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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. IV

NELSON MULLINS RILEY & SCARBOROUGH LLP Brook B. Andrews Caroline A. Warner 1320 Main Street / 17th Floor Columbia, SC 29201 P.O. Box 1107 Columbia, SC 29211 (803) 799-2000 <i>Attorneys for Petitioner</i>	SOUTH CAROLINA OFFICE OF THE ATTORNEY GENERAL W. Joseph Maye 1000 Assembly Street / Room 519 Columbia, SC 29201 P.O. Box 11549 Columbia, SC 29211 803-734-3131 <i>Attorneys for Respondent</i>

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FORM 5

STATE OF SOUTH CAROLINA)

County of Pickens)

Suzanna Brown Simpson, SCDC 00368727)

Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2020-CP-39- 617

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Leath Correctional Facility
2. Name and location of Court which imposed sentence General Sessions, Pickens
County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 14GS39-00397 Murder- 2 Counts

- (b) 14GS39-00397 Possession of Weapon During Commission of Violent Crime
- (c) 14GS39-00398 Attempted Murder
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 06/24/2016: Life Without Parole x 2
- (b) 06/24/2016: 5 years (Consecutive to Life)
- (c) 06/24/2016: 30 years (Consecutive to Life)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Writ Denied as Granted Improvidently
- iii. _____
- (c) the date of each such result:
- i. February 21, 2019
- ii. January 14, 2020
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 425 S.C. 522, 823 S.E.2d 229 (Ct. App. 2019)
- ii. 838 S.E.2d 500 (S.C. 2020) (Mem)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel-Failure to adequately request pre-trial notice of State's expert on Due Process grounds
 - (b) Ineffective Assistance of Trial Counsel-Failure to preserve Due Process Grounds for State's failure to provide adequate notice of expert testimony
 - (c) Ineffective Assistance of Trial Counsel-Failure to follow Rule 613(b), SCRE, as to State's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert.
 - (d) Ineffective Assistance of Trial Counsel-Failure to provide a Sur-Reply to State's expert witness called during State's Reply
 - (e) Petitioner reserves the right to amend the Petition after Counsel's review of the Transcript
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel did not raise Due Process as a grounds for forcing State to disclose their Expert witness, the expert's opinions and the basis for those opinions pre-trial.
 - (b) Trial Counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial
 - (c) Trial Counsel failed to ask the State's expert witness all the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness.
 - (d) Trial Counsel failed to offer any evidence in Sur-Reply to the State's introduction of mental capacity evidence in the State's Reply.
 - (e) Petitioner reserves the right to amend the Petition after Petitioner is appointed Counsel and Counsel has had time to review the transcript of record.
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
 - (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court,

State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
 - (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) The issue was not preserved for direct appeal by trial counsel. There was no objection based on Due Process grounds made at trial.
 - (b) The issue was not ripe for adjudication until post-conviction relief.
 - (c) The issue was not ripe for adjudication until post-conviction relief.
 - (d) The issue was not ripe for adjudication until post-conviction relief.
 - (e) Further issues may be developed with the help of Counsel.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

18. If you answered 'yes' to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. John Mauldin, Teal Johnson, Jacob Goldstein, 13th Cir. Public Defender Office
- ii. J. Falkner Wilkes, 114 Whitsett Street, Greenville, SC 29601
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
- ii. Direct Appeal
- iii. This Action - PCR

19. State clearly the relief you seek in filing this application:

Conviction overturned and case remanded for a new trial.

2020 JUN -1 P 12:12

20. Are you now under sentence from any other court that you have not challenged?

No

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

County of Greenwood

VERIFICATION

← Put County
Where you
Sign document

I, Suzanna Brown Simpson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Suzanna Brown Simpson
Signature: Suzanna Brown Simpson

SWORN to and subscribed before me this 27th
day of May, 2020.

Mamie L. Lumb (L.S.)
Notary Public

← Notary signs
here

My Commission Expires: 2-13-2029

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

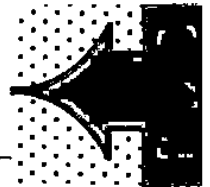
2020 JUN -1 P 12:12

I, Suzanna Brown Simpson, hereby apply for leave to proceed in this action without prepayment
of fees or costs or security therefor. In support of my application I declare under penalty of
perjury that the following facts are true:

CLERK OF COURT
UNDER 56 COUNTY
SOUTH CAROLINA

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Suzanne Brown Simpson
Applicant

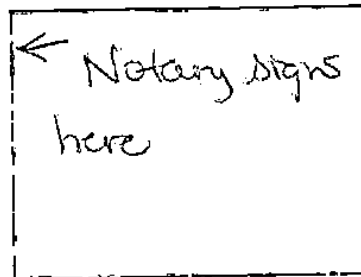


SWORN or affirmed to and subscribed before me this

27 day of May, 2020.

Mandy H. Roub
Notary Public

My Commission Expires: 2/3/2025



STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

2020 NOV 10 A 9 04

Suzanna Brown Simpson, #368727,

Applicant
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2020-CP-39-0617

RETURN AND PARTIAL
MOTION TO DISMISS

CLOCK IN TIME CANCELLED

Date 11-3-2020

FILED
PAID
CLERK
COURT
PICKENS
COUNTY
SOUTH CAROLINA

2020 NOV -2 PM 12:1

ju

The State of South Carolina ("Respondent"), making its return to the application for post-conviction relief filed by Suzanna Brown Simpson ("Applicant") on June 1, 2020, would respectfully show this Court:

I. Procedural History

During its February of 2014 term, the Pickens County Grand Jury indicted Applicant for two counts of murder (2014-GS-39-0396; -0397), attempted murder (2014-GS-39-0398), and possession of a weapon during the commission of a violent crime (2014-GS-39-0397). Applicant was represented by John I. Mauldin, Esquire, Teal Johnson, Esquire, and Jacob Goldstein, Esquire. Thirteenth Circuit Solicitor William Walter Wilkins, III, and Assistant Solicitor Betty C. Strom prosecuted the case. On June 20, 2016, through June 23, 2016, Applicant proceeded to a jury trial with the Honorable Brian M. Gibbons presiding. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for consecutive terms as follows: for each count of murder, to imprisonment for life; for attempted murder, to imprisonment for thirty years; and for possession of a weapon during the commission of a violent crime, for five years.

Mauldin filed a timely notice of appeal on Applicant's behalf. Chief Appellate Defender

Robert Michael Dudek of the South Carolina Commission initially represented Applicant on appeal, but was relieved as counsel and J. Falkner Wilkes was substituted as counsel for Applicant before briefing began. State v. Simpson, S.C. Ct. App. Order filed October 17, 2016. Assistant Attorney General Susannah R. Cole of the South Carolina Solicitor's Office represented Respondent. Wilkes argued on appeal that Judge Gibbons erred (1) in admitting forensic testimony of the State's expert witness because the State violated the discovery requirements of Rule 5, SCRCrimP, and Brady v. Maryland, 373 U.S. 83 (1963), (2) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained in violation of state and federal privacy laws, (3) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained pursuant to an unlawful seizure, (4) in excluding testimony of the defense's expert regarding statements made by the State's expert, (5) in denying trial counsel's motions for a directed verdict and a new trial, and (6) in allowing the State's witness to give forensic testimony and give an opinion as to Applicant's sanity without being qualified as a forensic expert. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Simpson, 425 S.C. 522, 823 S.E.2d 229 (S.C. Ct. App. 2019). The Court of Appeals subsequently denied Wilkes' petition for rehearing. State v. Simpson, S.C. Ct. App. filed February 21, 2019.

Wilkes filed a petition for a writ of certiorari, arguing Judge Gibbons erred in (1) admitting expert forensic testimony when the State had not timely disclosed the forensic examination or testimony to the defense, (2) admitting expert forensic testimony where the documents underlying the expert's testimony were unlawfully seized, (3) admitting forensic testimony where the State's expert was not properly qualified as a forensic expert, and (4) excluding commentary of the

defense's expert that the treating physician concurred in his analysis.¹ Cole continued to represent Respondent before the South Carolina Supreme Court. The Supreme Court granted Wilkes' petition for a writ of certiorari as to his fourth issue only, and ordered the parties to file briefs. State v. Simpson, S.C. Sup. Ct. Order filed August 6, 2019. Wilkes argued in his brief that Judge Gibbons erred in excluding testimony of the defense's expert as to statements made by Applicant's treating physician during a personal interview because: (1) the testimony was not hearsay, (2) if it was hearsay, the testimony was admissible to explain the reason for the expert's opinion and the underlying factual basis thereof, and (3) Applicant's had a constitutional right to present the evidence and was prejudiced by its exclusion. The Supreme Court dismissed the writ of certiorari as improvidently granted. State v. Simpson, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam). The remittitur was issued on January 22, 2020.

II. Current Application

In her application for post-conviction relief, filed on June 1, 2020, Applicant argues she is entitled to relief based upon multiple claims, which are as follows: (1) Applicant's trial attorneys were constitutionally ineffective for failing to adequately request pre-trial notice of the State's expert witness on due process grounds, (2) Applicant's trial attorneys were constitutionally ineffective for failing to preserve the due process grounds for the State's failure to provide adequate notice of its expert's testimony, (3) Applicant's trial attorneys were constitutionally ineffective for failing to follow Rule 613(b), SCRE, as to the testimony of the State's expert and the admission of a prior inconsistent statement made by him to the defense's expert, and (4) Applicant's trial attorneys were constitutionally ineffective for failing to provide a sur-reply to the

¹ Wilkes originally filed a petition for a writ of certiorari and then moved to amend it. The South Carolina Supreme Court granted that motion. State v. Simpson, S.C. Sup. Ct. Order filed May 9, 2019. For the sake of clarity, that amended petition will be referenced in this return as "the petition."

State's expert witness who was called during the State's reply. Applicant prays the Court would grant post-conviction relief and overturn her convictions and remand for a new trial.

Attached to this return and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding Applicant's convictions; the records from Applicant's direct appeal, including but not limited to the record on appeal; and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion for Summary Dismissal

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

First, the Court should dismiss as barred by the doctrine of res judicata Applicant's claims she is entitled to relief because her trial attorneys were constitutionally ineffective (1) for failing to adequately request pre-trial notice of the State's expert witness on due process grounds and (2) for failing to preserve the due process grounds for the State's failure to provide adequate notice of its expert's testimony. Res judicata prohibits subsequent actions by the same parties on the same

issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (S.C. Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (S.C. Ct. App. 1993). Res judicata also bars any issues that could have been raised in the former action. Id.; see also Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981) (approving of PCR court's finding that claims raised or that could have been raised in a prior federal habeas corpus proceeding were barred by res judicata). As previously noted, Applicant has presented claims identical to those presented in his earlier PCR actions, making them undeniably prohibited by the doctrine of res judicata.

Wilkes argued during Applicant's direct appeal that Judge Gibbons erred in admitting the testimony of the State's expert witness because, among other reasons, Applicant's due process rights were violated because the State, did not disclose to the defense prior to trial that it would offer the witness as an expert or ask him to provide forensic testimony based on Applicant's medical records. The South Carolina Court of Appeals rejected that argument, finding that Applicant was already in possession of her medical records—which she had, in fact, supplied to other experts to serve as the basis of their testimonies—and that neither Rule 5, SCRCrimP, nor Brady v. Maryland, 373 U.S. 83 (1963), required the State to notify the defense of the substance of the witness's testimony because the substance of the witness's testimony was not set down in writing. Simpson, at 537-39, 823 S.E.2d at 237-37. The South Carolina Supreme Court declined to review the Court of Appeals' opinion. State v. Simpson, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam). Brady is the means whereby a defendant's due process rights are protected when the prosecution withholds evidence favorable to the defense. Brady, at 86, 87 (“We agree with the Court of Appeals that suppression of this confession was a violation of the Due Process Clause of the Fourteenth Amendment.”; “This ruling is an extension of Mooney v. Holohan, 294 U.S. 103 [(1935)]...where the Court ruled on what nondisclosure by a prosecutor violates due

process”; and “[T]he suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”). Our appellate court’s rejection of Wilkes’ argument on appeal was a substantive rejection of the argument that Applicant revives now. Because a final judgment on the merits of this argument was reached during Applicant’s direct appeal, Applicant should not now be allowed to present the same argument again now. The Court should find there is no genuine issue of material fact as to these two claims and that Respondent is entitled to judgment as a matter of law, and dismiss the claims summarily.

IV. Response to Applicant’s Claims

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in her post-conviction relief action, and when alleging that counsel was constitutionally ineffective, she must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

Applicant claims she is entitled to post-conviction relief because her trial attorneys were constitutionally ineffective for (3) failing to follow Rule 613(b), SCRE, as to the testimony of the State’s expert and the admission of a prior inconsistent statement made by him to the defense’s expert and (4) failing to provide a sur-reply to the State’s expert witness who was called during the State’s reply. Respondent submits that Applicant likely cannot show that she is entitled to post-conviction relief on these claims in light of the strong deference given to defense attorneys in post-conviction relief actions, but requests an evidentiary hearing in order to address the questions of

fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Future Amendments and the Discovery Process

Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to S.C. Code Ann. § 17-27-150(a) (2008), an applicant in a noncapital post-conviction relief action may invoke discovery under the South Carolina Rules of Civil Procedure only if granted leave to do so by a court upon a showing of good cause. If Applicant attempts to invoke discovery powers without first obtaining leave to do so by a court upon a showing of good cause, Respondent will oppose those attempts.

VII. Conclusion

WHEREFORE, Respondent requests that the Court dismiss summarily Applicant’s first two claims as barred by the doctrine of res judicata and convene an evidentiary hearing as to the

third and fourth claims.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

August 14, 2020

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL CIRCUIT

Suzanna Brown Simpson, #368727,

Case No.: 2020-CP-39-0617

Applicant,

v.

State of South Carolina,

Respondent.

2020 NOV 10 A 9 04
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CERTIFICATE OF SERVICE
CLOCK IN TIME CANCELLED

Date 11/3/2020 Unit. *ju*

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return and Partial Motion to Dismiss** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Sarah Morrison Henry, Esquire
sarah@sarahmhenrylaw.com

DATED this 9th day of September, 2020.

s/Taylor Zane Smith
ATTORNEY NAME
Assistant Attorney General
S.C. Bar No.: 103282

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
TSmith@scag.gov

From: Taylor Smith
To: sarah@sarahmhenrylaw.com
Cc: Taylor Smith; info@sarahmhenrylaw.com
Subject: Return to Suzanna Simpson's application for PCR.
Date: Wednesday, September 9, 2020 2:15:47 PM



Taylor Smith sent you a secure message

Sarah,

I am representing the State in the PCR action Suzanna Simpson v. State, 2020-CP-39-0617. Attached to this email is the State's return and partial motion to dismiss and all attachments thereto, which I am serving on you by email in accordance with the South Carolina Supreme Court's recent COVID-19 orders. Because the file size is so large, I am uploading it to kiteworks and emailing the link to you. Please let me know if you are unable to access the document.

I will save a copy of this email to the return and mail it to the Pickens County Clerk of Court for filing.

Thank you,
Taylor Smith

Access message

Secured by Accellion



Attachments expire on Oct 09, 2020



1 PDF

Return for Simpson, Suzanna (02374519xD2C78).pdf

This message requires that you sign in to access the message and any file attachments.

Files sent securely by South Carolina Office of the Attorney General. Please contact helpdesk@scag.gov for assistance.

STATE OF SOUTH CAROLINA

County of Pickens

Suzanna Brown Simpson, SCDC 00368727

Applicant

v.

State of South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2023 JUL 11

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO.: 2020-CP-39-00617

APPLICATION FOR

POST-CONVICTION RELIEF

(FIRST AMENDMENT)

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each application question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original, shall be mailed to the Clerk of Court in which the applicant was convicted.

