l. 1-2. Dr. Smith believed that the defendant had stabilized around that time but admitted in his testimony that he was obviously wrong. R. 610. Smith admitted that his own records indicated that the defendant suffered from psychosis on at least three occasions. R. 613. Throughout his treatment Smith had the defendant on various anti-psychotic drugs. R. 615. Smith admitted that during her treatment the defendant's condition would destabilize when she would stop taking medications which resulted in mood swings and recurrence of paranoia. R. 617. During Smith's treatment the defendant had the psychotic episode that caused her to be committed for psychiatric by the emergency room at St. Francis Hospital. R. 617. Smith's records indicate that on the appointment immediately following the defendant's release from her commitment in Carolina Behavioral Center he saw the defendant for eight minutes for her August 16, 2012. R. 620-621. Over the course of his treatment of the defendant the average time spent with the defendant was 7.4 minutes. R. 626.

In preparing to testify for the State Dr. Smith never reviewed witness

statements, police reports, supplemental reports, EMS reports, 911 phone calls. R. 607. Dr. Smith never met with any of the family members, Michael Simpson, the defendant's parents, or the defendant's in-laws. R. 608; 609. Over the objection of the defense Smith gave a forensic opinion that the defendant knew right from wrong but was unable to conform her conduct to the behavior of the law. R. 599.

The defense objected to the testimony of Dr. Smith based on a lack of prior notice to the defense required by Rule 5, Brady and due process. R. 25-28; 36; 340-341; 516-523. Based on Fourth Amendment grounds, HIPAA, and state privacy laws pertaining to mental health records the defense further objected to any forensic testimony by Dr. Smith. R. 517-518; R. 802. The defense also sought to suppress any forensic testimony that was based on his review of the defendant's mental health records illegally seized by SLED. R. 517-524; 802. Those records, which Dr. Smith admitted that he had never seen before, were provided to him by the solicitor just prior to trial to allow Dr. Smith to give forensic testimony. R. 567. The court expressly refused to make any findings as to the SLED's seizure of the defendant's records or make a clear ruling on the issue. R. 541. *(Additional facts in argument section)*

ARGUMENT

I. THE COURT ERRED IN ADMITTING FORENSIC TESTIMONY OF THE STATE'S EXPERT WITNESS.

A. The Court Erred in Allowing the Testimony of State Expert Despite Discovery Violations under Rule 5 and Brady.

At the beginning of the trial the defense first learned that Dr. Jeffrey K. Smith might be offered as witness by the State. Dr. Smith was the Appellant's treating physician for approximately three years, but had not seen the defendant for three months prior to the incident, and then for only about eight minutes. Although the defense was aware of who Dr. Smith was, it had no notice that he had conducted a forensic evaluation, or that he would be offered to give a forensic opinion as to sanity at the time of the incident. The defense therefore objected to Smith being qualified or allowed to testify as a forensic expert. After extensive arguments the State subsequently offered Dr. Smith only as an expert in psychiatry, with the solicitor admitting that he didn't think he could have Dr. Smith qualified as an expert in forensic psychiatry. Accordingly the court qualified Dr. Smith only as an expert in psychiatry.

There is no question that the State failed to disclose to the defense prior to trial that it would offer Dr. Smith as an expert, or that he would be asked to

give forensic testimony based on documents (medical records) obtained by SLED that belonged to the Appellant. Pursuant to Rule 5, and as a matter of due process, the defendant objected to the State's failure to provide notice of Dr. Smith as a forensic expert, or the substance of his testimony which clearly was the result of an undisclosed forensic evaluation. R. 24-32. The defense objected repeatedly throughout the trial to the State's use of Dr. Smith as an undisclosed forensic expert. R. 28; 341.

The record shows that the State's failure to disclose the substance of Dr. Smith's testimony was entirely intentional. In the State's reply to the defense's initial objection the solicitor specifically said: "I don't want to tell the defense." R. 51. Yet as the State's expert, Dr. Smith was ultimately asked by the state to testify to matters clearly the subject of Rule 5. Timely disclosure to the defense prior to trial was therefore required.

In his testimony, Dr. Smith testified to the contents of the defendant's mental health records. Dr. Smith's testimony covered not only his own records, as one of the defendant's prior treating physicians, but also to the content of records from other mental health providers which were obtained by SLED and provided by the solicitor to Dr. Smith to review. R. 527; 596-597. Even though those documents were not introduced as exhibits, the content nd

substance of the records were put to the jury through Dr. Smith's testimony.

R. 595-596. Accordingly, the State was required to disclose to the defense any documents from which that the State intended to have Dr. Smith testify.

Rule 5 provides:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, *documents*, photographs, tangible objects, buildings or places, or copies or portions thereof, *which are within the possession, custody or control of the prosecution*, and which are *material to the preparation of his defense* or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or *belong to the defendant*.

Rule 5(a)(1)(C). Disclosure of Evidence by the Prosecution, Information Subject to Disclosure, Documents and Tangible Objects. *emphasis added*.

Here the mental health records at issue belonged to the defendant, were in the possession of the prosecution, and material to the preparation of the defense. They were therefore required to be disclosed to the defense. The defense made a proper request for the disclosure of any such documents and timely objected when it learned at trial that the State might offer testimony as to those documents despite a lack of any prior notice to the defense. R. 28; 341; R. 735-744

In addition to the failure to give prior notice of medical records seized by SLED that belonged to the defendant, the prosecution further failed to

disclose the forensic mental examination conducted by Dr. Smith based on those records. Rule 5 provides:

Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any *results* or reports of physical or *mental examinations*, and of scientific tests or experiments, or copies thereof, which are *within the possession, custody, or control of the prosecution*, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are *material to the preparation of the defense* or are intended for use by the prosecution as evidence in chief at the trial.

Rule 5(1)(D) Reports of examinations and tests.

Over the defense objection the court also allowed Dr. Smith to give a forensic opinion that the Appellant knew the difference between right and wrong, thus negating the Appellant's defense of insanity. R. 575. Since Dr. Smith had not seen the defendant for three months prior to the incident, and then for only eight minutes, Dr. Smith's testimony was necessarily based on his review of records that were obtained by SLED and provided to him by the solicitor to enable him to give forensic testimony at trial.

Although Dr. Smith had a dual role being a fact witness, he also became the State's forensic expert when asked to review the defendant's records from other providers and opine on the issue of sanity. Dr. Smith's pre-trial review of the records of other providers, including Carolina Center for Behavioral

Health and St. Francis Hospital, constituted a forensic mental evaluation of the defendant. R. 584-599. This is obvious as Dr. Smith admitted that he had never seen the records before they were provided to him by the solicitor. R. 567. Using these records Dr. Smith gave forensic testimony, including his opinion that the defendant knew the difference between right and wrong *at the time of the incident*. R. 599. As this testimony was clearly based on a forensic mental examination or evaluation of the defendant through her medical records, it was discoverable under Rule 5 and Brady.

“The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings.” State v. Proctor, 348 S.C. 322, 330, 559 S.E.2d 318, 322 (Ct.App.2001), *rev'd on other grounds*, 358 S.C. 424, 595 S.E.2d 480 (2004). Despite the different underpinnings of Brady and Rule 5, each has the same goal of ensuring the criminal defendant's right to a fair trial. Neither is designed “to displace the adversary system as the primary means by which truth is uncovered, but [rather] to ensure that a miscarriage of justice does not occur.” Bagley, 473 U.S. at 675, 105 S.Ct. 3375. Furthermore, “the prosecutor's role transcends that of an adversary [because] he ‘is the representative not of an ordinary party to a controversy, but of a sovereignty

... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.' " *Id. at n. 6* (quoting Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). Taking this into consideration and understanding that "the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure." Agurs, 427 U.S. at 108, 96 S.Ct. 2392. State v. Kennerly, 331 S.C. 442, 454, 503 S.E.2d 214, 220-21 (Ct. App. 1998), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999)

In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court held that, irrespective of good or bad faith, suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where such evidence is material to either guilt or punishment. Brady imposes an affirmative duty on the prosecution to produce at the appropriate time requested evidence that is materially favorable to the accused, either as direct or impeaching evidence. Brady is not a rule of discovery; it is a rule of fairness and minimum prosecutorial obligation. United States v. Beasley, 576 F.2d 626, 630 (5th Cir. 1978), *cert. denied*, 440 U.S. 947, 99 S.Ct. 1426, 59 L.Ed.2d 636 (1979) *citing* United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342 (1976). *See also*

United States v. Campagnuolo, 592 F.2d 852, 859 (5th Cir. 1979). The obligation to disclose is measured by the “character of the evidence, not the character of the prosecutor.” Agurs, 427 U.S. at 110, 96 S.Ct. at 2400.

Information known to investigative or prosecutorial agencies may, under certain circumstances, be imputable to the State. *see* United States v. Auten, 632 F.2d 478 (5th Cir.1980); State v. Von Dohlen, 322 S.C. 234, 240–41, 471 S.E.2d 689, 693 (1996). In this case SLED obtained the defendant’s mental health records, so possession of those records is clearly imputable to the prosecution. Of course the record clearly shows that the solicitor had actual possession of the documents since he personally gave them to Dr. Smith to conduct a forensic mental evaluation in this case. Based on the prosecution’s actual possession of the documents, and nature of the use of those records, the failure to provide notice to the defendant prior to trial constitutes a discovery violation. The court erred in failing to properly address the issue.

When a trial judge determines the prosecution violated Rule 5, the judge should fashion a proper remedy. The rule itself explains that if a party failed to comply with the rule, the court “may prohibit the party from introducing evidence not disclosed, or it may enter such other order as it

deems just under the circumstances.” Rule 5(d)(2), SCRCrimP. This Court in Kennerly explained the definition of “material” as used in Rule 5 is the same as the definition used in the context of violations and obligations pursuant to Brady. Kennerly, *supra* at 220. Thus, evidence is material for the purposes of Rule 5 “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” United States v. Bagley, 473 U.S. 667, 682 (1985).

As explained in Kennerly, the goal of Rule 5 is to ensure a criminal defendant’s right to a fair trial. Further, the role of a prosecutor is to be a minister of justice, not the representative of an ordinary party. As the representative of the sovereign, the prosecutor’s interest in a criminal prosecution is not to win, but to see that justice is done. Kennerly, at 220; *See also Riddle v. Ozmit*, 369 S.C. 39 (2006).

Similarly, the Rules of Professional Conduct impose certain duties upon prosecutors. Specifically, the Rules require a prosecutor “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.” Rule 3.8(3) SCACR. The special duties imposed upon prosecutors are due to the prosecutor’s “responsibility of a minister of justice and not simply

that of an advocate.” Thus, the prosecutor has “specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence.” Rule 3.8, *cmt. 1*, SCACR.

Brady requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession.¹ United States Supreme Court decisions have extended the Brady obligation to include (1) the duty to disclose impeachment evidence, (2) favorable evidence in the absence of a request by the accused, and (3) evidence in the possession of person or organizations. See Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); Material must be disclosed “when prejudice to the accused ensures ... [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.” Stickler v. Greene, 527 U.S. 263, 281-282 (1999).

The trial judge erred in failing to exclude Dr. Smith’s forensic testimony based on the State’s violation of Rule 5 and Brady.

¹Dr. Smith’s opinion as to GBMI would constitute exculpatory evidence where it mitigated the potential sentence.

B. The Court Erred in Admitting Testimony of State Expert Based on Evidence Obtained in Violation of State and Federal Privacy Laws.