1. Place of detention Leath Correctional Facility
2. Name and location of Court which imposed sentence General Sessions, Pickens County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14GS39-00397 Murder – 2 counts
 - (b) 14GS39-00397 Possession of Weapon During Commission of Violent Crime
 - (c) 14GS39-00398 Attempted Murder
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 06/24/2016: Life Without Parole x 2
- (b) 06/24/2016: 5 years (Consecutive to Life)
- (c) 06/24/2016: 30 years (Consecutive to Life)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgement of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Writ Denied as Granted Improvidently
- iii. _____
- (c) the date of each such result:
- i. February 21, 2019
- ii. January 14, 2020
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 425 S.C. 522, 823 S.E.2d 229 (Ct. App. 2019)
- ii. 838 S.E.2d 500 (S.C. 2020) (Mem)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel-Failure to adequately request pre-trial notice of State's expert on Due Process grounds
- (b) Ineffective Assistance of Trial Counsel – Failure to preserve Due Process Grounds for State's failure to provide adequate notice of expert testimony
- (c) Ineffective Assistance of Trial Counsel - Failure to follow Rule 613(b), SCRE, as to State's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert

- (d) Ineffective Assistance of Trial Counsel-Failure to provide a Sur-Reply to State's expert witness called during State's Reply
- (e) Petitioner reserves the right to amend the Petition as new information is revealed

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Trial Counsel did not raise Due Process as a grounds for forcing State to disclose their Expert witness, the expert's opinions and the basis for those opinions pre-trial.
- (b) Trial Counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial
- (c) Trial Counsel failed to ask the State's expert witness all the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness.
- (d) Trial Counsel failed to offer any evidence in Sur-Reply to the State's introduction of mental capacity evidence in the State's Reply.
- (e) Ineffective Assistance of Trial Counsel – Failure to call mitigating witnesses including family and friends
- (f) Ineffective Assistance of Trial Counsel – Failure to meet with/investigate/prepare/prepare for treating physician
- (g) Ineffective Assistance of Trial Counsel – Failure to investigate or offer expert testimony on Adderall Induced Psychosis
- (h) Petitioner reserves the right to amend the Petition after Petitioner is appointed Counsel and Counsel has had time to review the transcript of record.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

- (b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) The issue was not preserved for direct appeal by trial counsel. There was no objection based on Due Process grounds made at trial.
- (b) The issue was not ripe for adjudication until post-conviction relief.
- (c) The issue was not ripe for adjudication until post-conviction relief.
- (d) The issue was not ripe for adjudication until post-conviction relief.
- (e) Further issues may be developed with the help of Counsel.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motion or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. John Mauldin, Teal Johnson, Jacob Goldstein, 13th Cir. Public Defender Office

ii. J. Faulkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct Appeal

iii. This Action - PCR

19. State clearly the relief you seek in filing this application:

Conviction overturned and case remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA)

County of Greenwood)

VERIFICATION

I, Suzanna Brown Simpson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside, or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Suzanna Brown Simpson
Signature: Suzanna Brown Simpson

SWORN to and subscribed before me this 10th
Day of July, 2023.

James W. Bannister
Notary Public for South Carolina

Printed Name of Notary

My Commission Expires: 05/08/2028

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Suzanna Brown Simpson, hereby apply for leave to proceed in this action without prepayment of fees and costs or security therefor. In support of my application I declare under penalty of perjury that the following are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Suzanna Brown Simpson
Applicant

SWORN or affirmed to and subscribed before me this
10th Day of July, 2023.

James W. Bannister
Notary Public for South Carolina
James W. Bannister
Printed Name of Notary
My Commission Expires: 05/08/2028

STATE OF SOUTH CAROLINA

County of Pickens

Suzanna Brown Simpson, SCDC 00368727

Applicant

v.

State of South Carolina

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

APR 14 2020 CASE NO. 552020-CP-39-00617

APPLICATION FOR

POST-CONVICTION RELIEF

(SECOND AMENDMENT)

INSTRUCTIONS READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each application question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original, shall be mailed to the Clerk of Court in which the applicant was convicted.

1. Place of detention Leath Correctional Facility
2. Name and location of Court which imposed sentence General Sessions, Pickens County
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 14GS39-00397 Murder – 2 counts
 - (b) 14GS39-00397 Possession of Weapon During Commission of Violent Crime
 - (c) 14GS39-00398 Attempted Murder
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) 06/24/2016: Life Without Parole x 2
- (b) 06/24/2016: 5 years (Consecutive to Life)
- (c) 06/24/2016: 30 years (Consecutive to Life)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgement of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. Supreme Court
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. Writ Denied as Granted Improvidently
- iii. _____
- (c) the date of each such result:
- i. February 21, 2019
- ii. January 14, 2020
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 425 S.C. 522, 823 S.E.2d 229 (Ct. App. 2019)
- ii. 838 S.E.2d 500 (S.C. 2020) (Mem)
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
10. State concisely the grounds on which you base your allegations that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel-Failure to adequately request pre-trial notice of State's expert on Due Process grounds
- (b) Ineffective Assistance of Trial Counsel – Failure to preserve Due Process Grounds for State's failure to provide adequate notice of expert testimony
- (c) Ineffective Assistance of Trial Counsel - Failure to follow Rule 613(b), SCRE, as to State's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert

- (d) Ineffective Assistance of Trial Counsel-Failure to provide a Sur-Reply to State's expert witness called during State's Reply
 - (e) Ineffective Assistance of Trial Counsel – Failure to call mitigating witnesses including family and friends
 - (f) Ineffective Assistance of Trial Counsel – Failure to meet with/investigate/prepare/prepare for treating physician
 - (g) Ineffective Assistance of Trial Counsel – Failure to investigate or offer expert testimony on Adderall Induced Psychosis
 - (h) Petitioner reserves the right to amend the Petition as new information is revealed
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial Counsel did not raise Due Process as a grounds for forcing State to disclose their Expert witness, the expert's opinions and the basis for those opinions pre-trial.
 - (b) Trial Counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial
 - (c) Trial Counsel failed to ask the State's expert witness all the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness.
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 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered “yes” to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
 - i. _____
 - ii. _____

- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

- i. _____
- ii. _____
- iii. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No _____

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

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- (a) The issue was not preserved for direct appeal by trial counsel. There was no objection based on Due Process grounds made at trial.
- (b) The issue was not ripe for adjudication until post-conviction relief.
- (c) The issue was not ripe for adjudication until post-conviction relief.
- (d) The issue was not ripe for adjudication until post-conviction relief.
- (e) The issue was not ripe for adjudication until post-conviction relief.
- (f) The issue was not ripe for adjudication until post-conviction relief.
- (g) The issue was not ripe for adjudication until post-conviction relief.
- (h) Further issues may be developed if new information comes to light.

17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motion or applications with respect to this conviction, which you filed? No

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:

i. John Mauldin, Teal Johnson, Jacob Goldstein, 13th Cir. Public Defender Office

ii. J. Faulkner Wilkes, 114 Whitsett Street, Greenville, SC 29601

iii. _____

- (b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct Appeal

iii. This Action - PCR

19. State clearly the relief you seek in filing this application:

Conviction overturned and case remanded for a new trial.

20. Are you now under sentence from any other court that you have not challenged?

No

STATE OF SOUTH CAROLINA

County of Greenwood

)

)

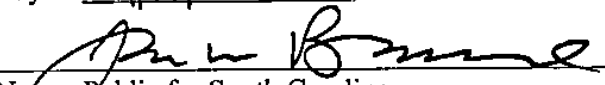
)

VERIFICATION

I, Suzanna Brown Simpson, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside, or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


Signature: Suzanna Brown Simpson

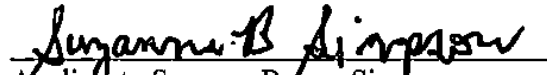
SWORN to and subscribed before me this 3rd
Day of April, 2024.


Notary Public for South Carolina
James W. Bannister
Printed Name of Notary
My Commission Expires: 05/08/2028

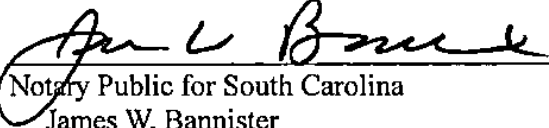
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Suzanna Brown Simpson, hereby apply for leave to proceed in this action without prepayment of fees and costs or security therefor. In support of my application I declare under penalty of perjury that the following are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant: Suzanna Brown Simpson

SWORN or affirmed to and subscribed before me this
3rd Day of April, 2024.


Notary Public for South Carolina

James W. Bannister

Printed Name of Notary

My Commission Expires: 05/08/2028



ALAN WILSON
ATTORNEY GENERAL

2024 OCT 21 P 1:47
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

October 11, 2024

The Honorable Harold P. Welborn
Pickens County Clerk of Court
Post Office Box 215
Pickens, South Carolina 29671-0215

Re: Suzanna B. Simpson, #368727 v. State of South Carolina
2020-CP-39-617

Dear Mr. Welborn:

Enclosed is the original and one copy of the Amended Return and Partial Motion to Dismiss in the above matter. Kindly please file same in your office and return a copy to the undersigned in the self-addressed stamped envelope provided.

Please let me know if I can provide any other information. Thank you.

Sincerely,

s/ W. Josephh Maye
W. JOSEPH MAYE
Assistant Attorney General

:dmd

Enclosures

cc: James W. Bannister, Esq. (with enclosures)

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Suzanna Brown Simpson, #368727,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE THIRTEENTH JUDICIAL CIRCUIT
)

) Case No.: 2020-CP-39-0617
)

) **AMENDED RETURN AND PARTIAL**
) **MOTION TO DISMISS**
)

The State of South Carolina ("Respondent"), making its return to the application for post-conviction relief filed by Suzanna Brown Simpson ("Applicant") on April 4, 2024, would respectfully show this Court:

I. Procedural History

During its February of 2014 term, the Pickens County Grand Jury indicted Applicant for two counts of murder (2014-GS-39-0396; -0397), attempted murder (2014-GS-39-0398), and possession of a weapon during the commission of a violent crime (2014-GS-39-0397). Applicant was represented by John I. Mauldin, Esquire, Teal Johnson, Esquire, and Jacob Goldstein, Esquire. Thirteenth Circuit Solicitor William Walter Wilkins, III, and Assistant Solicitor Betty C. Strom prosecuted the case. On June 20, 2016, through June 23, 2016, Applicant proceeded to a jury trial with the Honorable Brian M. Gibbons presiding. At the conclusion of trial, the jury found Applicant guilty as indicted. Judge Gibbons sentenced Applicant to imprisonment for consecutive terms as follows: for each count of murder, to imprisonment for life; for attempted murder, to imprisonment for thirty years; and for possession of a weapon during the commission of a violent crime, for five years.

Mauldin filed a timely notice of appeal on Applicant's behalf. Chief Appellate Defender

Robert Michael Dudek of the South Carolina Commission initially represented Applicant on appeal, but was relieved as counsel and J. Falkner Wilkes was substituted as counsel for Applicant before briefing began. State v. Simpson, S.C. Ct. App. Order filed October 17, 2016. Assistant Attorney General Susannah R. Cole of the South Carolina Solicitor's Office represented Respondent. Wilkes argued on appeal that Judge Gibbons erred (1) in admitting forensic testimony of the State's expert witness because the State violated the discovery requirements of Rule 5, SCRCrimP, and Brady v. Maryland, 373 U.S. 83 (1963), (2) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained in violation of state and federal privacy laws, (3) in admitting forensic testimony of the State's expert witness because the testimony was based upon evidence obtained pursuant to an unlawful seizure, (4) in excluding testimony of the defense's expert regarding statements made by the State's expert, (5) in denying trial counsel's motions for a directed verdict and a new trial, and (6) in allowing the State's witness to give forensic testimony and give an opinion as to Applicant's sanity without being qualified as a forensic expert. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Simpson, 425 S.C. 522, 823 S.E.2d 229 (S.C. Ct. App. 2019). The Court of Appeals subsequently denied Wilkes' petition for rehearing. State v. Simpson, S.C. Ct. App. filed February 21, 2019.

Wilkes filed a petition for a writ of certiorari, arguing Judge Gibbons erred in (1) admitting expert forensic testimony when the State had not timely disclosed the forensic examination or testimony to the defense, (2) admitting expert forensic testimony where the documents underlying the expert's testimony were unlawfully seized, (3) admitting forensic testimony where the State's expert was not properly qualified as a forensic expert, and (4) excluding commentary of the

defense's expert that the treating physician concurred in his analysis.¹ Cole continued to represent Respondent before the South Carolina Supreme Court. The Supreme Court granted Wilkes' petition for a writ of certiorari as to his fourth issue only, and ordered the parties to file briefs. State v. Simpson, S.C. Sup. Ct. Order filed August 6, 2019. Wilkes argued in his brief that Judge Gibbons erred in excluding testimony of the defense's expert as to statements made by Applicant's treating physician during a personal interview because: (1) the testimony was not hearsay, (2) if it was hearsay, the testimony was admissible to explain the reason for the expert's opinion and the underlying factual basis thereof, and (3) Applicant's had a constitutional right to present the evidence and was prejudiced by its exclusion. The Supreme Court dismissed the writ of certiorari as improvidently granted. State v. Simpson, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam). The remittitur was issued on January 22, 2020.

II. Current Application

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

- (a) Ineffective Assistance of Counsel: failure to adequately request pre-trial notice of state's expert on due process ground. "Trial counsel did not raise Due Process as a ground for forcing State to disclose their expert witness, the expert's opinions and the basis for those opinions pre-trial."
- (b) Ineffective Assistance of Counsel: failure to preserve Due Process grounds for state's failure to provide adequate notice of expert testimony. "Trial counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial."
- (c) Ineffective Assistance of Counsel: failure to follow 613(b), SCRE, as to state's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert. "Trial counsel failed to ask the State's expert witness all the factually specific questions

¹ Wilkes originally filed a petition for a writ of certiorari and then moved to amend it. The South Carolina Supreme Court granted that motion. State v. Simpson, S.C. Sup. Ct. Order filed May 9, 2019. For the sake of clarity, that amended petition will be referenced in this return as "the petition."

necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness."

- (d) Ineffective Assistance of Counsel: failure to provide a sur-reply to the State's expert witness called during State's Reply. "Trial counsel failed to offer any evidence in sur-reply to the State's introduction of mental capacity evidence in the State's Reply."
- (e) Ineffective Assistance of Counsel: failure to call mitigating witnesses, including family and friends, for the purposes of introducing good character evidence and seek a corresponding jury charge to the same.²
- (f) Ineffective Assistance of Counsel: failure to meet with/investigate/prepare for treating physician
- (g) Ineffective Assistance of Counsel: failure to investigate or offer expert testimony on Adderall Induced Psychosis

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

Prior to the filing of this Amended Return, the Court has been provided with the records of the Pickens County Clerk of Court regarding Applicant's convictions; the records from Applicant's direct appeal, including but not limited to the trial transcript; and Applicant's records from the South Carolina Department of Corrections. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion for Summary Dismissal

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and admissions and agreements of fact" and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the face of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494

² Pursuant to the State's inquiry for any updated allegations, additional clarification of this claim was provided to the State via email on October 4, 2024.

(2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

Applicant's grounds (a) and (b) should be summarily dismissed. Each of these grounds for relief relies upon a legal premise that is not supported by the law, either via direct consideration of the issues by the Court of Appeals in Applicant's direct appeal, or by existing case law.

Ground (a) asserts that counsel was constitutionally ineffective for failing to adequately request pre-trial notice of state's expert on due process grounds. Similarly, Ground (b) asserts that counsel failed to preserve Due Process grounds for state's failure to provide adequate notice of expert testimony. The underlying law for these claims was raised on direct appeal. Therein, appellate counsel Wilkes argued that the trial court erred in admitting the testimony of the State's expert witness because, among other reasons, Applicant's due process rights were violated because the State did not disclose to the defense prior to trial that it would offer the witness as an expert or ask him to provide forensic testimony based on Applicant's medical records. The South Carolina Court of Appeals rejected that argument, finding that Applicant was already in possession of her medical records—which she had, in fact, supplied to other experts to serve as the basis of their testimonies—and that neither Rule 5, SCRCrimP, nor Brady v. Maryland, 373 U.S. 83 (1963), required the State to notify the defense of the substance of the witness's testimony because the substance of the witness's testimony was not set down in writing. Simpson, at 537-39, 823 S.E.2d at 237-37. The South Carolina Supreme Court declined to review the Court of Appeals' opinion. State v. Simpson, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam).

The Court of Appeals ruled explicitly that neither Rule 5(a)(1)(D), SCRCrimP, nor *Brady*

establishes a basis for which the solicitor was compelled “to notify the defendant of the substance of an expert’s testimony that has not been put in the form of a written report, particularly when the expert is relying on information with the defendant’s possession.” State v. Simpson, 425 S.C. 522, 539, 823 S.E.2d 229, 238 (Ct. App. 2019), overruled on other grounds by State v. Wallace, 440 S.C. 537, 892 S.E.2d 310 (2023). The alleged due process right was considered by the court, but the court found the demanded notice to not exist within the applicable rules.³ Summary judgment is appropriate because the underlying legal basis for these claims is faulty and cannot support a finding of ineffectiveness. The Court should find there is no genuine issue of material fact as to these two claims and that Respondent is entitled to judgment as a matter of law, and dismiss the claims summarily.

IV. Response to Applicant’s Claims

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008); Strickland v. Washington, 466 U.S. 668 (1984). Applicant has the burden of proving the allegations in her post-conviction relief action, and when alleging that counsel was constitutionally ineffective, she must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result.” Strickland, 466 U.S. at 686. In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First,

³ Respondent’s initial Return likened the argument to one of *res judicata*. While *res judicata* is similar to Respondent’s argument above, it is not precisely applicable. The ineffective assistance claim is newly asserted, rendering *res judicata* inapplicable, but the underlying legal issue has been ruled upon in a manner contrary to Applicant’s reliance. The argument above demonstrates that in order to grant relief, this Court would have to disregard the Court of Appeals’ holding in finding no due process right to notification existed. For that reason, it cannot support collateral relief.

Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 697. Therefore, the function of the post-conviction relief court is to determine if "in light of all the circumstances, the identified

acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

a) Ineffective assistance of counsel for failure to adequately request pre-trial notice of state’s expert on due process ground:

In addition to the arguments for summary dismissal, Respondent argues that Petitioner’s Ground (a) cannot demonstrate deficient performance or prejudice under Strickland. An attorney cannot be found deficient for failing to raise a violation of due process rights, where no such right exist. In equal measure, the record demonstrates that counsel *did* ultimately file a motion geared toward obtaining disclosure of the State’s witnesses, a result that came not as a result of obligation to a rule, but simply out of discussion to an otherwise baseless pretrial motion. Counsel’s efforts ultimately provided him with multiple days of preparation time in advance of Dr. Smith being called. Applicant likewise fails to demonstrate prejudice as he cannot demonstrate how there would have been a reasonable probability of differing result had he learned of the State’s intention to call Dr. Smith earlier.

b) Ineffective assistance of counsel for failing to preserve Due Process grounds for state’s failure to provide adequate notice of expert testimony

The record demonstrates that counsel *did* preserve this underlying issue for appeal and the Court of Appeals ruled on the issue finding no basis for a due process violation. Applicant can demonstrate neither deficiency nor prejudice under Strickland as a result.

c) Ineffective assistance of counsel for failing to follow 613(b), SCRE, as to state’s expert testimony and the admission of a prior inconsistent statement made to Petitioner’s expert

Applicant has not identified the prior inconsistent statement in question. As a result, Respondent is limited in its ability to respond. However, in review of the outstanding cross examination of Dr. Smith, Respondent asserts that counsel cannot be said to have rendered

advocacy that fell below an objective standard of reasonableness under *Strickland*. Respondent also asserts that Applicant cannot demonstrate prejudice, in the context of this case.

d) Ineffective assistance of counsel for failing to provide a sur-reply to the State's expert witness called during State's Reply

Respondent asserts that in light of the outstanding cross examination of Dr. Smith, Applicant cannot demonstrate deficient performance or prejudice for failing to seek a surrebuttal. Moreover, as permission for rebuttal testimony is a matter of discretion for the court and reliant upon the introduction of new matters to the trial that had not been previously addressed, the nature of Dr. Smith's testimony did not create the prerequisite for surrebuttal. State v. Watson, 353 S.C. 620, 623–24, 579 S.E.2d 148, 150 (Ct. App. 2003).

e) Ineffective assistance of counsel for failing to call mitigating witnesses, including family and friends, for the purposes of establishing "good character" evidence and a jury charge to the same.

Applicant has failed to set forth a basis for which this type of testimony would have been admissible at trial. "Evidence of a defendant's character is generally not admissible to show a propensity to act accordingly. State v. Young, 378 S.C. 101, 106, 661 S.E.2d 387, 389 (2008) (citing Rule 404(a)(1), SCRE). Applicant is not attempting to present evidence of good character traits specific to the crime to convince the jury she did not commit the crime. She has conceded that she has committed the crime and therefore good and bad character are ultimately irrelevant to the question of her mental state at the time of the shooting. Applicant cannot demonstrate that counsel was deficient for failing to present testimony of this nature, as such would likely not be admissible. However, even if it were admissible, it would not rise to a level of deficient performance and it would not demonstrate prejudice as it has no bearing on the sole issue presented to the jury – Applicant's mental state as it pertains to criminal responsibility.

f) Ineffective assistance of counsel for failing to meet with, investigate, and prepare for treating physician.

Applicant cannot demonstrate ineffective assistance of counsel concerning his preparations with Dr. Smith because 1) Dr. Smith testified that he agreed with the conclusions reached by the other experts, in light of their examinations and review; 2) notwithstanding the difference of diagnoses, Dr. Smith agreed that Applicant was mentally ill (a position the jury rejected despite all four experts agreeing); and 3) Dr. Smith admitted that Applicant was much sicker than he was aware, despite numerous meetings with Applicant. In light of both the substance of Dr. Smith's ultimate conclusion, and the impact of his cross-examination testimony, Applicant cannot demonstrate counsel was deficient in his preparedness and examination of Dr. Smith or that additional preparation would have created a reasonable probability of differing result at trial.

g) Ineffective assistance for failing to investigate or offer expert testimony on Adderall Induced Psychosis

Applicant cannot establish deficient performance or prejudice under Ground (g) because the record does not factually support the underlying premise. Testimony from experts revealed that, if anything, Applicant had failed to take her Adderall preceding the crime. Moreover, general testimony of the experts as to Applicant's medications habits overall demonstrated that there was no evidence of extreme or prolonged abuse of her Adderall that would render Applicant's alleged expert testimony relevant at trial. As such, Applicant cannot satisfy his burden under Strickland.

Respondent submits that Applicant likely cannot show that she is entitled to post-conviction relief on these claims in light of the strong deference given to defense attorneys in post-conviction relief actions, but requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application

for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VI. Future Amendments and the Discovery Process

Applicant must specify any claims she intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 238-39, 834 S.E.2d 196, 199-200 (2019), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VII. Conclusion

WHEREFORE, Respondent requests that the Court dismiss summarily Applicant’s first two claims as precluded by the holdings in Applicants direct appeal and convene an evidentiary hearing as to the third and fourth claims.

(signature block on following page)

Respectfully submitted,

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October 6, 2024

Respondent.

CERTIFICATE OF SERVICE

- 1134

STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
) 2020-CP-39-00617
COUNTY OF PICKENS)
)
)
)
)
SUZANNA SIMPSON,)
 APPLICANT,)
)
vs.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

)

October 7 and 8, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE PATRICK CLEBURNE FANT, III, JUDGE

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

JAMES W. BANNISTER, ESQ.
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CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>

There were no exhibits introduced.

P R O C E E D I N G S

Monday, October 7, 2024

(WHEREUPON, proceedings commenced at 9:30 AM.)

THE COURT: This is the case of Suzanna Brown Simpson vs. The State of South Carolina. And this is Case Number 2020-CP-39-0617.

I believe that there is a motion that's been filed by the AG on the first two issues. And I will hear you on that and then we'll proceed.

MR. MAYE: Thank you, Your Honor. May it please the Court. The pretrial motions immediately preceding the trial, Ms. Simpson raised dispute over the State's failure to notice their expert witnesses for this case. The defense couched the motion in a directed verdict motion, but it was a pretty large umbrella of things that was argued under that. And her arguments included assertions of her right to due process in light of violations of what they thought were violations of Rule 5 and Brady regarding discovery rules of being notified of the witnesses and being provided reports thereto.

Ultimately, counsel for the defense learned that the State might potentially call Dr. Smith possibly as a case-in-chief witness, possibly as a rebuttal. It wasn't certain. But ultimately, the trial court ruled that there was no Rule 5 or Brady application because there

1 wasn't any physical report to turn over. It was just a
2 witness they were considering calling and had discussions
3 with.

4 For that reason, they denied any due process
5 violation or any violation that would have prevented the
6 trial from going forward or prevented the witness from
7 taking the stand later at trial.

8 That issue was taken up on appeal. The Court of
9 Appeals agreed with the trial court, and they found that
10 in the absence of a written report, there isn't any
11 application of Rule 5 or Brady to the issue, and the
12 State was not under any obligation to notify the defense
13 of what witness they may call or when or how.

14 That underlying issue, and I know there's a little
15 bit of discrepancy between the initial return from the
16 State and the amended return, it is not precisely res
17 judicata because the issue here is ineffective assistance
18 of counsel. That, obviously, has never been pled before.

19 But the underlying issue that that claim relies upon
20 has been ruled on conclusively by the Court of Appeals.
21 And it's the State's position that the first two claims
22 of today's hearing, failure to seek pretrial motion for
23 getting notification of experts and the preservation
24 essentially of that same issue, are worthy of summary
25 dismissal because the legal issue underlying them has

1 been negated. There's nothing there for Ms. Simpson to
2 rely upon legally to allow for a finding of ineffective
3 assistance of counsel.

4 THE COURT: Mr. Maye, how do you feel -- and I know
5 that you've been arguing this, but how do you feel that
6 her due process rights were protected? And we're just
7 talking about the first two issues that were raised.

8 MR. MAYE: Certainly. The essential issue, Your
9 Honor, is that specific to what they were wanting, which
10 was notice of the expert, there isn't a due process
11 right. And that's essentially what the Court of Appeals
12 found. So they're raising ineffective assistance of
13 counsel on the basis of a due process right that doesn't
14 exist based on the controlling law of this case. So for
15 that reason, I can't think of a logical reason how
16 ineffective assistance can stem from a due process that
17 has been conclusively found not existing.

18 THE COURT: Okay. Mr. Bannister?

19 MR. BANNISTER: Thank you, Judge. Jim Bannister.
20 May it please the Court. I'm here on behalf of Anna
21 Simpson Brown -- Anna Brown Simpson. Sorry.

22 Your Honor, so the due process issue here is a
23 little more nuanced than what has been described by the
24 attorney general's office. The reason that issue has
25 been raised as an ineffective assistance of counsel is

1 not because of a failure to have it addressed under
2 Rule 5 and Brady, but a failure to have it addressed as a
3 standalone issue. Here's what I mean. In South
4 Carolina, we are virtually unique in the United States in
5 our criminal courts. We are unique in this sense, and
6 that is that you are not permitted as a defendant to
7 require the State to disclose expert information,
8 testimony, who they're going to be, their CV, what they
9 intend to offer an opinion about, or what they base the
10 opinion on.

11 Your Honor, for the last roughly 15 years, at
12 several CLEs and at one particular judicial conference
13 where I've had the opportunity to speak, I've spoken on
14 this issue and raised the idea that in criminal court, of
15 all the courts in our jurisdiction in South Carolina,
16 that ought to be the one particular place that you are
17 entitled as a defendant to know that there is going to be
18 an expert presented against you, what their background
19 and CV is, and what the basis of their testimony is.

20 So the place we are right now, the attorney
21 general's office has described accurately, which is as a
22 defense attorney, you are expected to show up, have a
23 witness take the stand and then just do the best you can
24 shooting from the hip with a cross-examination of an
25 expert that could be the deciding factor in the case. We

1 see this all the time with criminal sexual conduct cases.
2 It becomes a very difficult thing to ask any attorney to
3 perform adequately when they have no notice of the
4 expert, no idea of what the opinion is going to be, nor
5 any idea of what the basis of that opinion is. And
6 that's so important, Judge, because when you know what
7 the basis of the opinion is, then you have an opportunity
8 to attack the qualifications, you have an opportunity to
9 attack the reliability. You have an opportunity to
10 attack it, the opinion on the front end. Plus, you have
11 -- and this is the most important. You have the
12 opportunity to do the research into the peer-reviewed
13 scientific journals and articles that contradict what the
14 expert is offering as an opinion or contradict some of
15 the bases for which the expert is offering an opinion.

16 So if this were a civil court, Your Honor, and
17 somebody showed up and said, hey, we've got an expert we
18 didn't disclose to the other side, then across the board
19 in this jurisdiction, that expert would be excluded
20 because they have not been made available to the other
21 side.

22 I realize we don't have depositions in criminal
23 court, but let me just contrast what we do in criminal
24 court in South Carolina state court with what happens in
25 Federal Court, probate court, Family Court. In every one

1 of those jurisdictions, you have the right as a litigant
2 to know who is going to be an expert, what they're going
3 to offer testimony about, and, again, what their CV is
4 and what the basis of the testimony, where it comes from.

5 So I agree with the attorney general's office with
6 the idea of -- a lot of the argument in this case about
7 Rule 5 and Brady had to do with medical records that were
8 obtained by SLED. There was a big argument about whether
9 or not SLED could have retained those records lawfully or
10 whether they obtained them unlawfully and then whether
11 anybody had a right to be provided them by the State.

12 THE COURT: There was a HIPAA release.

13 MR. BANNISTER: That's right.

14 THE COURT: And SLED has the ability to investigate.

15 MR. BANNISTER: Sure. And that is not the issue
16 here. I'm not trying to relitigate that or go back
17 through it. What I am saying is at the outset, the
18 ineffective assistance of counsel back in 2012, '13,
19 whenever the -- or 2013 when the case came to the Public
20 Defender's Office, then at that moment it was clear that
21 this was going to be an expert intensive case and that it
22 was necessary at that point to make sure you understood
23 who and what the State was going to produce.

24 And there's a telling moment in the transcript where
25 the solicitor in the case said, yeah, I didn't want to

1 tell them. And he didn't have to under our current
2 rules.

3 And so what I'm saying, Judge, is the issue here is
4 not having to tell Mr. Mauldin and the defense team is
5 the due process violation, and not having to tell them is
6 the issue I'm raising on this ineffective assistance of
7 counsel.

8 THE COURT: But is this the appropriate place to be
9 raising that issue at this point? I mean, you're
10 acknowledging what the law is and we argue NAIC
11 [phonetic] in South Carolina.

12 MR. BANNISTER: Yes. I think it is. Because I
13 think at some point prior to the trial in 2016, it should
14 have been clear based on -- I mean, you can just look at
15 the rules of civil evidence, Family Court and federal
16 criminal rules and say, okay, why aren't we being treated
17 the same way in state court? Of all the places where you
18 ought to have more access to information, criminal court,
19 when you're representing a defendant whose liberty is at
20 stake, should occupy the highest realm of notice and
21 disclosure. And I think that's inherently obvious. So
22 the fact that trial counsel didn't do that, I don't have
23 any -- there's no other place to raise that than here in
24 a postconviction relief.

25 THE COURT: But, essentially, if they raised it, it

1 would be -- "novel" might not be the appropriate word.
2 But, I mean, under the law, it was not incumbent on them
3 to raise that.

4 MR. BANNISTER: I think -- so I'll take a little ---

5 THE COURT: I'll hear from you. I promise. Don't
6 worry.

7 MR. BANNISTER: I'll take a little exception to
8 that. I think that being an effective defense attorney
9 requires you to raise it. And I don't know any other way
10 to describe it than just give my own experience which is
11 on the front end of every criminal case I've got where I
12 think there's going to be an expert called, and I've been
13 doing this for the last, I don't know, maybe ten years at
14 least, I file a motion that says reveal the expert.
15 Here's what all the rules in our state requires in every
16 other court, and I want the same treatment for my
17 defendant. And then I will get some response. And most
18 of the time, it is, hey, we'll make your expert available
19 to you. You go ask whatever questions you want to. And
20 we satisfy it that way. But that just wasn't done in
21 this case.

22 THE COURT: Under the law as it is, did the Court of
23 Appeals not address the Brady and Rule 5 violation in
24 that opinion?

25 MR. BANNISTER: They did. But I don't believe the

1 Brady or the Rule 5 violation cover what I'm suggesting.

2 THE COURT: Are you through?

3 MR. BANNISTER: I am. Unless you have another
4 question.

5 MR. MAYE: Thank you, Your Honor. I apologize.
6 It's getting a little hot seated there.

7 THE COURT: Do not apologize. I mean, we're here to
8 listen to everybody.

9 MR. MAYE: Your Honor, a couple of responses to
10 what's been argued. First of all, in the record this
11 wasn't a -- it wasn't that counsel, you know,
12 scattershotted the issue and failed to raise specifically
13 due process. On page 86 of the transcript, he explicitly
14 says: So I challenge it. I believe it's a violation of
15 due process. So that's part of his argument. There's no
16 debating that as far as the record is concerned. And
17 that carried through to the Court of Appeals because the
18 Court of Appeals also acknowledged that due process was
19 part of this argument being made.

20 Now, counsel has suggested that, you know, the
21 argument is due process. But you get to a violation of
22 due process through the rules that are in place that
23 govern the issue. And those rules are Rule 5 and Brady.
24 So in addressing Rule 5 and Brady and finding that they
25 were not applicable, the Court has addressed the

1 underlying premise for where a due process violation
2 might have arose.

3 A few other things. Counsel has admitted that they
4 didn't have to notify him of who their expert was. He's
5 admitted that that's not what the law says. And what
6 he's essentially trying to do as far as I can tell is
7 make a public policy argument on what the law should be.
8 But this forum specifically is absolutely not the right
9 forum for addressing a public policy issue. This is
10 addressing whether counsel was ineffective for doing or
11 not doing something. And in this case, the law does not
12 provide a basis for which a defense counsel can go and
13 become notified under the rules of court as to the
14 State's expert under the circumstances of this case. And
15 our courts have repeatedly held in the context of
16 postconviction relief that counsels are not required to
17 be clairvoyant of changes in the law. They're certainly
18 not required to present legal arguments that aren't
19 supported by the law at the time that they want to raise
20 them.