Dr. Smith testified to records of other mental health providers that he had never seen before they were given to him by the solicitor. Those records were obtained by SLED in clear violation of state and federal privacy laws relating to mental health records. The record shows that SLED sent a letter demanding that the defendant's current and prior mental health providers turn over the defendant's mental health records to the State. R. 566-567; 802-806. SLED did not obtain a search warrant, court order, or subpoena for the records. SLED'S demand failed to comply with both state and federal law relating to mental health records.

The defendant had a constitutional and statutory right to privacy in her mental health records. The defendant's mental health records were confidential, privileged, and protected by S.C. Code § 44-22-90 which provides:

(A) Communications between patients and mental health professionals including general physicians, psychiatrists, psychologists, psychotherapists, nurses, social workers, or other staff members employed in a patient therapist capacity or employees under supervision of them are considered privileged. The patient may refuse to disclose and may prevent a witness

from disclosing privileged information except as follows:

- (1) communications between facility staff so long as the information is provided on a "need-to-know" basis;
- (2) in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of commitment to a mental health facility for care of the patient's mental illness;
- (3) in an emergency where information about the patient is needed to prevent the patient from causing harm to himself or others;
- (4) information related through the course of a court-ordered psychiatric examination if the information is admissible only on issues involving the patient's mental condition;
- (5) in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when the condition is introduced by a party claiming or defending through or as a beneficiary of the patient, and the court finds that it is more important to the interests of justice that the communication be disclosed than the relationship between the patient and psychiatrist be protected;
- (6) when a competent patient gives consent or the guardian of a patient adjudicated as incompetent gives consent for disclosure;
- (7) as otherwise authorized or permitted to be disclosed by statute.

(B) This does not preclude disclosure of information to the Governor's ombudsman office or to the South Carolina Protection and Advocacy System for the Handicapped, Inc.

S.C. Code § 44-22-90.

None of the exceptions of § 44-22-90 existed at the time SLED obtained the defendant's mental health records in this case. The defendant's mental health records were further protected under S.C. Code Section 19-11-95 which provides in pertinent part:

- (B) Except when permitted or required by statutory or other law, a provider knowingly may not:
- (1) reveal a confidence of his patient;

.....
(C) A provider may reveal:

- (1) confidences with the written authorization of the patient or patients affected, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed;
- (2) confidences when allowed by statute or other law;
- (3) the intention of the patient to commit a crime or harm himself and the information necessary to prevent the crime or harm;
- (4) confidences reasonably necessary to establish or collect his fee or to defend himself or his employees against an accusation of wrongful conduct;
- (5) in the course of diagnosis, counseling, or treatment, confidences necessary to promote care within the generally recognized and accepted standards, practices, and procedures of the provider's profession;
- (6) confidences in proceedings conducted in accord with Sections 40-71-10 and 40-71-20;
- (7) confidences with the written authorization of the patient or patients affected for processing their health insurance claims, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed.

(D) A provider shall reveal:

- (1) confidences when required by statutory law or by court order for good cause shown to the extent that the patient's care and treatment or the nature and extent of his mental illness or emotional condition are reasonably at issue in a proceeding; provided, however, confidences revealed shall not be used as evidence of grounds for divorce;
- (2) confidences pursuant to a lawfully issued subpoena by a duly constituted professional licensing or disciplinary board or panel;
- (3) confidences when an investigation, trial, hearing, or other proceeding by a professional licensing or disciplinary board or panel involves the question of granting a professional license or the possible revocation, suspension, or other limitation of a professional license.

(E) A disclosure pursuant to subsection (C) or (D) is limited to the information and the recipients necessary to accomplish the purpose of the subsection permitting the disclosure.

(F) A person to whom a disclosure is made pursuant to subsections (C)(1), (5), and (7), an employee to whom a disclosure is made pursuant to subsection (G), and any other person to whom a confidence, written or oral, is disclosed by a provider are bound by the same duty of confidentiality as the provider from whom he received the information.

(G) A provider shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences of a patient, except that a provider may reveal the information allowed by subsections (C) and (D) through an employee.

(H) A provider releasing a confidence under the written authorization of the patient or under the provisions of this section is not liable to the patient or other person for release of the confidence to the person authorized to receive it; provided, however, a patient has a cause of action for damages against a provider, associate, agent, employee, or any other person who intentionally, wilfully, or with gross negligence violates the provisions of this section.

(I) Nothing in this section alters the existing requirements of nonproviders to preserve confidences or the requirements of providers subject to Sections 44-23-1090 and 44-52-190.

S.C. Code Ann. § 19-11-95. None of the exceptions were applicable at the time SLED seized the defendant's mental health records. SLED's seizure therefore violated the defendant's privacy rights under state law.

SLED's seizure of the defendant's records further violated federal law.

Under federal law mental health records are protected under HIPAA. HIPAA defines "protected health information" as "individually identifiable health information," which in turn is defined as information that:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103 (2016).

Federal regulations further provide that a health care provider may disclose protected health information (*i.e.*, "individually identifiable health information") for a law enforcement purpose to a law enforcement official "[i]n compliance with ... [a] court order or court-ordered warrant" as long as "(1) [t]he information sought is relevant and material to a legitimate law enforcement inquiry; (2) [t]he request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) [d]e-identified information could not reasonably be used." 45 C.F.R. § 164.512(f)(1)(ii) (2016), *emphasis added*. State v. Smith, 789 S.E.2d 873, 878 (N.C. Ct. App. 2016).

Absent patient consent, under both state and federal law, SLED could not lawfully obtain the defendant's mental health records except by court order (or other enumerated means), which, it clearly did not have at the time of the seizure. SLED's seizure of the defendant's mental health records therefore violated the defendant's statutory right to privacy under both state and federal law. As a result, the court erred in allowing the State's expert to testify to the contents of those records.

In addressing a similar issue under the Florida law with provisions similar to those in HIPAA, the Florida Court held that suppression was the appropriate remedy for unlawful seizure of protected health information. It's reasoning is informative:

Given the fact that these statutes were passed into law over a decade ago, and that the State Attorney's Office for the 15th Judicial Circuit has handled similar cases and is well aware of the mandated procedures, it is almost incomprehensible that law enforcement proceeded in the manner as they did herein. Other than one's expectation of privacy in one's personal effects and papers in our homes, Americans next most hold as intensely personal and private the status of their health, medical treatment, medical advice and therapy.