21 However, in speaking to all of that, the record
22 demonstrates that, despite not having an actual
23 foundational basis for the motion and a foundational
24 basis for getting notification, he still made a pretrial
25 motion to this point. And the result, even though it was

1 not necessarily the purpose or the ultimate desired
2 outcome from the solicitor, he ultimately learned who the
3 State would likely be calling. So he did get pretrial
4 notice and had time to prepare.

5 THE COURT: Well, they did, I guess, identify them,
6 I believe, even though they said that they did not have
7 to at that juncture. And clearly, in voir dire, the name
8 of Dr. Smith was mentioned.

9 But continue.

10 MR. MAYE: Correct.

11 So essentially, defense counsel got more than he was
12 really entitled to under the rules by raising this issue
13 and, you know, discussing it with the Court for as long
14 as he did. He got the information he was ultimately
15 after.

16 And if I may approach, Your Honor.

17 THE COURT: Sure. Absolutely.

18 MR. MAYE: I think there's a fair comparison to be
19 made in State v. Hopkins. In State v. Hopkins, our
20 courts have ruled that in the event there is some form of
21 a Brady violation, that the courts have found that it is
22 not a due process violation if opposing counsel receives
23 the notice of the testimony or the evidence in question
24 in advance with specific time in which to prepare for it.
25 I would argue that that's exactly what took place in this

1 case.

2 Now, this entire argument is an alternative to the
3 fact that the rules just don't support what they want.
4 But ultimately, even the case law says that even if there
5 was some form of a Rule 5, Brady violation, Hopkins has
6 said, well, yeah, but we're fixing it pretrial. You're
7 now on notice, and that's sufficient to avoid a due
8 process violation that would negate the trial upcoming.

9 And for those reasons, we would continue to argue
10 that summary dismissal for these two claims is
11 appropriate.

12 I think it's Head Note 18, Your Honor, is where that
13 really starts.

14 (Pause in proceedings.)

15 THE COURT: I'm going to step down for just a second
16 and I will return.

17 (WHEREUPON, a recess is taken at 9:50 AM.)

18 THE COURT: Can counsel approach real quick? I'm
19 going to take it under advisement. But I'm also asking
20 counsel if y'all will brief the issue as it pertains to
21 Number 1 and Number 2. I think it's more of a matter of
22 law as opposed to, you know, any kind of real testimony.

23 All right. So at this point, I'm not either
24 granting it or denying your motion. Okay. All right.
25 So we can proceed.

1 MR. MAYE: Your Honor, at this point, I'm happy to
2 put some procedural history into the record if the Court
3 requires it, or if you want to just move on, I'm happy to
4 just let opposing counsel call his first witness.

5 THE COURT: However you wish to proceed. I mean, I
6 have read, you know. You both did an excellent job. I
7 mean, you put the background and, of course, your return.
8 But if you feel like you need to put that into the
9 record, I'm not going to prevent you from doing it.

10 MR. MAYE: I do so many appeals that I feel almost
11 contrary to my own personality to not put something on
12 the record.

13 THE COURT: Okay. Well, then proceed. Thank you.

14 MR. MAYE: Your Honor, as you already stated, this
15 is Suzanna Simpson vs. State of South Carolina. It is
16 2020-CP-39-617. It is the PCR application that raises
17 various allegations of ineffective assistance of counsel.

18 In brief review of the procedural history, Your
19 Honor, Ms. Simpson was arrested for the murder of her two
20 children and the attempted murder of her husband on the
21 early morning of May 14, 2013. She proceeded to trial
22 before the Honorable Judge Brian M. Gibbons and a jury on
23 June 20, 2016, wherein she sought a verdict of not guilty
24 by reason of insanity. The jury, after hearing all the
25 evidence, found her guilty and the Court sentenced her to

1 consecutive life sentences for the murders and
2 consecutive term of 30 years for the attempted murder
3 with five years for possession of a weapon during the
4 commission of a violent crime.

5 She appealed a number of issues to the Court of
6 Appeals but her conviction and sentence were affirmed.
7 And she filed her original application in 2020 with the
8 most recent amendment coming in April of this year.

9 Respondent, as the Court knows, filed an amended
10 return to the application. And we've already addressed
11 the motion raised in that. And at this point, I'm happy
12 to turn it over to opposing counsel.

13 Thank you.

14 THE COURT: Okay. Mr. Bannister.

15 MR. BANNISTER: Thank you, Judge. If it please the
16 Court, I would call Dr. Jeffrey Smith.

17 THE CLERK: Mr. Smith, please place your left hand
18 on the Bible and raise your right hand.

19 WHEREUPON,

20 JEFFREY SMITH

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you. You may be seated. Please
23 state your full name for the record.

24 THE WITNESS: Jeffrey, J-E-F-F-R-E-Y, middle initial
25 K, Smith, S-M-I-T-H.

DIRECT EXAMINATION

BY MR. BANNISTER:

Q Good morning, Dr. Smith. Thank you for being here.

A Good morning.

Q If I could, I'm going to go ahead and turn your attention to the dates of May 13th and 14th of 2013 and just ask you how you learned about an incident involving Anna Brown Simpson and her family.

A Like so many, I learned about it through the media, through television newscast the evening of the crime.

Q And you had a little different perspective then, say, most other people. Can you tell the Court why?

A Well, in what has now been over 34 years practicing as a psychiatrist, at that time which had been over 23 years of practicing as a psychiatrist, to my knowledge had never had a patient who killed someone else, a person or persons. So obviously, it was different, very shocking both as a psychiatrist, as a human being, as a parent. So I applied the processes I typically do when I've had patients who have committed a suicide by going back and doing a very detailed review of the medical records.

Q And so Anna Brown Simpson was one of your patients.

A Yes.

Q And you had been treating her for some period of

1 time.

2 A Yes.

3 Q And when you went back and looked through the file,
4 were you anticipating that you were going to get some
5 questions from family, law enforcement, attorneys,
6 et cetera?

7 A Yes.

8 Q Is it unusual for the psychiatrist sometimes to fall
9 under -- or be pointed at as being a cause sometimes of
10 the incident that occurs with a patient?

11 A Yes.

12 Q And did you review the file with that in mind to
13 some extent?

14 A I reviewed the file in mind that -- the same way I
15 would in a suicide case. And if I have a patient who has
16 taken their life, I offer with no fee to meet after hours
17 with any family and friends that wish to discuss that
18 because they often have anger or guilt directed at
19 themselves, perhaps directed at me as a treating
20 psychiatrist. So I applied that same principle.

21 Q So in your file at that time, you had your treatment
22 notes?

23 A Correct.

24 Q And you had one set of medical records for the
25 Carolina Behavioral Health from a hospitalization back in

1 August the 5th through the 8th of 2012; does that sound
2 accurate?

3 A Correct.

4 Q You had been treating Anna since, what, roughly
5 about March of 2010?

6 A Yes, sir.

7 Q And what had been her initial diagnosis?

8 A I diagnosed her for the first time with bipolar
9 disorder. I also diagnosed her with anxiety disorder.
10 And I confirmed the previous diagnosis of
11 attention-deficit/hyper activity disorder.

12 Q At some point in, let's say, I believe it was
13 February -- well, let me just stick with the -- you
14 became aware that she was hospitalized in late July of
15 2012, in particular August 5th through the 8th of 2012?

16 A Yes. At her next office follow-up visit immediately
17 after that hospitalization, she made me aware of that.

18 Q And in your experience, did you consider that to be
19 a psychotic event that had put her into the hospital?

20 A Yes. I think at the time she described it as a
21 psychotic event. I had not yet received a discharge
22 summary from the Carolina Center to evaluate their
23 assessment of that. And I was not made aware by anyone
24 about the hospitalization -- brief hospitalization hold
25 at the St. Francis emergency room prior to the Carolina

1 Center admission.

2 Q All right. A lot of us are kind of familiar with
3 the facts of this case, but did you later find out that
4 Anna had been in the emergency room at St. Francis prior
5 to the hospitalization with Carolina Behavioral Health?

6 A Yes, sir.

7 Q But the emergency room records that predated the
8 hospitalization at Carolina Behavioral Health, those had
9 not been provided to you.

10 A No. Nor was I even aware that had occurred.

11 Q Okay. And it was -- would July 29th sound correct
12 for that ER visit to St. Francis?

13 A Yes, sir.

14 Q And, again, this is in 2012?

15 A Correct.

16 Q All right. As you were looking through your notes
17 and going back through trying to ascertain maybe what had
18 led up to this, I assume you would have wanted to have
19 those ER notes. That would have been helpful.

20 A Yes.

21 Q All right. And then there was -- was there a
22 follow-up at your office after the August 5th through
23 8th, 2012, with a practitioner named Carol Rentz
24 Mitchell?

25 A Yes. I felt -- I suggested to the patient from

1 really her initial visit with me that I thought
2 psychotherapy would be most beneficial in addition to the
3 pharmacotherapy medical treatment she was receiving from
4 me. She did finally agree to see a therapist and had one
5 appointment with a therapist. But to my knowledge, there
6 was never any follow-up appointment.

7 Q And I realize this wasn't your fault, but that
8 initial follow-up with Ms. Mitchell -- Carol Rentz
9 Mitchell August 23, 2012, at least initially, back in
10 2013 when you were reviewing the notes, it looked like
11 that had been a no-show for Ms. Simpson; do I have that
12 correct?

13 A The first visit was a no-show. The second visit was
14 not printed out in the notes I had, so I was not actually
15 aware of that visit until the day of trial.

16 Q And then there were some regular follow-ups with
17 Ms. Simpson between August of 2012, and then I think the
18 last time you saw her was February 26, 2013, in a
19 clinical setting.

20 A That is correct.

21 Q All right. And then this incident occurred May 13th
22 or 14th, roughly about two months after your last time
23 seeing her.

24 A Correct.

25 Q All right. So as you are going through what you

1 have in your file after this incident has occurred, did
2 you have an expectation that you were eventually going to
3 get contacted by Anna's defense team, that is, the
4 lawyers that were going to be representing her relevant
5 to the homicides and the attempted murder?

6 A Yes. I thought I would have been contacted.

7 Q All right. And were there some things that you
8 wanted some more information about that you were
9 anticipating asking for or about once you received that
10 contact?

11 A Yes.

12 Q All right. And would you have liked to have had an
13 opportunity to interview Anna relatively close to the
14 incident day?

15 A Yes.

16 Q And would you have liked to had the opportunity to
17 interview her family members and close friends?

18 A Yes.

19 Q Would you have liked to had the opportunity to
20 review the law enforcement file, the forensic reports,
21 the 9-1-1 calls and the other witness statements gathered
22 by law enforcement?

23 A Yes.

24 Q And would you have liked to have had the opportunity
25 to review the complete psychiatric medical records?

1 A I think specifically what psychiatric medical
2 records you're talking about that I may not have
3 reviewed.

4 Q Well, yeah. And I'm talking about this is early
5 after the incident. The psychiatric records, the ER
6 visit at St. Francis before the Carolina Behavioral
7 Health in August.

8 A Yes. Specifically, St. Francis, yes.

9 Q And then ultimately, the ER visit after the incident
10 and then subsequent psychiatric ---

11 A I -- I actually received the ER summary right after
12 the commission of the crime, so that was not three years
13 later like the first contact by anyone on either the
14 prosecution or defense side.

15 Q Ok. Which ER visit did you receive?

16 A The one from Dr. Harris the day of the commission of
17 the crime.

18 Q So from the May 13th, 14th incident.

19 A Correct.

20 Q Okay. Understood.

21 So I guess what I'm talking about then is the first
22 ER visit, the record that you had in house that didn't
23 make it into your file, and then the subsequent treatment
24 after her ER visit after the incident May 13th, those are
25 additional records that you would have liked to have had.

1 A Can you rephrase that question or ask it again? You
2 lost me for a second.

3 Q Yeah. So maybe it's a little easier if I just go
4 down and let me set a time frame.

5 A Okay.

6 Q You see it on TV. You're looking at your file. As
7 I understand it, at that moment you had your clinical
8 notes that you kept, correct?

9 A Correct.

10 Q All right. But some of the things that you were
11 missing and would like to have had would have been the ER
12 visit from St. Francis in July 29, 2012.

13 A Yes.

14 Q All right. And then additionally, in your file, at
15 least, for whatever reason, you didn't have the note from
16 Carol Rentz for the therapeutic visit.

17 A Actually, I did. But it was overlooked by my staff
18 when they were printing that out. So it was actually
19 available, but it was by clerical error it was not
20 printed for me to see.

21 Q So -- and then additionally, after the incident,
22 there would have been some treatment notes post her ER
23 visit May 13th, 14th of 2013.

24 A Treatment notes from whom?

25 Q Well, the psychiatric doctors that were seeing her

1 after she was released from the emergency room.

2 A Okay. Yes.

3 Q All right. Would you also had liked to have the
4 opportunity to speak with some of the treating
5 psychiatrists that had been involved with Anna both in
6 the psychotic event that happened July 29th, August 5th
7 to 8th of 2012, and then the May 13th, 14th
8 post-incident?

9 A Certainly would have liked to have done all of those
10 things that you had mentioned, but given there was an
11 eight-day time frame, it was absolutely impractical to do
12 so.

13 Q Yeah. I'm sorry. I asked a bad question because I
14 keep forgetting to put the timing on it. So let me put
15 it this way. After you saw the incident on TV and you
16 were going through the file, was speaking with the other
17 treating psychiatrists, was that something you would have
18 been interested in doing if you had been given the
19 opportunity?

20 A Had I been contacted by either prosecution or
21 defense, yes.

22 Q Okay. And let's see. I assume you also would have
23 wanted to review any forensic evidence that was relevant
24 to the case?

25 A If I -- if there was indication I was going to be

1 asked to provide an opinion about not guilty by reason of
2 insanity, yes.

3 Q So when did the first contact occur from anybody in
4 the case?

5 A First, the incident, again, I guess was May 13,
6 2013. In early March of 2016, Dr. David Price, who is a
7 psychologist and one of the three expert witnesses
8 retained by the defense, made an after-hours appointment
9 in my office to discuss the case with me. So that was
10 the first contact almost three years post the incident.

11 Q All right. And you found that to be a little
12 surprising.

13 A Yes.

14 Q All right. Would it have been your preference to
15 have been in the loop and to have been -- had all the
16 information that was appropriate made available to you so
17 that you can have a thorough review and ask questions
18 along the way?

19 A I don't know if it would ever be my preference to be
20 in court, but if I had been subpoenaed, obviously, I
21 would have liked to have had as much information as
22 possible and as much time as possible because that was
23 going to require a significant amount of time. One
24 defense expert, over a four-month period of time, either
25 had 63 either interviews or documents or tapes that he

1 reviewed. The other examiner, over the course of one
2 year, had nearly 200 interviews and documents he
3 reviewed.

4 Q So I guess if you were going to end up in court,
5 would it have been your preference to have been made
6 aware some of what was going on around the expert
7 opinions on Anna Brown Simpson?

8 A Certainly, but with far more than just eight days.

9 Q Sure. So let's start. You ultimately had about --
10 got a subsequent contact after Dr. Price that was eight
11 days prior to testimony or trial of the case? I can't
12 remember which.

13 A I was subpoenaed 13 days before the opening day of
14 the trial.

15 Q And then how soon after that was it that you had
16 some contact with somebody?

17 A The next week I had a meeting at my office with a
18 solicitor and assistant solicitor. And that was, I
19 believe, six days before the opening of the trial.

20 Q All right. And would it -- after that contact, did
21 the State provide you with some material?

22 A Yes.

23 Q Would one of those have been the St. Francis ER
24 records from July 29, 2012?

25 A Yes. I requested those.

1 Q And did you also receive copies of Dr. Frierson and
2 Dr. Price's forensic reports?

3 A Yes. I requested those.

4 Q And then did you have other questions that the State
5 answered verbally for you?

6 A Yes.

7 Q But would it be fair to say that there was still a
8 lot missing that you would have wanted to have a chance
9 to review if time had not become of the essence at that
10 late date?

11 A Yes. It just would be -- have been -- if I'd
12 canceled every patient on my schedule and worked the
13 weekends, I don't think I would have had time to
14 assimilate all of that information. So the time element
15 was absolutely negating.

16 Q Now, you were perfectly willing to speak with
17 anybody from the defense team during any point in time
18 that three years before Dr. Price contacted you, correct?

19 A Correct.

20 Q And you were willing to talk with them after
21 Dr. Price contacted you all the way up till the trial of
22 the case, correct?

23 A Correct.

24 Q And just to be clear, there was no contact from
25 trial counsel or anybody else other than Dr. Price on the

1 defense team during that period of time.

2 A Correct.

3 Q So you may have said this but I just want to see
4 what -- had you been contacted, would it be fair to say
5 that you agree that Ms. Simpson experienced a psychotic
6 event on that July 29, 2012, when she went to the
7 St. Francis ER and then the subsequent follow-up with
8 Carolina Behavioral Health?

9 A Yes.

10 Q And it was that psychotic event which actually
11 resulted in her going to the emergency room. You agree
12 with that?

13 A It was a -- based upon the records that I've seen,
14 it was a combination of both manic symptoms and psychotic
15 symptoms.

16 Q And then you -- let's see. So it looked like the
17 first time you actually got a chance to see the therapist
18 notes from Carol Rentz Mitchell was in the courtroom at
19 trial.

20 A Sitting right here.

21 Q Okay. And those therapeutic notes did indicate that
22 Ms. Simpson was still experiencing some psychotic issues.

23 A Yes. Those notes indicated that, which was one of
24 the many confusing things because they directly
25 contradicted what she told me in the visit before that

1 and after that.

2 Q Okay. And then had you been asked that, would you
3 have agreed that May 13th, 14th when the incident
4 occurred, that that was a moment where Anna was
5 experiencing another psychotic event which ultimately
6 resulted in her treatment and the homicides?

7 A Based upon what I've read including the forensic
8 experts' reports, she was experiencing both psychotic and
9 severe depressive symptoms at that time.

10 Q So if I could, I want to turn your attention a
11 little bit to the prescriptions that Anna was on. Let's
12 just stay maybe focused between August of 2012 and May of
13 2013. So was she on a mood stabilizer?

14 A She was from the very first visit through all
15 34 visits that I saw her in roughly a three-year period
16 of time was prescribed a mood stabilizer by me because
17 you cannot effectively treat bipolar disorder without
18 that.

19 Q Did the mood stabilizers you treated her with
20 contain an antipsychotic component?

21 A In some cases.

22 Q Was there one time, and I'm going to take you back
23 to February of 2011, that you had put Anna on Nuvigil?

24 A Correct.

25 Q And that had resulted in some mild psychotic

1 symptoms; is that correct?

2 A She called, spoke with my medical assistant
3 indicating some very vague, paranoid ideations. So we
4 immediately stopped that medication. That was the first
5 mention of psychosis during her treatment with me.

6 Q Is that a non-stimulant, Nuvigil?

7 A Yes.

8 Q So once you got her off the Nuvigil, then her mood
9 stabilized at that point?

10 A Correct.

11 Q And she was also on Adderall.

12 A Correct.

13 Q Can you kind of talk about the combination of
14 Adderall and the mood stabilizer?

15 A Well, you have to be very careful. If someone has a
16 diagnosis of bipolar disorder, it's essential that they
17 be on a mood-stabilizing medicine if they're taking any
18 type of ADD, ADHD stimulant medication whether it be
19 Adderall, Ritalin, Dexedrine or it will very likely
20 provoke severe mood swings and can provoke psychosis.

21 Q And is it the Adderall that is the component there
22 that can provoke the psychosis without the mood
23 stabilizer?

24 A It can be just the stimulant. It could be the
25 absence of the mood stabilizer causes the mood swings to

1 start working or it can be a combination of those two
2 things occurring simultaneously.

3 Q And is it ever appropriate for a patient with
4 bipolar to take just the Adderall and fail to take the
5 mood stabilizer?

6 A Absolutely not.

7 Q And I think you've used a flour analogy to describe
8 this?

9 A Yes.

10 Q Do you mind just letting the Court know how you
11 perceive those two working together?

12 A Well, with bipolar disorder, the mood stabilizer is
13 the most important medication. The flour analogy would
14 be if you were trying to bake a cake and you put eggs and
15 milk and sugar together, other meds, stir them up, you've
16 got a bunch of goo. If you add the flour, that binds the
17 other ingredients together. You can make batter and bake
18 a cake. And the mood stabilizer is indeed the flour that
19 binds the other ingredients together and allows that
20 combination of medications to be efficacious.

21 Q And I assume you informed Ms. Simpson this taking
22 Adderall without the mood stabilizer was problematic.

23 A Many times.

24 Q Were there a couple of occasions where she reported
25 that she had not strictly complied with her mood

1 stabilizer?

2 A There were two occasions where she self-reported
3 that to me, and then there was the occasion of the
4 St. Francis followed by the Carolina Center admission
5 that was later reported to me.

6 Q So that being the August 2012 first psychotic
7 episode that she reported not taking her mood stabilizer
8 at that point.

9 A Correct. And then the next follow-up visit when I
10 put her on a mood stabilizer, she had come back in
11 paranoid with mood swings and admitted she had not been
12 taking the mood stabilizer.

13 Q And just to kind of put an underlying point on it,
14 back in 2010 when you first started treating Ms. Simpson,
15 had she reported some psychotic symptoms, Adderall would
16 have been off the table at that point.

17 A Correct.

18 MR. MAYE: Your Honor, I'd like to raise just a
19 brief objection. I know speaking objections are not
20 favored, but the purpose of PCR under statute is not to
21 rehash the entire testimony offered at trial. I think we
22 need to keep it to how this relates to the actions of
23 counsel which has not been brought up for quite a while
24 now.

25 THE COURT: I note your objection.

1 Get moving.

2 MR. BANNISTER: I am.

3 BY MR. BANNISTER:

4 Q Let's see. And so, Dr. Smith, did anyone ask you
5 about Adderall and psychosis from the defense team? In
6 other words, the question and answers we've just had
7 today, did anybody contact you and talk to you about
8 those particular issues?

9 A You're talking about prior to my testimony in court?

10 Q Prior to your testimony in court, yes, sir.

11 A No.

12 Q So let me ask a little bit now about sort of the
13 severity of psychosis absent a mood stabilizer if I
14 could. So how quickly had you been asked would you have
15 said that Ms. Simpson could develop manic and possibly
16 psychotic symptoms if she was off the mood stabilizer?

17 A As early as within days to weeks.

18 Q All right. And if she remained noncompliant with
19 the mood stabilizer but continued to take Adderall, would
20 that have resulted in the possible psychosis that might
21 be severe in terms of its nature?

22 A Yes.

23 Q And it appears that Anna's -- well, let me back up.
24 Were you asked about those issues by defense counsel or
25 anybody for the defense team prior to the trial?

1 A No.

2 Q And was it notable to you that, from the records
3 that you did review, that Anna's stabilization happened
4 relatively quickly after she was put back on the mood
5 stabilizers?

6 A Yes. The stabilization both at St. Francis and
7 Carolina Center, which were consecutive events, was a
8 very rapid reconstitution, and the response to just two
9 doses of medications in the emergency room on the day of
10 the crime was rapid and a very rare occurrence.

11 Q All right. So let me turn your attention, if I
12 could, to family and friends and communications with
13 them. Were you asked by anybody on the defense team
14 about the importance of you understanding family and
15 friends and what their perceptions had been about
16 Ms. Simpson during the relevant time frames leading up to
17 the incident?

18 A I do not remember the specifics of the question. I
19 remember at least two times in that testimony indicating
20 how important it was -- would have been for me to have
21 heard from family or friends anytime anything bizarre was
22 occurring, a delusional system. And that never occurred
23 which was at that time and remains to this day a first
24 for me.

25 Q So just to put another time frame on it, so when --

1 let's just stick with leading up to the August 2012
2 psychotic event where she went into the ER initially, and
3 then, again, leading up to the psychotic event where we
4 have the incident date May of 2013, was it an open
5 question for you why you had not been contacted by any
6 family or friends about Ms. Simpson's deteriorating
7 mental health?

8 A It certainly was. And in retrospect, even prior to
9 that time, based on what were supposed delusions at a
10 much earlier time in 2010, again, the absence of contact
11 from family or friends in a situation like that is
12 unprecedented in my career.

13 Q So you would have liked to have heard from the
14 defense team some explanation relevant to that if it
15 existed.

16 A Can you rephrase that question?

17 Q I said -- well, if you were expecting to hear from
18 the defense team -- well, let me ask it a different way.
19 Would a fulsome understanding of Anna's condition have
20 been -- have required you have some information about why
21 you didn't get any of those contacts in the time frames
22 you just described?

23 A Yes. I would be very interested to know why those
24 contacts never occurred.

25 Q Okay. So during the entire treatment course that

1 you were treating Anna, was there ever a moment where a
2 family member or a friend attended her treatment with
3 you?

4 A No, sir.

5 Q Were there ever any occasions where you asked for a
6 family member or friend to come in with Anna?

7 A No. Because I never observed any bizarre or unusual
8 delusional beliefs that made me feel like that was
9 necessary. I did make it very clear at the first visit
10 that, at any point in time, if she wished to bring a
11 friend or family member, she was certainly welcome to do
12 so. That was at her discretion because of
13 confidentiality reasons.

14 Q Certainly, certainly. And I guess this line of
15 question that I'm asking, this is something that you were
16 not asked about by the defense team at least up until the
17 moment you were on the stand; is that correct?

18 A That's correct.

19 MR. BANNISTER: Thank you, Judge. I don't have
20 anything further at this time from Dr. Smith.

21 THE COURT: Mr. Maye?

22 MR. MAYE: Thank you, Your Honor.

23 Just a moment, Your Honor, to get set up a little
24 bit.

25 THE COURT: Take all the time you need.

1 MR. MAYE: Thank you.

2 CROSS EXAMINATION

3 BY MR. MAYE:

4 Q Good morning, Dr. Smith.

5 A Good morning, sir.

6 Q You need another sip before we get going again?

7 A How about one more.

8 Q Certainly.

9 A Thank you.

10 Q Sure. Just start off with some simple ones. You
11 were called as a witness for the State, correct?

12 A That's correct.

13 Q You were not called as a witness for the defense.

14 A That is correct.

15 Q And you were called by the State not long before the
16 trial actually took place.

17 A Yes. Less than two weeks.

18 Q In the testimony that you presented at trial, did
19 you testify honestly?

20 A Absolutely.

21 Q Did you testify fully? Did you answer the questions
22 that were presented to you?

23 A Yes, sir.

24 Q Do you recall being -- and this is a legal term so I
25 apologize if you're not familiar, but do you recall being

1 voir dire quite heavily as to your qualifications?

2 A I most certainly do.

3 Q Okay. In that process, it was made clear you were
4 not a forensic psychiatrist, correct?

5 A That is correct.

6 Q And that is still the case today.

7 A That is correct.

8 Q And correct me if I'm wrong, the distinction between
9 forensic psychiatrist and psychiatrist is the forensic
10 psychiatrist has some additional training and gears their
11 practice, their career towards offering essentially legal
12 conclusions as it relates to a patient or client's mental
13 state; is that fair?

14 A That's a fair summary, yes, sir.

15 Q And in this case specifically, that type of issue
16 was going to be criminal responsibility.

17 A Correct.

18 Q Okay. Now, by the end of your voir dire, do you
19 recall the conclusions that were reached? Or should I
20 kind of walk through those?

21 A Well, as I recall, the ultimate conclusion was the
22 trial judge asked if I felt that I was qualified to
23 render a criminal responsibility opinion, and my answer
24 was yes.

25 Q Okay. So you were permitted to do so. So you got

1 over the qualification standard. But would you agree
2 that not being a forensic psychiatrist does not make you
3 best suited to do so?

4 A Probably not best suited. There were -- and in this
5 particular case there were three defense experts who
6 opined not guilty by reason of insanity. I was the only
7 one who disagreed with that.

8 Q Certainly. And I'm going to get into that in a
9 minute.

10 And all three of those expert witnesses you just
11 referenced, Dr. Price, Dr. Mulbry, Dr. Frierson, all
12 three of them are forensic psychiatrists or
13 psychologists.

14 A That is my understanding.

15 Q Okay. So in a comparative analysis, while full
16 respect to precisely what your career is devoted to
17 versus what their careers are devoted to, they would be
18 better suited than you to do the type of analysis that is
19 necessary for demonstrating criminal responsibility of
20 the mental state of the defendant at trial. Not that
21 you're not capable, but better suited based on the nature
22 of your practices.

23 A I think they would be in a better position because
24 they were given an extensive period of time to evaluate a
25 tremendous amount of data and were involved in this case

1 really about a year after commission of the crime. So
2 certainly, the time factor works in their favor.

3 Q Okay. So you agree that they were provided the
4 records they needed, the time they needed to do their job
5 in determining the mental state and the criminal
6 responsibility in this case.

7 A Yes.

8 Q Thank you.

9 And I don't want to be -- push too long, but just to
10 rehash, forensic psychiatry is not what you do on a
11 regular basis. You might be able to venture into it, but
12 that's not your specialty, correct?

13 A It's not my specialty, but it's also not something
14 I'm unfamiliar with. I have testified in court numerous
15 times, mainly civil cases. I've done thousands of
16 depositions, again, mostly civil cases, Workmen's Comp.,
17 Social Security.

18 I think any psychiatrist who is treating patients
19 needs to have familiarity with what the rules of not
20 guilty by reason of insanity or guilty but mentally ill
21 are or the American Law Institute, depending upon whether
22 -- the state you're in. You certainly need to know
23 testamentary capacity because you're in all likelihood in
24 your career going to be asked to do that. You need to be
25 able to look at -- be able to evaluate competence

1 criteria for appointment of a guardian or a conservator.
2 So a treating psychiatrist needs to have a very good
3 working knowledge of all aspects of forensic psychiatry.
4 That's why it is a required portion of your training as a
5 psychiatry resident.

6 Q Certainly. And you're speaking essentially all
7 psychiatrists had some, forensic psychiatrists have more.

8 A Yeah. Far more. Because they spent an entire year
9 doing exclusively that in their fellowship.

10 Q So in your testimony regarding the various things
11 that you wish you'd been provided or wish you'd been
12 contacted, a defense attorney is picking an expert whose
13 purpose at trial is to discuss and offer a medical
14 opinion as to the criminal responsibility level of the
15 crime of the defendant. And if they've got three
16 forensic psychiatrists and psychologists on one hand and
17 a practicing psychiatrist who does not have that
18 specialty on the other, is it fair for them to say the
19 three who are specifically trained for this specific type
20 of discussion is probably the better way to go?

21 MR. BANNISTER: Objection. Calls for speculation.
22 He's asking what's in the mind of the defense counsel.

23 THE COURT: Note your objection. Overrule.

24 MR. MAYE: If I may attempt to rephrase, Your Honor?

25 THE COURT: Sure.

1 BY MR. MAYE:

2 Q Would you expect to be chosen as an expert to
3 present a criminal responsibility opinion in a case over
4 someone you respect who is a forensic psychiatrist?

5 A No. And may I add, I think that two of the
6 examiners were retained by the defense. One was
7 appointed by the Court.

8 Q Sure. And I believe you even testified that you had
9 the utmost respect for Dr. Frierson who was the
10 court-appointed forensic psychiatrist; is that correct?

11 A At that time I did.

12 Q You were questioned about the fact that the
13 defendant went into the ER at St. Francis and then
14 followed with time at Carolina Center. During those
15 stages, you were not necessarily aware immediately; is
16 that correct?

17 A Immediately -- not notified immediately?

18 Q Of her admission into those.

19 A I was -- as far as the Carolina Center admission
20 which follow the St. Francis ER hold, she advised me of
21 that the first time at her first follow-up appointment
22 after the hospital. I had not yet even received the
23 discharge summary. She or no one else ever told me about
24 the St. Francis portion until I was actually subpoenaed
25 for this trial.

1 Q They were -- correct me if I'm wrong, and I might
2 be, those events were essentially back to back, though,
3 correct?

4 A Correct.

5 Q Okay. So she let you know that she had had a
6 substantial event.

7 A I mean, she had been admitted to the Carolina
8 Center.

9 Q And those and both the hospital as well as the
10 Carolina Center, those treatment centers have qualified
11 psychiatrists for treatment, correct?

12 A Well, the emergency room, I think they have a
13 consultant psychiatrist who comes. I think the -- as I
14 understand it from reading the records, the stay in the
15 emergency room was because there was not a psychiatric
16 bed available. So after three to four days, one became
17 available and she was transferred to Carolina Center.

18 Q Okay. But it is fair to say that even though you
19 were not immediately notified, she was under the care of
20 a psychiatrist and experts in the field during that time
21 period.

22 A Yeah. I think her care was excellent at both
23 places.

24 Q You kept records of your various meetings with
25 Ms. Simpson, correct?

1 A Oh, yes.

2 Q And what is the general purpose of your records?

3 A Well, there's an old adage in medicine that if it's
4 not written down, it didn't happen. Okay. So you want
5 to document the condition of the patient both what
6 they're telling you subjectively, what you're seeing
7 objectively yourself, do you feel like the diagnosis
8 remains consistent with your previous diagnosis, and you
9 need to document what medication adjustments or changes
10 you may make and then a justification for how long it
11 will be between now and the next recommended appointment.