Suppression is the only remedy to sanction this police misconduct and deter similar misconduct. The danger of the law enforcement practices in this case are amply demonstrated by the willingness of medical professionals to surrender private medical records and engage in discussions regarding private and privileged communications concerning their treatment of

individuals on the mere naked display of authority by law enforcement. Without court intervention and review as mandated by statute, countless innocent patient records are subject to examination and review by well-meaning but misguided law enforcement officials.

State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

The Sun Court went on to reason that the application of the exclusionary rule, where there has not been a good faith effort to comply with subsection 456.057(8), should instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of a patient. State v. White, 660 So.2d 664, 666–67 (Fla.1995) (*quoting United States v. Leon*, 468 U.S. 897, 919, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (*quoting Michigan v. Tucker*, 417 U.S. 433, 447, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974)))” State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

Based on the same reasoning as seen in Sun, in a similar case the Florida Court suppressed the testimony of doctors where police had unlawfully obtained protected medical information about the defendant, stating: "Under the circumstances we can neither agree with the State that it acted in good faith nor disagree with the trial court's determination that it failed to so act. The medical records secured from Dr. Shapiro, comprised of both his and Dr. McKnight's records, were properly suppressed." State v. Strickling, 164 So. 3d

727, 734 (Fla. Dist. Ct. App. 2015). In the present case, suppression of the forensic testimony, and opinion of the State's expert, both based on medical records obtained by SLED in violation of the defendant's right to privacy, is the appropriate remedy.

C. The Court Erred in Admitting Testimony of State Expert Which Was Based on Evidence Obtained as a Result of an Unlawful Seizure Under the Fourth Amendment.

In addition to the foregoing grounds the defense further objected to the State's use of testimony based on SLED's unlawful seizure of the defendant's mental health records under the Fourth Amendment. R. 527. The court expressly declined to make any findings as to the way SLED retrieved the evidence, but indicated that the matter was preserved. R. 527. The court allowed a very limited proffer into facts underlying SLED's seizure of those records. R. 516. SLED obtained the defendant's protected mental health records by sending a written demand to all of the defendant's mental health providers. R. 519-520; 802-806. The letter was misleading as to the State's right to require providers provide those records. The letter was characterized by one provider as "a long submission form that indicated that in felony cases that HIPAA regulations did not apply and we turned over the records of the

patient to SLED.” R. 566, l. 2-567, l. 1. A review of SLED’s demand letter shows that it misrepresented the law to the mental health providers in order to have them release the defendant’s records. R. 802-806.²

The letter cites S.C. Code Section 63-11-1960 and 63-11-1990, neither of which authorizes the disclosure of protected mental health records in the defendant’s case. SLED obtained the records without a warrant, court order, or lawful subpoena, and therefore, in violation of the Fourth Amendment.

The records obtained unlawfully by SLED were then provided by the solicitor to the State’s expert, Dr. Smith, to allow him to perform a forensic evaluation and testimony, including an opinion on sanity to negate the defense in the case. R. 567. Based on SLED’s unlawful seizure of the records the defense objected to Dr. Smith’s forensic testimony which was based on those records. R. 590. Despite the defense having timely raised the issue, the court expressly refused make appropriate findings or properly rule on the unlawful seizure issue. R. 541.

The record shows that Dr. Smith’s forensic testimony was based in large part on the unlawfully seized records. Dr. Smith testified that the solicitor

²The requirements of HIPAA and state law are set forth in the preceding arguments and incorporated by reference herein.

provided him with the records seized by SLED. R. 565-566. Dr. Smith testified that he met with the solicitor prior to trial and reviewed documents "that I had not previously seen". R. 604, l. 13-15. While the State appears to agree that SLED improperly obtained the records, the Solicitor nevertheless provided them to the State's expert to prepare him for his forensic testimony. R. 526, l. 12-20; 567.

The only defense the State argued as to the unlawful seizure of the defendant's mental health records was "its" been waived by placing those records in front of the jury through the defense witnesses' testimony. R. 525-526. This argument however, does not address the issue of the use of evidence seized in violation of the Fourth Amendment, or the application of the exclusionary rule. Nor did the court properly rule on those issues.

The defendant clearly had a privacy interest in her mental health records. Communications with a mental health provider are confidential and protected. §§ 19-11-95; 44-22-90. The defendant further had a privacy interest in her mental health records pursuant to federal law under HIPAA. As a general rule, a mental health patient may refuse to disclose and may prevent

a witness from disclosing privileged information.³ The defendant clearly had an expectation of privacy in her mental health records which were seized by SLED, without a warrant, court order, subpoena, or other lawful process, and provided to the State's expert witness, Dr. Smith.

The Fourth Amendment guarantees "[t]he right of the people to be secure ... [from] unreasonable searches and seizures." U.S. Const. amend. IV. "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both State and federal court. Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

"Generally, a warrantless search is *per se* unreasonable and thus violative of the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct.App.1995). "However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically

³State and Federal law on privacy of mental health records are in the foregoing arguments and incorporated herein by reference.

established and well delineated exceptions to the Fourth Amendment exclusionary rule." *Id.* at 331–32, 457 S.E.2d at 621. These exceptions include: (1) search incident to a lawful arrest; (2) "hot pursuit;" (3) stop and frisk; (4) automobile exception; (5) "plain view" doctrine; (6) consent; and (7) abandonment. State v. Dupree, 319 S.C. 454, 456–57, 462 S.E.2d 279, 281 (1995), *cert. denied*, 516 U.S. 1131, 116 S.Ct. 951, 133 L.Ed.2d 875 (1996). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." Bultron, 318 S.C. at 332, 457 S.E.2d at 621. In the present case, no exception to the warrant rule exists and at trial the solicitor seemed to concede that the seizure by SLED of the defendant's mental health records was improper. Testimony regarding the improperly obtained records should therefore be excluded.