12 Q Okay. And you feel you do that with your records on
13 a regular and reliable basis?

14 A Absolutely.

15 Q So if another expert has your collective records
16 involving a patient or client, they, in reviewing those,
17 would have a very good understanding of what took place
18 at each interval, at each meeting, at each session in
19 terms of what was discussed and medications that were
20 changed, things of that nature.

21 A I would certainly think so.

22 Q Okay. You testified on direct that I believe it was
23 the phrase essentially you wish you had been provided
24 these records, or you wish you'd been provided these
25 reports, you wish you'd been provided the police reports

1 and a number of other things. In not being provided
2 those, you were never an expert for the defense, correct?

3 A No.

4 Q Okay. So any hindrance you would have encountered
5 in not having those types of materials would relate to
6 the party that you were testifying on the behalf of;
7 would you agree with that?

8 A Can you rephrase that?

9 Q Certainly. You're testifying on behalf of the
10 State, and you're trying to offer your expertise to the
11 issue on behalf of the State, correct?

12 A I would say I wasn't offering anything. I was
13 subpoenaed to give an opinion about the -- what I believe
14 the patient's long-term diagnoses were and what I opined
15 her mental state is to be on the date of the crime. In
16 other words, I didn't take sides.

17 Q Okay. In the conclusions that you provided at
18 trial, do you agree that you testified that having
19 reviewed the forensic psychiatrist's records, I believe
20 it was Dr. Price specifically, that having looked at
21 everything that he looked at, that you understood and
22 concurred with his medical conclusion as to her criminal
23 responsibility?

24 A I told both he and Dr. Frierson that I could
25 understand how they arrived at their opinions, but it was

1 as if we were looking at two distinctly different
2 patients because I had never seen a delusional system as
3 bizarre as what was -- they described in both their
4 reports.

5 Q Certainly. But, essentially, the opinions that they
6 proffered during their discussions with you medically
7 made sense to you based on what -- everything that they
8 had had at their disposal.

9 A Based upon what they observed and what the patient
10 told them at the time, I can see how they arrived at
11 their diagnosis and opinions, of course, both of which I
12 disagreed with.

13 MR. MAYE: Okay. And were you -- one moment, Your
14 Honor.

15 THE COURT: Sure.

16 BY MR. MAYE:

17 Q So the jury -- in your testifying, the jury
18 essentially heard you agree that under the records and
19 the interviews and everything that other experts had,
20 that you concurred with that opinion?

21 A With what opinion?

22 Q With Dr. Price's finding of that the witness was
23 suffering from delusions and paranoia and the psychosis
24 and that it would have rendered her unable to distinguish
25 between moral and legal right and wrong based on what

1 they had to review.

2 A Well, no. Because of their -- Dr. Price,
3 Dr. Frierson and I believe Dr. Mulbry had all testified
4 that their opinion was not guilty by reason of insanity.
5 My opinion was guilty but mentally ill.

6 Q Correct. But as we were discussing earlier, their
7 opinion you found at least medically appropriate given
8 what they had at their disposal and reviewed.

9 A Yes.

10 Q Okay. Now, as you just said, based on your
11 experience with the witness and you had not received that
12 differing information, you reached an opinion of that she
13 was not able to conform her actions which in the law
14 becomes the verdict of guilty but mentally ill; is that
15 correct?

16 A That is correct.

17 Q So even though y'all disagreed on the legal
18 distinction between the mentally ill and how it affects
19 the patient, all of you agreed that she was mentally ill.

20 A Correct. It was just a difference, Number 1, in
21 primary diagnosis, and Number 2, in criminal
22 responsibility.

23 Q And despite all four of you having essentially
24 concluded that she was mentally ill notwithstanding the
25 difference of opinion that we've discussed, the jury did

1 not find her mentally ill at all.

2 A That is correct. They found, it's my understanding,
3 straight up guilty without either not guilty by reason of
4 insanity or guilty but mentally ill, but just guilty.

5 Q Dr. Smith, you discussed briefly on direct the
6 defendant's medications. The Adderall is prescribed for
7 the purposes of the ADD, correct?

8 A That is correct.

9 Q And the mood stabilizers are prescribed for purposes
10 of the bipolar portion of her diagnosis.

11 A That is correct.

12 Q And you were questioned about whether a psychosis
13 can arise when the medications are not taken as
14 prescribed, correct?

15 A Correct.

16 Q Would you agree that that is something that would
17 require considerable time? It's not -- let me rephrase.
18 If someone misses a single dose of one or the other,
19 there's not likely to be a psychosis to result.

20 A A single dose, extremely unlikely.

21 Q And would you agree that the inducement of any
22 psychosis would come from the lack of the mood stabilizer
23 as opposed to a lack of the Adderall? I can clarify
24 that, if I may, Your Honor. If -- someone taking a mood
25 stabilizer but not taking Adderall is not going to

1 succumb to an Adderall-induced psychosis; is that
2 correct?

3 A It is possible. For example, if the mood stabilizer
4 diagnosis was -- mood stabilizing medication dosage was
5 not high enough or if it wasn't a mood stabilizer that
6 was effective for that patient, yes, the psychosis and
7 mania could occur.

8 Q In the absence of taking Adderall, though?

9 A Not in the absence.

10 Q Okay. That's what I'm referring to.

11 A Okay. If you were taking the Adderall, it could
12 occur definitely without the mood stabilizer, but it's
13 not impossible for it to occur if the mood stabilizer is
14 not the correct one.

15 Q Okay. Are you aware that defendant reported to I
16 believe Dr. Price, it's in the record, that she actually
17 did not take her Adderall dose prior to the crime that
18 was committed?

19 A What I remember is in Dr. Frierson's report, she
20 said she had not taken it the day prior to the crime.

21 Q Apologies. I got my experts wrong. A lot of
22 testimony in there.

23 A There is.

24 Q So your recollection of the record is that she
25 actually reported not taking the Adderall, not the mood

1 stabilizers.

2 A She reported not taking both.

3 Q Okay. But in the absence of Adderall, the absence
4 of Adderall is not going to cause Adderall-induced
5 psychosis; is that fair?

6 A Can you put that a different way?

7 Q I'll try.

8 A Okay.

9 Q The defendant reported to Dr. Frierson she had
10 skipped a dose of Adderall the day prior.

11 A Correct.

12 Q In order for to the extent Adderall psychosis or
13 Adderall-induced psychosis exists and can occur, it has
14 to come from abusing Adderall, not missing a dose.

15 A Are you -- if in the absence of a mood stabilizer,
16 the psychosis could occur at a therapeutic dosage. If
17 they were taking correct mood -- taking the mood
18 stabilizer, it would take an abusive dose of the Adderall
19 to cause that.

20 Q Okay. Let's rehash this. That's not quite the
21 question I asked.

22 A Okay.

23 Q I recognize -- Adderall-induced psychosis
24 specifically requires the individual to actually take
25 Adderall.

1 A Correct.

2 Q Okay. If someone has missed a dose of Adderall and
3 there's no indication that she has taken excessive
4 amounts of Adderall, is there any reason to conclude that
5 there would be an Adderall-induced psychosis in play?

6 A No. But there is an additional factor in this
7 particular situation.

8 Q Would you like to enlighten me as to what you're
9 referring to?

10 A Well, according to Dr. Frierson's report, she did
11 not take the Adderall the day prior to that. The urine
12 drug screen drawn at the emergency room on the day of the
13 crime was positive for stimulants.

14 Q Okay. Now that leads me to my next question which I
15 was going to ask at some point. Missing a single dose of
16 Adderall does not -- let me rephrase, Your Honor.
17 Generally speaking, how long can medications remain in
18 someone's urine upon the last dosage?

19 A It depends on the half-life of the medication, when
20 the last dosage was. But by my understanding, the
21 emergency room record, this was a fairly obvious positive
22 urine drug screen.

23 Q So it can differ, but let's get a little bit more
24 specific. If I take Adderall over the course of the day,
25 my urine, if I were to have urine tested, it would show

1 Adderall.

2 MR. BANNISTER: Judge, I'm going to interpose an
3 objection here and ask that he lay a little better
4 foundation for whether or not this good doctor has the
5 knowledge about urine testing to do that.

6 THE COURT: I sustain that.

7 BY MR. MAYE:

8 Q Would you agree that missing an Adderall dose and
9 otherwise taking the Adderall as prescribed would allow
10 testing of urine to potentially show a positive test
11 taken the next day?

12 MR. BANNISTER: Same objection, Judge.

13 MR. MAYE: Your Honor, given the direct examination
14 that was already provided, I think this is appropriate
15 cross.

16 THE COURT: I'm going to allow it.

17 THE WITNESS: Can you rephrase that question?

18 BY MR. MAYE:

19 Q I'll do my best.

20 A Okay.

21 Q I know I'm not necessarily giving you the best
22 crafted questions.

23 Would you agree that a urinalysis could show a
24 positive for Adderall if taken where only one dose the
25 prior day was missed?

1 A Well, in this case, it would have been three doses
2 in one day as it was prescribed. It was 20 milligrams
3 three times a day. If, let's say, the day that was
4 skipped was Wednesday, the last dosage was Tuesday, the
5 urine drug screen was late in the day Thursday, it is
6 possible that it could still show some trace evidence of
7 that. But possible, but not probable.

8 Q In your treatment of Ms. Simpson, was there ever any
9 indication that she was habitually and excessively
10 abusing Adderall?

11 A No.

12 Q Is there anything that you've seen in the records
13 since that would suggest that she has definitively abused
14 Adderall to a point that it would cause a psychosis?
15 This is based on records, not ---

16 A As far as causing the psychosis, I can't opine to
17 that. In Dr. Frierson's report, there's indication that
18 she told him that at times she overtook the Adderall. If
19 she did, she then had to go for a number of days without
20 any at all because we have very strict -- with it being a
21 schedule II substance, it can only be filled at 30-day
22 intervals. So she never got excess Adderall. So if she
23 overtook it, however much she overtook, she's short --
24 shortened herself for that supply for the remainder of
25 those 30 days.

1 Q So it's fair to say that her prescription records do
2 not demonstrate her getting refills that were before they
3 would have been needed.

4 A That's correct.

5 Q And you provided care for her over three years
6 essentially; is that correct?

7 A That is correct.

8 Q And would you agree that that general premise that
9 her prescriptions were aboveboard, so to speak?

10 A Absolutely aboveboard.

11 Q For three years.

12 A Yes.

13 MR. MAYE: Okay. A moment of indulgence, Your
14 Honor. I'll just step away from the lectern.

15 Your Honor, if I may approach the witness.

16 THE COURT: Sure.

17 BY MR. MAYE:

18 Q Dr. Smith, I'm showing you the transcript from the
19 trial.

20 THE COURT: What page?

21 MR. MAYE: This is page 687.

22 BY MR. MAYE:

23 Q And I want you to just read, if you could, the
24 portion that I've got highlighted, the full sentences
25 from line 7 through -- halfway through 10.

1 A (As read) "Question: But it would appear that you
2 were not aware or did not realize how sick Anna was; is
3 that fair to say?

4 "Answer: That is fair to say."

5 MR. MAYE: Thank you. Just one follow-up question.
6 In your being subpoenaed as a witness for the State and
7 not being called as a witness for the defense -- you know
8 what, Your Honor? Withdraw that question. That will be
9 it.

10 THE COURT: All right. Anything else,
11 Mr. Bannister?

12 MR. BANNISTER: No, sir. And I ask that Dr. Smith
13 be excused if no further...

14 THE COURT: He can be excused. Any objection to
15 that?

16 MR. MAYE: No objection, Your Honor.

17 THE COURT: Thank you, Dr. Smith.

18 Anybody need to take a quick break?

19 MR. BANNISTER: If we can have a restroom break,
20 that would be nice, Your Honor.

21 THE COURT: All right. I agree wholeheartedly.

22 (WHEREUPON, a recess is taken at 10:59 AM; proceedings
23 reconvened at 11:13 AM.)

24 THE COURT: All right. Mr. Bannister, your next
25 witness.

1 Mr. BANNISTER: Thank you, Your Honor. Ms. Simpson
2 will call John Mauldin.

3 THE CLERK: Mr. Mauldin, will you please raise your
4 right hand.

5 WHEREUPON,

6 JOHN MAULDIN

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you. You may be seated. Please
9 state your full name for the record.

10 THE WITNESS: John I. Mauldin.

11 DIRECT EXAMINATION

12 BY MR. BANNISTER:

13 Q Thank you, Mr. Mauldin. I've waited a long time to
14 have an opportunity to be able to cross-examine you.

15 Mr. Mauldin, can you tell us when you first got
16 involved with Anna Brown Simpson's case?

17 A We were advised of an incident in Pickens County.
18 The nature of the incident, a homicide of minor children
19 by a parent. We were informed or received information
20 that Anna Simpson was in the hospital as a result of
21 rather severe injuries she had received in an automobile
22 collision accident. And I went to the hospital in search
23 of Ms. Simpson.

24 Q And is that when your representation effectively
25 began?

1 A Yeah. In fact, we just stepped in and assumed
2 representation. Ordinarily, we would have waited to be
3 appointed, but because of the nature of the case, it was
4 very clear in my view that this woman needed immediate
5 representation. And so I did go to the hospital without
6 having been appointed. I was appointed later.

7 Q Was this potentially a death penalty eligible case?

8 A It was. It was.

9 Q And you have spent a lot of your career dealing with
10 death penalty cases, correct?

11 A That's correct.

12 Q At some point in time, did you become aware that
13 expert testimony was going to be necessary in the case
14 particularly as it related to her mental health?

15 A When I went to the hospital that day or night, I
16 can't even remember, I met with Anna's parents at the
17 hospital. I went into the hospital room where Anna was
18 being treated. I don't recall -- quite frankly, I don't
19 recall whether or not she was in a position to be able to
20 communicate with me. In fact, I do remember. I remember
21 her parents described to me her mental history in a very,
22 very nutshell way. I then recall leaning over Anna in
23 her hospital bed and telling her that we were going to
24 help her, that she needed to know that she had people who
25 were going to help her through this process.

1 I formed an opinion immediately that the case would
2 involve extensive psychiatric or psychological
3 involvement, if you will, and to the extent, obviously, I
4 did not know, but I was certainly of the opinion that
5 that was the direction the case would likely take.

6 Q And to that effect, what did you do in your
7 preparation for the defense of the case?

8 A Well, because it was a potential capital case, we
9 had to what I would describe as kind of lock the case
10 down. We always want the case not to get any worse from
11 the moment we become involved. That meant I had to make
12 sure that the family knew how serious the matter was and
13 that they were not to communicate with anybody without at
14 least consulting with us about whether such communication
15 would be in Anna's best interest.

16 The case occurred in Pickens. My main office was
17 Greenville. So I communicated with Teal Johnson, who was
18 a lawyer on the staff at the Public Defender's Office in
19 Pickens, asking Teal if she would assist me in
20 representation of Anna.

21 So we took some very basic steps, but it was real
22 clear in our view where the case would likely go.

23 Q All right. And when you say real clear of where it
24 would likely go, that had to do with whether or not she
25 was mentally competent.

1 A Yeah. The criminal responsibility was front and
2 center in this case from the very day one.

3 Q And so focusing just for a moment on the criminal
4 responsibility aspect of the case, did you engage experts
5 on the defense side to come up with a forensic opinion as
6 it related to criminal responsibility?

7 A That's right.

8 Q Who did you get? And just kind of walk me through
9 briefly an outline of that.

10 A The process is a little bit complicated, but I'll
11 kind of describe it very briefly.

12 First of all, we had to be appointed. We had to
13 receive a court appointment before we could actually move
14 forward.

15 We then petitioned the Court, the administrative
16 judge I believe it would have been, for funding for a
17 psychiatric evaluation. We then went, proceeded with
18 receiving the approval of those funds through the Office
19 of Indigent Defense in Columbia. Once we secured the
20 ability to pay, we then sought a psychiatric forensic
21 psychiatrist to do an evaluation of Anna.

22 Q And who was that?

23 A It was Dr. Mulbry was the first doctor we enlisted
24 in this case.

25 Q And what ultimate conclusion did he bring back to

1 you?

2 A We had to gather records to the extent possible, and
3 that did take a lot of time. We had some pushback on
4 some of the records, we had some issues with cooperation.
5 We had a number of different medical facilities as well
6 as places that Anna had been treated over the years.
7 This is information we had gathered from her parents.
8 And we sent those releases, the requests for records.

9 Once we gathered the records, then we sought the
10 involvement of Dr. Mulbry, providing him those records
11 and asking that he meet with our client.

12 Q Does the process for getting a forensic psychiatrist
13 involved include having interviews or moments to meet
14 with friends, family and those who know the defendant
15 well?

16 A Well, now, I'm a lawyer, so I can't really -- I
17 don't really think I'm qualified to answer that. I guess
18 a forensic psychiatrist attempts to gather whatever
19 information he feels like is relevant to forming his
20 forensic opinion.

21 Q Do you provide them with any witnesses you think
22 might be helpful or should be interviewed like a list or
23 something along those lines?

24 A Are you asking did we or ---

25 Q Well, yeah. Did you in this particular case?

1 A I don't recall that. I don't recall that. I know I
2 met with Mike and his wife I don't know how many times.
3 And during those meetings with Anna's parents, we would
4 talk about things that we felt like we could recommend
5 that the experts review.

6 So I don't have any specific recollection of
7 providing any of the experts with lists of friends or
8 relatives or anything like that other than what Mike and
9 Susan gave me.

10 Q Did Dr. Mulbry ultimately produce a report for you?

11 A He did.

12 Q And what was his conclusion in the report?

13 A He provided a report, and as a result, I then
14 communicated with him to make sure I understood without
15 any question his impression. And he formed the opinion
16 that, at the time of the incident in question, Anna was
17 not capable of distinguishing between right and wrong and
18 would therefore be considered not guilty with regard to
19 criminal responsibility.

20 Q And what was your understanding of why she couldn't
21 understand right from wrong at the time of the incident?

22 A My understanding of why?

23 Q Yes. What was it that put her in the position where
24 she couldn't understand right from wrong?

25 A Well, I think Dr. -- you know, it's been, gosh, I

1 guess ten years. I haven't looked at Dr. Mulbry's report
2 in that period of time. So I think you'd have to ask
3 Dr. Mulbry questions about how he came to that
4 conclusion. I just know that his conclusion placed me in
5 a position of having an expert who would testify that she
6 did not have the capability of distinguishing between
7 right and wrong.

8 Q But based on mental illness.

9 A Oh, yeah. Oh, I'm sorry. I'm sorry. Yeah. It was
10 clearly psychiatric foundation.

11 Q Yes. Maybe that was a poor question.

12 A No question about that.

13 Q So now you've got there's some procedures that are
14 in place at that point that are statutory. You've got to
15 put somebody on notice on the other side, correct?

16 A The state of the case at that point would have been
17 that a basic Rule 5 would have been filed prior, and the
18 rules require under those circumstances that if a
19 defendant intends to claim not guilty by reason of
20 insanity, he must notify the prosecution of that
21 intention.

22 MR. MAYE: Objection, Your Honor. This is the
23 matter we've covered in the pretrial motion. It's under
24 advisement. I don't think we need to take testimony as
25 to it.

1 THE COURT: I did say that I would allow it to be
2 developed, and I am going to allow y'all to brief on it.

3 MR. MAYE: Okay. Apologize. I didn't recall that.

4 THE COURT: No. That's okay. And your objection is
5 noted for the record.

6 MR. BANNISTER: And can we just continue the
7 objection ongoing so he doesn't have to ---

8 MR. MAYE: Yes. I don't want to ---

9 MR. BANNISTER: Okay thank you.

10 THE COURT: Well, I anticipated it would not be a
11 lot, I mean, based on y'all's arguments that it seemed it
12 was more of a matter of law.

13 MR. BANNISTER: Right. And I'll say this, the
14 questions I'm asking go to a host of different things as
15 well.

16 THE COURT: But he will have a continuing objection,
17 and it will just be noted.

18 And thank you, Mr. Bannister.

19 MR. MAYE: Thank you, Your Honor.

20 MR. BANNISTER: Thank you, Judge.

21 BY MR. BANNISTER:

22 Q All right. At some point, you understood you have
23 to put the State on notice of your experts or of the
24 position you were going to take, the affirmative defense
25 of not guilty by reason of insanity.

1 A That's right.

2 Q And so what happened next in the case relating to
3 this not guilty by reason of insanity opinion you got
4 from Dr. Mulbry?

5 A And I can't testify certainly as to the actual time
6 frame these things happened, but when that occurred, the
7 prosecution sought an evaluation of our client by the
8 state hospital in Columbia. There were some certainly
9 legal positioning involved there, but the fact of the
10 matter was, because we had put them on notice, they were
11 entitled to an opportunity to have her evaluated.

12 That evaluation did take place. We were asked or
13 ordered, essentially, to provide records and so forth to
14 the doctor in Columbia who we didn't know who it would
15 be. But we did provide all -- our entire file, the same
16 file that Dr. Mulbry had been provided. And that
17 evaluation did take place.

18 Q And who did the evaluation for the State Department
19 of Mental Health?

20 A Dr. Frierson.

21 Q And at some point, were you made aware of what
22 Dr. Frierson's conclusions were?

23 A Yes. There was, as you would imagine, some delay in
24 getting Dr. Frierson's opinion. But he did submit to us
25 an opinion that basically was consistent with what

1 Dr. Mulbry had determined.

2 Q So Anna Brown Simpson was not guilty by reason of
3 insanity.

4 A That's right.

5 Q Did you seek any further expert opinions relevant to
6 the not guilty by reason of insanity from different
7 experts?

8 A And I'm going to attempt to recall as clearly as I
9 can. My recollection is that the prosecution -- and, of
10 course, Mr. Wilkins can correct me if I'm wrong about
11 this, but my recollection is that the prosecution was
12 going to attempt to have an independent evaluation. And
13 we vigorously objected to that, that they had already had
14 their evaluation in Columbia. And I'm not really sure,
15 quite frankly, whether the judge ever had to actually
16 rule on that in the record of the case, but I know that
17 that never did take place. They did not -- were not
18 given the right to have another bite at the apple, so to
19 speak.

20 Q So at some point, did Dr. Price, David Price get
21 involved?

22 A Yes. What we determined or at least formed the
23 opinion, and it was me that made this choice, we had two
24 forensic psychiatrists, both who had excellent
25 reputations. But sometimes surprises come up in a case

1 and we wanted to have a forensic psychologist also on
2 board in the event he agreed with the opinion. He did
3 evaluate -- David Price was approached. We received
4 funding from the judge for his fees. We allowed him to
5 evaluate Anna over a period of time. And he did do that
6 and did report back to us.

7 Q And was his conclusion consists with Dr. Frierson's
8 and Dr. Mulbry's?

9 A Yes.

10 Q All right. So now you've got basically three
11 experts at this point that you would anticipate are all
12 going to testify that Anna Brown Simpson was not guilty
13 by reason of insanity on the day of the incident,
14 May 13, 14, 2013.

15 A That's right.

16 Q Would it be a fair statement to say that the focus
17 of the case up to that point had been on her --
18 Ms. Simpson's capacity, mental capacity and whether or
19 not it met the requirements of law for not guilty by
20 reason of insanity?

21 A I'm going to clarify -- or at least make some
22 distinction there. It was my view that the focus of this
23 case was the mental and forensic psychiatric issues, that
24 that was going to be the focus.

25 We had a client in the Pickens County jail, and she

1 had been there from the time she was released from the
2 hospital, who was very, very ill in our view. And she
3 did require a lot of what I describe as hands-on
4 approach. So it was not just focus on the mental
5 defense, but we had to focus on the welfare of the
6 client, the welfare of Anna Simpson.

7 We worked with her family on numerous occasions. We
8 met with them here in Greenville to decide what we could
9 best do to serve our client.

10 And then we also had to make sure that the discovery
11 material received from the State regarding the facts of
12 the case were definitely examined, re-examined, and we
13 want to be sure we had the facts of the case clear.

14 Q Okay. All right. So was there some concern as it
15 related to the strategy of the case about what the State
16 might try to offer to counter the three expert opinions
17 that you anticipated being part of your case in chief?

18 A Yes. The notice of our intent had been properly
19 filed, and the records of those witnesses that we've
20 described have been provided to the State. I mean, they
21 were fully aware of what we were doing. They knew they
22 were going to have to respond in some fashion, and we
23 did, too. So we were anticipating what we might have to
24 do with regard to their response to our guilty but
25 mentally ill evidence -- I mean our not guilty by reason

1 of insanity evidence.

2 Q All right. So I want to focus on your understanding
3 of what the rules require the State to produce as it
4 relates to experts. So does Rule 5 require the State to
5 produce anything other than an expert report if such
6 exists?

7 A And I sometimes get the sub paragraphs of these
8 rules a little bit mixed up, Judge, so I'm going to ask
9 for some indulgence here.

10 Rule 5 requires if the State has an expert, a
11 ballistics expert, a fingerprint expert or a doctor, a
12 psychiatrist, the rule requires that they identify that
13 person and provide the basis upon his opinion. That's
14 what the rule requires if you file that rule.

15 When we filed our notice of intent to seek a not
16 guilty by reason of insanity, we then certainly expected
17 the prosecution to provide us with something that they
18 intended to use from an expert point of view to rebut
19 that testimony.

20 Q And did you receive anything from the State
21 indicating that there was going to be an expert testimony
22 in the form of a report or a notice?

23 A No.

24 Q How did you first become aware that Dr. Smith was
25 ultimately going to become a witness?

1 A Well, we knew of what I would describe the existence
2 of Dr. Smith's involvement. Mike and Susan certainly
3 advised us of who her psychiatrist had been. To be quite
4 frank, it was obvious that there was a lot of
5 dissatisfaction. I mean, obviously, this incident was
6 the result of a complete and total psychiatric breakdown.
7 And so we knew who he was. We didn't -- we really did
8 not believe that he would be involved as the treating
9 psychiatrist and that that -- if he became involved, it
10 would create a number of different legal positions which
11 we ended up taking in the transcript of this case.

12 Q At the time, was it your belief that a treating
13 psychiatrist was prohibited from testifying as a forensic
14 psychiatrist for a patient, former patient? I'm asking
15 what you believe.

16 A You know, that was -- obviously, we argued that
17 until I was as blue as your coat to attempt to get the
18 presiding judge at the time to agree with that. But he
19 would not, did not. And, of course, the appeals court
20 didn't either.

21 Q So I guess what I'm trying to get at, though,
22 Mr. Mauldin, is at the time when at least Dr. Smith might
23 have been on the radar as a potential witness for the
24 State, was it your belief that that was unlikely and that
25 if he did get called, that you had the law on your side

1 to prohibit him from offering testimony?

2 A Yes. The record clearly reflects that it was my
3 view that while he could be called to testify as to her
4 treatment and consultations and prescriptions and
5 diagnosis, he would not be allowed to express an opinion
6 as to the ultimate issue in the case. That would require
7 a forensic psychiatrist, and he was not a forensic
8 psychiatrist.

9 Q Other than anticipating that the State would comply
10 with what you describe as their Rule 5 obligations, did
11 you take any other action to force the State to produce
12 any witness they were going to rely on to rebut the
13 expert testimony that you anticipated bringing?

14 A We did. And I don't recall, again, the time frame.
15 I know that it was after we had three -- our three
16 experts prepared for trial.

17 We were, quite frankly, frustrated that the State
18 was intending to try our client for murder. So we asked
19 for a meeting. We sat down in a conference room with
20 Mr. Wilkins and Ms. Strom, and I can't recall if there
21 was somebody else, and laid out our evidence and said
22 here's what we've got, and what have you got to respond
23 to it? There was no response to that. He just said he
24 was going to go to trial, go to trial. And so that's
25 what we accepted, and we went to trial.

1 Q Okay. I have alleged in the complaint for the PCR
2 that it is a due process violation. It's
3 unconstitutional for a defendant not to be provided with
4 expert information that the State intends to introduce.
5 And is that the first -- never mind. Bad question.

6 So let me just focus you on that allegation for a
7 moment. Was there any filing that your office made, you
8 or your office, designed to bring this to a conclusion
9 prior to the eve of trial, like a motion or something
10 else?

11 A I'm going to -- and, once again, it's been many
12 years since this case was tried -- occurred and then
13 tried three years later. And I cannot say with absolute
14 certainty whether any actual motion was filed that went
15 specifically to a request by us representing Anna for the
16 State to provide us with any such evidence that you're
17 describing. So whatever is in the Court's file, the
18 clerk of court's file would speak for it, but I can't
19 really say that.

20 Q Understood.

21 All right. So I'm going to turn your attention for
22 a moment to Dr. Smith. So we're going to focus on him
23 for just a second. Is it true that there was no contact
24 with Dr. Smith other than Dr. Price's meeting with him
25 after hours about three years after the incident?

1 A Was there any contact by me?

2 Q You or your defense team.

3 A Me or my defense team, I would say no, there was no
4 contact.

5 Q And then after -- so as a result of the contact
6 between Dr. Price and Dr. Smith, what was your
7 understanding of what Dr. Smith's position might be?

8 A I was informed by my forensic psychologist,
9 Dr. Price, that he had met with Dr. Smith, that Dr. Smith
10 agreed with his opinions on the case. And when I
11 received that information, I then concluded that
12 Dr. Smith was not to be -- we should not be concerned
13 with the possibility that Dr. Smith might testify for the
14 State, that he was not going to end up being their
15 expert, so to speak.

16 Q So when Dr. Smith did ultimately become a witness
17 for the State, was there some time constraints that you
18 were under to get prepared to try to cross-examine him?

19 A Well, we didn't know that Dr. Smith was going to be
20 their witness until they submitted his name in the
21 rebuttal. I mean, that was when we discovered that. So
22 it wasn't a matter of time restraints. There was
23 absolutely no time. We were trying the case at that
24 point, third or fourth day, I think.

25 Q So just tell me if I've got this right. To

1 summarize, in your mind, at least, in preparing for
2 strategy of the case, once Dr. Price had reported back to
3 you, then Dr. Smith really came off of your radar as a
4 potential witness until he was noticed as a rebuttal
5 witness by the State.

6 A Well, and, you know, hindsight is 50-50. I would
7 say that our concern for the State's use of Dr. Smith was
8 significantly reduced when Dr. Price told us that he had
9 consulted with Dr. Smith. Dr. Price was a member of our
10 defense team, so to speak. So yes. That -- he had -- he
11 was no longer -- or had not been at any time, but he
12 certainly was after that, not what I consider to be a
13 threat to the case.

14 Q Mr. Mauldin, were you in the courtroom when
15 Dr. Smith was testifying?

16 A Yes.

17 Q So you heard his testimony, both my direct and the
18 cross from the other side.

19 A Well, I heard some of it and couldn't hear some of
20 it. And I've got pretty lousy hearing at this point.

21 Q Okay.

22 A But I heard most of his testimony.

23 Q If there had been -- well, did you -- what you did
24 hear, did you believe that some of that would have been
25 potentially helpful to supporting your case for Anna

1 Brown Simpson had you known to ask it and had you known
2 what his answer was going to be?

3 A That's true. It perhaps could have been helpful to
4 her.

5 Q All right. And so at this point as a trial attorney
6 for many years, do you believe that you should have
7 interviewed Dr. Smith prior to his being in the courtroom
8 as a potential witness?

9 A Yes. And I regret that I did not.

10 Q If you had been adequately prepared for Dr. Smith,
11 based on what you were able to hear and testify here
12 today, would there have been different questions and
13 other things that you would have gone into with him other
14 than what you actually did on cross?

15 A If I had consulted with Dr. Smith and been convinced
16 at that time that it would be helpful to our case for him
17 to be called as our witness instead of the State's
18 witness, then certainly what I would have asked would
19 have been different than the cross-examination that I
20 ended up conducting.

21 Q Did you hear his answer on cross-examination from
22 the attorney general's office that he felt like the other
23 three psychiatrists, forensic psychiatrists were in a
24 better position to render an opinion than he was?

25 A I did hear that, and I agreed with that.

1 Q Would that have been a question you might have asked
2 him had you known what the answer was going to be during
3 his cross-examination at trial?

4 A Yes. I certainly would -- if I had known that he
5 would have answered that question that way at Anna
6 Simpson's trial, then I would have asked it. I think it
7 would have been helpful. But obviously, I did not know
8 that, and I regret that I did not know that.

9 Q Were you aware prior to the trial of the case that
10 Dr. Smith was very concerned about speaking with Anna's
11 friends and family or the lack thereof during his
12 treatment of Anna Simpson?

13 A I was not aware of that.

14 Q Okay. So I'm going to change topics just a little
15 bit and maybe focus your attention on a little bit of
16 what we heard from Dr. Smith about Adderall and its
17 interaction with the mood stabilizers and how it can be a
18 component part of this.

19 At the time you were preparing for the case, was
20 there much focus in your strategy or preparation related
21 to anything dealing with Adderall?

22 A Well, I'm going to answer that as a qualified no.
23 And the qualification is that we certainly were aware
24 that all three of our experts had identified, you know,
25 the drugs that she was or wasn't taking properly or

1 prescriptions being used. So we were aware. But we
2 never focused, if you will, on the contribution that the
3 taking or not taking of particular medicines could really
4 be part of the root of the problem here.

5 Q Was the idea that Adderall is contraindicated for
6 somebody who is having psychotic symptoms, do you recall
7 that ever coming up with any specificity with any of your
8 experts?