The exclusionary rule was adopted to effectuate the Fourth Amendment right of all citizens 'to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .'. Under this rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure. Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); Mapp v. Ohio,

367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 1081 (1961). This prohibition applies as well to the fruits of the illegally seized evidence. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319 (1920).

The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim: "(T)he ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late." Linkletter v. Walker, 381 U.S. 618, 637, 85 S.Ct. 1731, 1742, 14 L.Ed.2d 601 (1965). Instead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures: "The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed.2d 1669 (1960). *Accord*, Mapp v. Ohio, *supra*, 367 U.S., at 656, 81 S.Ct., at 1692; Tehan v. United States ex rel. Shott, 382 U.S. 406, 416, 86 S.Ct. 459, 465, 15 L.Ed.2d 453 (1966); Terry v. Ohio, 392 U.S. 1, 29, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968). In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect,

rather than a personal constitutional right of the party aggrieved.

The right to privacy in one's mental health records has been held to be of considerable importance. In Jaffee, the Supreme Court resolved a circuit split when it "recognize[d] a psychotherapist privilege under Rule 501" in the context of a § 1983 excessive force action. 518 U.S. 1, at 7, 116 S.Ct. 1923. There the Court concluded that a social worker's notes from her counseling sessions with the defendant police officer were protected by the psychotherapist-patient privilege from disclosure to the plaintiff for use in cross-examination. The Supreme Court reasoned that "[e]ffective psychotherapy ... depends upon an atmosphere of confidence and trust" and that "the mere possibility of disclosure" of "confidential communications made during counseling sessions" could hinder productive therapy. *Id.* at 10. "By protecting confidential communications between a psychotherapist and her patient from involuntary disclosure, the ... privilege thus serves important private interests." *Id.* at 11. Most importantly, the Court found that, like other testimonial privileges, the psychotherapist privilege serves the greater public interest by facilitating effective mental health care—"a public good of transcendent importance." *Id.* at 4. The Court concluded that a "privilege protecting confidential communications between a psychotherapist and her

patient 'promotes sufficiently important interests to outweigh the need for probative evidence.' " *Id.* at 9–10. (quoting Trammel v. United States, 445 U.S. 40, 51, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980)). In other words, the public benefit produced by the recognition of the psychotherapist-patient privilege is sufficiently weighty to trump the cost to the administration of justice of precluding the use of relevant evidence. In this case, application of the exclusionary rule serves the same end. As a result, it was error for the trial court in this case to allow the introduction of testimony that was based on the SLED's unlawful seizure of the defendant's mental health records.

II. TRIAL COURT ERRED IN EXCLUDING CRITICAL TESTIMONY BY DEFENSE EXPERT AS TO STATEMENTS BY STATE EXPERT.

The defense offered Dr. David Price, PhD., as an expert in forensic psychology. Dr. Price testified that in his opinion the defendant did not know the difference between moral or legal right and wrong at the time of the incident. R. 440. In explaining the basis for his opinion Dr. Price testified that he had reviewed records and discussed the defendant's treatment with Dr. Smith. R. 443. Dr. Price testified that during their discussion Dr. Smith had agreed with him. R. 443. It appears that Dr. Price considered his discussion

with Dr. Smith in formulating his opinion. R. 443, l. 8-12. Based on hearsay the State objected to Dr. Price testifying as to what the State's expert, and treating physician, had told him during their discussion. R. 443 The objection was sustained with the court reasoning that Dr. Price was relating something Dr. Smith told him directly and was not in Dr. Smith's medical records. R. 443. This was clearly error.

An expert may testify as to matters of hearsay for the purpose of showing what information he or she relied on in giving an opinion of value. *In re Manigo* (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, *rehearing denied, certiorari granted, affirmed* 398 S.C. 149, 728 S.E.2d 32. Here Dr. Smith was the treating physician as well as the State's expert that would ultimately give forensic testimony on the issue of sanity. This Court has held that the hearsay rule does not preclude forensic psychiatrist from testifying as to what she learned from sex offender's treatment provider, in proceeding to civilly commit offender as a sexually violent predator (SVP), where psychiatrist relied on that information to form the basis of her opinion that offender was an SVP. *In re Manigo* (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, *rehearing denied, certiorari granted, affirmed* 398 S.C. 149, 728 S.E.2d 32. In the present case Dr. Price's testimony, as to what he had been told by Smith, both as the

defendant's treating physician, as well as the State's forensic expert, was clearly admissible. Its exclusion was therefore error.

Because Dr. Smith later testified to his opinion that the defendant knew right from wrong, testimony that he at one point agreed with Dr. Price was substantial evidence. Especially where Dr. Smith's testimony was the only evidence offered of the defendant's sanity. The exclusion of Dr. Smith's prior statements to Dr. Price further prevented full and effective cross-examination of Dr. Smith. Precluding the defense from relating Dr. Smith's prior statement foreclosed any ability of the defense to effectively cross examine or impeach Smith with the prior statement. The therefore court erred in failing to allow Dr. Price to testify to the prior statements of Dr. Smith.

III. TRIAL COURT ERRED IN DENYING MOTION FOR A DIRECTED VERDICT AND MOTION FOR NEW TRIAL.

At the close of the State's case the defense moved for a directed verdict. The only evidence at the close of the State's case was that the defendant suffered from severe mental illness and could not tell legal or moral right from wrong. The defense again moved for a directed verdict at the close of the defense case. The only evidence at the close of the defense case was that the defendant could not distinguish between moral and legal right and wrong.

An accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts. State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973). This is the *M'Naghten* insanity defense, codified as S.C. Code 17-24-10. The *M'Naghten* rule is old and well established:

The test here given to the jury was, as we understand it, the ordinary test in such cases; the test authorized by the opinion of all the judges of England in answer to the questions of the House of Lords growing out of *McNaghten's Case*; the test applied in the case of the United States v. Guiteau for shooting President Garfield, and in many other cases in most of the States. See Lawson on Insanity as a Defence to Crime, 270, and following pages.

State v. Bundy, 24 S.C. 439, 445 (1886).

Under the *M'Naghten* rule a defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he 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) (Supp.1996). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself-to recognize the act complained of is either morally or legally wrong'." State v.

Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23, *cert. denied*, 506 U.S. 846, 113 S.Ct. 137, 121 L.Ed.2d 90 (1992), *quoting State v. McIntosh*, 39 S.C. 97, 17 S.E. 446 (1893).

Under Rule 19(a) of the South Carolina Rules of Criminal Procedure, "the court shall direct a verdict in the defendant's favor on any offense charged in the indictment *after the evidence on either side is closed*, if there is a failure of competent evidence tending to prove the charge in the indictment." State v. Nicholson, 366 S.C. 568, 574–75, 623 S.E.2d 100, 103 (Ct. App. 2005). *emphasis added*.

At the beginning of a trial there is a presumption that a criminal defendant is sane. This presumption relieves the State of the burden of proving sanity in every case. However, when the defendant offers evidence of insanity, the presumption disappears and it is incumbent on the State to present evidence from which a jury could find the defendant sane. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985). After the close of the defense in the present case there had been no evidence offered that would support a finding that the defendant knew right from wrong at the time of the incident. In the defense case, three expert witnesses testified that the defendant could not distinguish between right and wrong. A number of

other witnesses testified to the defendant's long history of mental illness and psychosis. By the close of the defense case the presumption of sanity was extinguished by overwhelming evidence of the defendant's insanity. Under Rule 19, the defendant was entitled to a directed verdict when the defense made the motion at the close of the defense case. It was therefore error for the court to deny the defense motion to direct a verdict under Rule 19.

IV. THE TRAIL COURT ERRED IN ALLOWING THE STATE WITNESS TO GIVE FORENSIC TESTIMONY AND OFFER OPINION ON SANITY WHERE THE WITNESS WAS NOT QUALIFIED AS A FORENSIC EXPERT.

After extensive argument and *voir dire* Dr. Smith was qualified as an expert in the field of psychiatry. R. 583. The State did not seek to have Dr. Smith qualified in the field of forensic psychiatry and even admitted that he could not be qualified as a forensic psychiatrist. R. 511-512. Yet, over the objection of the defense, the State asked Dr. Smith to formulate an opinion as to the defendant's criminal responsibility based in large part on Smith's forensic mental examination of the defendant through her mental health records provided in part by the State. R. 599. Smith testified that it was his opinion that the defendant knew right from wrong but was unable to conform her conduct to the behavior of the law. R. 599.

Dr. Smith, as the treating physician, had not seen the defendant for three months prior to the incident, and then for only eight minutes. Dr. Smith's opinion as to sanity at the time of incident was therefore clearly based on a review of the case, including documents that the solicitor provided, in what constituted an undisclosed forensic type of evaluation. Dr. Smith reviewed documents for trial and on his own initiative contacted one of the defense experts to discuss the case. R. 579-580. To prepare him for testifying, the solicitor gave Dr. Smith mental health records of the defendant that Dr. Smith had never seen before. R. 567. As the State's expert, Smith clearly prepared for and testified to his opinion based on a forensic evaluation of the case which included records provided by the solicitor. Both his preparation and testimony exceeded that of a fact witness or his qualification in court as an expert in psychiatry. While certainly qualified to testify as the defendant's condition during his treatment of the defendant, Dr. Smith extended that into a forensic opinion of the defendant's condition *at the time of the incident*, which was three months since he had last seen her.

The trial court erred in allowing Dr. Smith to testify as a forensic expert where he was not so qualified, and the state did not seek to have him qualified and even admitted that it would be unable to have him so qualified.

“The qualification of a witness as an expert and admissibility of his testimony are matters largely within the discretion of the trial judge; however, the exercise of this discretion will be reversed where an abuse of discretion has occurred.” Payton v. Kearse, 329 S.C. 51, 60–61, 495 S.E.2d 205, 211 (1998) (*citation omitted*). As discussed in a recent opinion of this Court, trial courts have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702. State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009).

In the discharge of its gate-keeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to “weight, not admissibility” may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

Risher v. S.C. Dep't of Health & Envtl. Control, 393 S.C. 198, 206, 712 S.E.2d 428, 432 (2011).

Here, the state did not seek to have Dr. Smith qualified as an expert in forensic psychiatry. The solicitor even admitted that he could not have him qualified as an expert in forensic psychiatry. While competent to testify as an expert as the treatment he provided, any forensic testimony and opinion as to the defendant's sanity at the time of the incident, three months after having last seen her, should have been excluded.

CONCLUSION

Based on the foregoing the convictions and sentences of the defendant should be set aside and reversed.

Respectfully submitted,



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November 19, 2017.



The South Carolina Court of Appeals

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September 19, 2018

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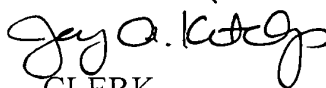
Ms. Susannah Rawl Cole, Esquire
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Columbia SC 29211

Re: The State v. Suzanna Simpson
Appellate Case No. 2016-001387

Dear Counsel:

After careful consideration by the Court, this case will be submitted on the record on appeal and briefs during the September 2018 term without oral argument. Please notify the Clerk's office in writing within fifteen (15) days of the date of this letter if you would like any of the remaining bound copies of the record on appeal and briefs we may have. If you have not made arrangements to come pick up the extra copies within fifteen (15) days, we will dispose of the remaining copies of the record on appeal and briefs.

Very truly yours,


CLERK

cc: William Walter Wilkins, III, Esquire
Alan McCrory Wilson, Esquire
Donald J. Zelenka, Esquire
Melody Jane Brown, Esquire



The South Carolina Court of Appeals

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January 23, 2019

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Re: The State v. Suzanna Simpson
Appellate Case No. 2016-001387

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: William Walter Wilkins, III, Esquire
Alan McCrory Wilson, Esquire
The Honorable Brian M. Gibbons

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Suzanna Brown Simpson, Appellant.

Appellate Case No. 2016-001387

Appeal From Pickens County
Brian M. Gibbons, Circuit Court Judge

Opinion No. 5619
Submitted September 19, 2018 – Filed January 23, 2019

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Susannah Rawl Cole, all of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

LOCKEMY, C.J.: Suzanna Simpson appeals her convictions for murder, attempted murder, and possession of a weapon during the commission of a violent crime. Simpson argues the trial court erred in (1) admitting forensic expert testimony, (2) excluding expert testimony, and (3) denying her motion for a directed verdict. We affirm.

FACTS/PROCEDURAL BACKGROUND

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*¹. 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.

¹ 335 S.C. 1, 515 S.E.2d 508 (1999).

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.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015).

LAW/ANALYSIS

I. Dr. Smith

A. Qualification of Dr. Smith

Simpson argues the trial court erred in allowing Dr. Smith to give forensic testimony and offer his opinion on sanity where he was not qualified as an expert in forensic psychiatry. We disagree.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. However, "[b]efore a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) . . . the expert's testimony is reliable." *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). "The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). While an expert's qualification generally goes to weight of his testimony and not its admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

Here, the trial court qualified Dr. Smith as an expert in psychiatry. On appeal, Simpson argues the determination as to whether she knew right from wrong at the time of the shootings is a determination that can only be made by experts qualified in *forensic* psychiatry. Simpson contends that while Dr. Smith was qualified to testify as to her condition during his treatment, he was not qualified to testify as to his forensic opinion of her condition at the time of the shootings. Simpson argues Dr. Smith's opinion was based on a review of the case, including records previously unseen by Dr. Smith; thus, Dr. Smith prepared for and testified to his opinions based on a forensic evaluation of the case.

We find the trial court did not abuse its discretion in qualifying Dr. Smith as an expert in psychiatry and allowing him to testify as to Simpson's ability to distinguish between right and wrong. First, we note Simpson failed to cite any case law supporting her argument that only a forensic expert can testify as to whether a defendant knew right from wrong at the time of the crime. Moreover, in

the case of an affirmative defense of insanity, the jury decides whether the defendant knew right from wrong based on either the testimony of lay witnesses or expert witnesses or both. *See State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

In addition, we find Dr. Smith, as Simpson's treating psychiatrist, was qualified to opine as to Simpson's mental capacity. At the time of trial, Dr. Smith had practiced psychiatry for twenty-six years and been deposed "hundreds of times" in civil cases. He also completed a rotation in forensic psychiatry during his residency. Dr. Smith has offered his opinion on a patient's criminal responsibility on five occasions and rendered an opinion on his patients' ability to conform their behavior on multiple occasions. Not only was Dr. Smith qualified to opine on Simpson's mental capacity, he also had the most direct and most recent interaction with Simpson in relation to the shootings. Dr. Smith saw Simpson thirty-four times over a three-year-period, including a visit three months before the shootings. In contrast, Dr. Mulbry examined Simpson nine months after the shootings, Dr. Price examined her one year later, and Dr. Frierson began his evaluation almost two years after the shootings.

B. Admission of Dr. Smith's Testimony

Simpson argues the trial court erred in admitting Dr. Smith's testimony. Specifically, Simpson contends the court erred in admitting testimony: (1) despite discovery violations under Rule 5, SCRCrimP, and *Brady v. Maryland*²; (2) based on evidence obtained in violation of state and federal privacy laws; and (3) based on evidence obtained as a result of an unlawful seizure under the Fourth Amendment. We disagree.

"Generally, the admission of expert testimony is a matter within the sound discretion of the trial court." *State v. Cope*, 405 S.C. 317, 343, 748 S.E.2d 194, 208 (2013) (quoting *State v. Whaley*, 305 S.C. 138, 143, 406 S.E.2d 369, 372 (1991)). This court will not disturb the trial court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion whe[n] the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs*, 353 S.C.

² 373 U.S. 83 (1963).

374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003). To show prejudice, the appellant must demonstrate "a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

1. Rule 5, SCRCrimP, and *Brady*

Simpson argues the trial court erred in allowing Dr. Smith's testimony despite discovery violations under Rule 5, SCRCrimP, and *Brady*. We disagree.

Pursuant to Rule 5(a)(1)(D), SCRCrimP,

Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

"The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). "[A]n individual asserting a *Brady* violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or [impeachment evidence]." *Id.* at 287, 754 S.E.2d at 909. "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Von Dohlen*, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996).

Simpson's medical records were central to her defense of insanity. Shortly after trial counsel was appointed to represent Simpson, she signed a HIPAA release authorizing the release of her medical records. Simpson's records were then disclosed to the defense experts and the court appointed psychiatrist to aid in the formation of their opinions.

We disagree with Simpson's argument that the State violated Rule 5 and *Brady* by failing to disclose the records as the basis for Dr. Smith's opinion when the documents were in the possession of the defense and submitted to the defense experts. Simpson contends the State was required to disclose the basis of Dr. Smith's opinion, pursuant to Rule 5 and *Brady*, but the law does not support this contention. Rule 5 does not obligate the solicitor 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.

2. Privacy Laws

Simpson argues the trial court erred in admitting Dr. Smith's testimony based on evidence obtained by SLED in violation of state and federal privacy laws. We disagree.

Pursuant to the record: (1) SLED submitted a form requesting medical information from Simpson's medical providers; (2) the form cited an inapplicable state statute³; and (3) the State was unaware of the form submitted by SLED. Simpson did not request a suppression hearing, no records custodians from the medical providers testified about when the documents were disclosed, and no representative from SLED testified about how the information ultimately came into its possession. The trial court did not make a finding as to how SLED retrieved Simpson's records. However, the trial court did find Simpson waived her privilege to protect her medical records by disclosing the information to her own experts, then calling those experts to testify to the contents at trial.

We agree with the trial court's finding that Simpson waived her privacy interest in her medical records when she consented to the disclosure of her records to her own experts and opened the door to her mental health by raising the defense of insanity. Because Simpson waived her claim of privilege in her records, her argument SLED obtained her records improperly had no bearing on the issue before the trial court.

³ SLED is authorized to "expeditiously investigate child deaths in all counties of the State" in accordance with section 63-11-1940 of the South Carolina Code (2010). In addition, section 63-11-1960 of the South Carolina Code (2010) authorizes SLED to obtain the medical records of a child whose death is being reviewed by the department. Here, SLED requested Simpson's records, not the children's.

Furthermore, Simpson cannot demonstrate any prejudice from the trial court's decision to allow Dr. Smith's testimony based on her medical records. Simpson called three expert witnesses to testify as to their opinions of her mental health after reviewing her records from Dr. Smith. These experts explained to the jury the portions of Dr. Smith's records they found relevant to their opinions. Simpson cannot show Dr. Smith revealed information to the jury that was not previously revealed through the defense experts.

3. Fourth Amendment

Simpson argues the trial court erred in admitting Dr. Smith's testimony because it was based on evidence obtained as a result of an unlawful seizure under the Fourth Amendment. We disagree.

The Fourth Amendment provides no remedy for a violation of the warrant requirement, but the United States Supreme Court fashioned the exclusionary rule, a deterrent sanction whereby the State is barred from introducing evidence obtained in violation of the Fourth Amendment. *Davis v. United States*, 564 U.S. 229, 237 (2011). A Fourth Amendment seizure "deprives the individual of dominion over his or her person or property." *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting *Horton v. California*, 496 U.S. 128, 133 (1990)). However, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, . . . then the deterrence rationale has so little basis that the evidence should be received." *Nix v. Williams*, 467 U.S. 431, 432 (1984).

Simpson argues Dr. Smith's testimony should have been excluded because SLED violated her Fourth Amendment rights. The trial court declined to make a finding that Simpson's medical records obtained by SLED were a search or seizure in violation of Simpson's Fourth Amendment rights.

As discussed above, the State was entitled to Simpson's medical records, and was entitled to call Dr. Smith as a reply witness. At trial, Simpson did not request, nor did the trial court conduct, a suppression hearing on her medical records. Simpson does not object to the disclosure of the information in her medical records to expert witnesses. Nor does she object to the information in her medical records being presented to the jury. Instead, Simpson seeks to suppress Dr. Smith's opinion on the basis of her records. We find Simpson's Fourth Amendment violation claim is

not supported by the record or an appropriate claim of exclusion to Dr. Smith's testimony.

II. Dr. Price

Simpson argues the trial court erred in excluding Dr. Price's testimony regarding statements made to Dr. Price by Dr. Smith. We disagree.

"Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "[I]t is well-settled that an exception to the rule prohibiting hearsay exists when it is used by an expert." *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432, 433 (1997). "An expert may base his opinion on hearsay evidence so long as it is of a type reasonably relied upon by other experts in the field." *Id.*

Dr. Price testified Dr. Smith agreed with his opinion that Simpson was not able to differentiate between right and wrong at the time of the shootings. The State objected based on hearsay and the trial court sustained the objection. On appeal, Simpson argues an expert witness may testify as to matters of hearsay for the purpose of showing what information he or she relied upon in giving an opinion of value.

We find the trial court did not err in excluding Dr. Price's testimony. Dr. Price testified Dr. Smith agreed with his opinion, which necessarily indicates Dr. Price formed his opinion *before* Dr. Smith agreed with it. Dr. Price's testimony was an impermissible attempt to bolster his credibility before the jury, and did not fit within the hearsay exception for expert testimony.⁴ *See State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (holding a witness is not permitted to vouch for the credibility of another witness by offering testimony that bolsters the testimony of another witness).

III. Directed Verdict

Simpson contends the trial court erred in denying her motion for a directed verdict, arguing the State failed to present sufficient evidence tending to prove her guilt. We disagree.

⁴ We note Simpson did not attempt to enter Dr. Smith's statement to Dr. Price pursuant to Rule 613(b), SCRE.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Id.* "On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." *State v. Stanley*, 365 S.C. 24, 41, 615 S.E.2d 455, 464 (Ct. App. 2005). "If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury." *State v. Mollison*, 319 S.C. 41, 46, 459 S.E.2d 88, 91 (Ct. App. 1995).

Pursuant to section 17-24-10(A) of the South Carolina Code (2014),

It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, 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.

However,

[a] defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

S.C. Code Ann. § 17-24-20(A) (2014).

Viewing the evidence in the light most favorable to the State, we find a jury could reasonably deduce Simpson was capable of recognizing her actions as morally or legally wrong. Although Simpson's three experts opined she was unable to distinguish between right and wrong at the time of the shootings, Simpson's treating psychiatrist Dr. Smith testified she was capable of distinguishing between right and wrong. Additionally, several lay witnesses testified as to Simpson's behavior around the time of the shootings. The following evidence was introduced

from which a jury could conclude Simpson understood right from wrong: (1) Simpson removed her children from school and lied as to the reason; (2) Simpson appeared irritated with her husband and children the day before the shootings; (3) Simpson turned off the home's alarm system before the shootings; and (4) Simpson refused to tell her neighbor or the police about the whereabouts of her family.

Although Simpson's experts opined she did not know right from wrong at the time of the shootings, the jury was not required to give the expert testimony greater weight than that of the lay witnesses. *See State v. Douglas*, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) (holding the fact that a witness was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness). Accordingly, the trial court did not err in denying Simpson's motion for a directed verdict.

CONCLUSION

Simpson's convictions are

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.