9 A No. Other than what's in their records, right.
10 That, if you will, direction of the case, I never took
11 that direction.

12 Q Okay. And was there ever a moment where there was a
13 strategy relevant to Dr. Smith's treatment, that is, his
14 prescription regimen and its efficacy or inefficacy, did
15 his actual treatment of Anna Brown Simpson make its way
16 into the strategy of presenting a defense for Anna Brown
17 Simpson at her trial?

18 A No.

19 Q Were you aware that Dr. Smith was somewhat concerned
20 that patients or family and friends might blame him for
21 the ultimate result on the incident on May 13th or 14th?

22 MR. MAYE: I'm going to object, Your Honor. I don't
23 see how that can be relevant to what counsel did in
24 preparation.

25 MR. BANNISTER: Do you want me to respond to that,

1 Judge? Because I think it goes towards ---

2 THE COURT: You can respond.

3 MR. BANNISTER: Yeah. I think it goes towards his
4 strategy and had he known that. Let me tie it up this
5 way. I withdraw the question. I'm going to ask a
6 different question.

7 BY MR. BANNISTER:

8 Q Mr. Mauldin, all right. So have you had a chance to
9 review the transcript?

10 A I received a copy of the transcript electronically
11 from the attorney general and also a hard copy from you.
12 And I had the opportunity to review the whole thing, but
13 I did not obviously read it all.

14 Q Okay. Do you recall that -- or would you dispute
15 with me that in your closing argument, you raised for the
16 first time an issue of potential malpractice on behalf of
17 Dr. Smith?

18 A I believe that I made reference to that subject
19 during cross-examination after he was called as a
20 rebuttal witness.

21 Q Okay. Thank you.

22 Would it have been important to you to be aware of a
23 potential defense relevant to either Adderall's impact on
24 creating the psychosis or Dr. Smith's treatment and how
25 that added to or potentially created the situation that

1 we got on May 13th, 14th of 2013 with Anna Brown Simpson?

2 A With regard to the Adderall specifically, I do not
3 recall any consideration of that as a potential defense.

4 With regard to whether Dr. Smith's treatment of her
5 was appropriate regarding psychiatric standards and so
6 forth, that certainly -- we did consider that, but did
7 not -- we felt like we had three good, solid forensic
8 witnesses prepared to present our defense and that the
9 subject of whether she had been properly treated by a
10 treating psychiatrist beforehand just simply kind of --
11 did not raise to the level where I thought it ought to be
12 our focus.

13 Q Understood.

14 And throughout the trial, was the focus on the
15 forensic reports, the mental illness and her capacity to
16 understand right from wrong on the day of the incident?

17 A It was.

18 Q Was there a -- well, all right. So let me turn your
19 attention now to some of the other potential witnesses
20 that might have been in the case.

21 Were you aware of any people, friends, family that
22 knew Anna Brown Simpson that would have been available
23 and would have been willing to testify to the roughly
24 34 years prior to her two psychotic episodes in a way
25 that would have painted Anna in a different light than

1 the incident did?

2 A My recollection regarding that subject is multiple
3 conversations with Mike Brown, with his wife and with
4 Rush, and I can't recall -- I think it was Jernigan,
5 maybe, who was also a person very interested in Anna's
6 welfare. Beyond those three, I do not recall being
7 provided information or seeking information about other
8 friends or family in the case.

9 Q Would it be a fair statement to say that the jury
10 was not presented with any witnesses that described Anna
11 as a mother, a wife and as a child growing up in a
12 positive light prior to the onset of her psychotic
13 episode in 2012?

14 A Certainly, the State presented some -- and I hate to
15 use word "nonprofessional," but these are not expert
16 witnesses. These were people aware of the family. And
17 the State did present some people during their case to
18 describe Anna's conduct or presentation prior to the
19 incident. The defense did not present any witnesses of
20 that nature.

21 Q Was one of the witnesses that the State introduced
22 Susan Brown, Anna Brown Simpson's mother?

23 A Yeah.

24 Q Was there any reason that -- strategic reason that
25 you chose not to ask Ms. Brown about how Anna had been as

1 a mother up until the mid part of 2012 when she had that
2 psychotic break?

3 A I cannot recall any reason for not asking her that
4 question. She would have been on cross-examination
5 because she was called by the State.

6 It was a very painful experience. Susan was called
7 as a State's witness against her own daughter, basically,
8 and so that was a difficult situation. And I did not ask
9 her questions that I perhaps should have.

10 Q Would you have anticipated that she would have
11 offered you testimony, if asked, that would have painted
12 Anna as a precocious, young, did-well-in-school child
13 growing up, I'll just break it down as, you know, the
14 childhood years? Was there anything -- any reason not to
15 ask Ms. Brown about those years and her experience with
16 Anna?

17 A No.

18 Q All right. And obviously, the children were 7 and 5
19 at the time of the incident. I think I've got that
20 right.

21 A Right.

22 Q So at least she had been a mother to the oldest for
23 roughly seven years and to the youngest for roughly five
24 years, correct?

25 A And I will say, Mr. Bannister, I'm not actually real

1 sure about those ages, you know. So I am -- I will say
2 that the children had been raised by Anna for their
3 entire lives, but they were still very young.

4 Q And was there any reason that you knew of why
5 Ms. Brown would have said anything that wasn't glowing
6 about Anna's motherhood?

7 A The discussions that I had with Mike and Sue, the
8 parents, these were painful discussions. And they were
9 suffering from this tragedy. And so questions I might
10 have asked Susan I did not ask at trial. I certainly
11 could have asked those questions at trial, but I did not.

12 Q Mr. Mauldin, in fairness, looking back at the trial
13 of the case, would it be fair to say that you got maybe
14 too focused on the mental health aspect of not guilty by
15 reason of insanity maybe to the detriment of some of the
16 other issues that could have presented Anna in a more
17 fulsome way?

18 A Well, the Monday morning quarterback idea comes
19 into focus, obviously. But I would say my focus was
20 directly on the forensic psychiatry in the case. And I
21 certainly acknowledge that. And to the extent that left
22 other things undone, I regret that that might be the
23 case.

24 Q John, are you familiar with the affirmative defense
25 of good character?

1 A What?

2 Q Are you familiar with the affirmative defense of
3 good character?

4 A I'm not sure. I'm not sure I understand that.

5 MR. MAYE: Your Honor, I'm going to object. I don't
6 believe it qualifies as an affirmative defense.

7 THE COURT: I'm going to sustain that.

8 BY MR. BANNISTER:

9 Q John, are you familiar with the defense of good
10 character?

11 A Yes.

12 MR. MAYE: Same objection, Your Honor. It's a
13 matter of evidence.

14 MR. BANNISTER: I'm not sure I understand the
15 objection, Judge.

16 THE COURT: Do you want to clarify your objection?

17 MR. MAYE: Yes. Under I believe it's Rule 401,
18 generally speaking, character evidence cannot be admitted
19 for purposes of demonstrating conformity therewith. It
20 is not a defense. It can be admitted, but it is not a
21 defense. And its limitation of admission is part of that
22 rule.

23 THE COURT: And I'm not sure that Mr. Bannister was
24 -- well, you did say affirmative defense.

25 MR. BANNISTER: Can I respond just briefly?

1 THE COURT: Please respond.

2 MR. BANNISTER: Had I been able to give you a
3 pretrial brief, this would have been a lot easier. But I
4 would refer you to the case of State v. Rebecca
5 Lee-Grigg, G-R-I-G-G. I know about that case because it
6 was my case.

7 While common law has permitted you to put in good
8 character evidence forever, that's the first reported
9 decision where the Supreme Court affirmed that, yes, it
10 is a defense. I think it's a 2012 case, Your Honor.

11 THE COURT: I'm sure you will put that in your
12 brief.

13 MR. BANNISTER: I will, I will. So if I can just
14 have a little leeway here on these questions so I can get
15 into that.

16 BY MR. BANNISTER:

17 Q So, John, let me back up. Are you aware that there
18 is a defense called good character?

19 THE COURT: Your objection is noted.

20 MR. MAYE: Thank you, Your Honor.

21 THE COURT: Go ahead, sir.

22 THE WITNESS: I've kind of gotten lost myself here.
23 I'm not aware of it being captioned, I think, as a
24 defense, perhaps, is what I need to say. I'm not really
25 sure what ---

1 BY MR. BANNISTER:

2 Q Are you aware that a defendant is entitled to an
3 instruction that good character can in and of itself
4 raise reasonable doubt?

5 A Well, I'm certainly aware that if you present
6 character evidence and the judge instructs the jury on
7 the consideration of character evidence, then it could
8 affect whether or not they are satisfied beyond a
9 reasonable doubt of a person's guilt. I mean, and I'm
10 sure I'm not really kind of on the same page as you.

11 Q All right. Did you consider perhaps bringing
12 witnesses to Anna Simpson Brown's case that could have
13 testified to her good character and considered that as a
14 potential additional way to get the verdict to what
15 you're looking for?

16 A I did not consider that.

17 MR. BANNISTER: All right. Give me just a moment,
18 Judge. Just let me just check with my co-counsel back
19 here, make sure I'm on the right page.

20 Thank you, Judge. No further questions.

21 Mr. Mauldin, thank you.

22 MR. MAYE: Your Honor, would you mind just taking a
23 five-minute break?

24 THE COURT: That's perfectly fine.

25 MR. MAYE: Thank you.

1 (WHEREUPON, a recess is taken at 12:05 PM.)

2 THE COURT: Mr. Maye, proceed when you're ready.

3 MR. MAYE: Thank you, Your Honor.

4 CROSS EXAMINATION

5 BY MR. MAYE:

6 Q Mr. Mauldin, good afternoon. I think we've reached
7 afternoon at this point.

8 Just right off the bat, let me clarify one thing.
9 One of the things you said in your examination just now
10 was that you did not have any notice that Dr. Smith was
11 going to be called as a witness by the State.

12 Essentially, it was when it happened was when you knew.
13 Is that essentially the summary of your testimony?

14 A I think so, yeah.

15 MR. MAYE: May I approach the witness, Your Honor?

16 THE COURT: Sure.

17 BY MR. MAYE:

18 Q I am referencing page 107 of the transcript. If you
19 can, read starting with what's highlighted there and
20 continue until essentially line 10 of 108.

21 A You want me to read it out loud?

22 Q Yes, I do.

23 A It identifies me, Mr. Mauldin (as read), "All right.
24 The next question is the barring of any expert not
25 promptly noticed under Rule 5 or under the court rules.

1 Once again, I am a little bit in the blind about whether
2 or not to anticipate.

3 "Court: Do we have one? Are y'all calling an
4 expert?

5 "Mr. Wilkins: We have an expert in psychiatry.
6 It's a known witness. It's Jeff -- it's Dr. Jeff Smith,
7 her treating psychiatrist. He -- their expert has talked
8 to him. They know all about him. They have his records.
9 I'm not sure he cannot -- we cannot be qualified as an
10 expert in forensic psychiatry, so -- I don't -- I don't
11 have -- I can't tell the Court exactly how far I'm going
12 to be able to go down the road with him, but I'm going to
13 attempt to qualify him as an expert in psychiatry.

14 "The Court: During your case in chief.

15 "Mr. Wilkins: Don't know, Your Honor.

16 "The Court: Or possible rebuttal?

17 "Mr. Wilkins: Possibly could be rebuttal. I don't
18 know. I don't want to tell the defense and I don't know
19 myself."

20 Q Thank you.

21 So is it fair to say that prior to opening
22 statements and prior to the admission of any evidence,
23 you were put on notice that Dr. Smith would be a witness
24 the State might potentially call and that they might do
25 it either in case in chief or rebuttal?

1 A Well, if I'm understanding, I don't know where
2 during the trial that particular excerpt was taken. But
3 prior to the beginning of the trial, I was not on notice
4 of Dr. Smith.

5 Q I can respect that. But I believe you said your
6 testimony was that you didn't have notice that he would
7 be called until the moment he was called. And does that
8 reflect differently?

9 A Oh, yeah. I would -- I would accept that as a
10 clarification. I mean, we began the trial, and that's
11 when Mr. Wilkins said something about Dr. Smith. But we
12 were in the trial -- we were in the courtroom at that
13 point.

14 Q Mr. Mauldin, your strategy at trial was to present a
15 not guilty by reason of insanity defense; is that
16 correct?

17 A Yes.

18 Q Is it fair to say that that was the only realistic
19 strategy for avoiding a guilty verdict in this case, a
20 pure ---

21 A Yeah, yes. I would say it was my opinion at the
22 time that that was our defense in an attempt to obtain --
23 to avoid a guilty verdict, yes.

24 Q And to further clarify that question because it
25 wasn't a great question, there was no reasonable dispute

1 that Ms. Simpson was the person who pulled the trigger.

2 A No.

3 Q And you're -- and I'm abbreviating NGRI, not guilty
4 for reason of insanity -- NGRI defense seeks to
5 demonstrate that Ms. Simpson did not know legal or moral
6 right from wrong and thus could not be held criminally
7 responsible for the crimes.

8 A That was our strategy.

9 Q So that was your goal for this trial.

10 A Yes.

11 Q Okay. Proof she did not know legal right from legal
12 wrong.

13 A Yes.

14 Q Did you believe that expert testimony was going to
15 be necessary in proving this case?

16 A Did I believe ---

17 Q With that being your goal and that being your trial
18 strategy, did you believe that expert testimony was going
19 to be necessary to prove?

20 A Yes.

21 Q Was forensic psychology and forensic -- excuse me.
22 Was forensic psychology and forensic psychiatry the
23 fields you believed necessary to prove NGRI defense?

24 A That was the evidence that we had that we intended
25 to produce in an attempt to get a verdict of NGRI.

1 Q And I believe you testified on direct earlier that
2 after obtaining both your hired expert in Mr. Mulbry, you
3 also had the State-appointed or court-appointed witness
4 Dr. Frierson, both are forensic psychiatry, both
5 providing you with essentially the defense that you're
6 looking for, correct?

7 A That's true.

8 Q Okay. And even though you already had two witnesses
9 of that type, you testified that you wanted to go one
10 step further and get a forensic psychologist just in case
11 as well.

12 A That's right.

13 Q Okay. The term "forensic," is that because forensic
14 specifically means that the witness has the ability or
15 the additional training to focus their practice -- I
16 apologize, Your Honor. That was awful. Let me try that
17 one again. Is that because the forensic specialty means
18 that the witness has additional training and focuses
19 their practice on the mental status of their client or
20 patient as it pertains to the law?

21 A Yes.

22 Q And I apologize for some ---

23 A No. That's a fair -- that's a fair description.

24 Q So you were after specifically forensic experts in
25 fields of psychiatry and psychology because that allowed

1 them to speak to the mental state as it pertains to the
2 law.

3 A It would allow them to express an opinion that the
4 defendant in a hypothetical case was not guilty by reason
5 of insanity. They could express that within the forensic
6 psychiatric qualifications.

7 Q So you would agree that there was a strategic and
8 specific reason to go and get a forensic psychiatrist,
9 psychologist for the purposes of the strategy you chose.

10 A There was.

11 Q And would you agree with me that Dr. Smith is not a
12 forensic psychiatrist?

13 A He is not.

14 Q I'll ask this. It might be a little bit repetitive
15 for purposes of clarity. Was the purpose of those
16 experts in pursuing that specific defense to speak to her
17 level of criminal responsibility?

18 A Yes.

19 Q We've already established you essentially had three
20 expert witnesses for the defense in this case.

21 A That's right.

22 Q Did these witnesses each meet with Ms. Simpson
23 personally?

24 A Yes.

25 Q Did these witnesses have various mental health and

1 medical records for their review?

2 A I did.

3 Q That you did. Did they as well?

4 A All right. I'm sorry. Repeat the question.

5 Q I'll ask it again. And I'll ask it in two parts.

6 Did your experts have the mental health and medical
7 records that they needed to review for purposes of their
8 job?

9 A As far as I'm concerned, they did. I mean, I gave
10 them what we had. And if they -- and I advised them that
11 if they wished additional information, to please ask me.
12 And none of them did that.

13 Q That saves me asking that question. Thank you.

14 And the second part of that question was you also
15 had those records, not just your experts.

16 A Yes. We had -- we had obtained those records
17 through releases and requests through our client.

18 Q Okay.

19 A Plus, we had gotten material from the prosecution in
20 discovery, and all of that combined to be the records
21 reviewed by three experts.

22 Q Going off what you just testified, let's extend it
23 just a little bit. Did your three experts that you had,
24 did these witnesses ever indicate to you they did not
25 have what they needed to make a full and competent

1 medical decision for purposes of their diagnosis on the
2 mental state?

3 A No, they did not.

4 Q Were each of these witnesses' diagnoses consistent
5 with each other?

6 A They appeared consistent to me.

7 Q And that diagnosis specifically was schizoaffective
8 bipolar disorder type, correct?

9 A Well, I can't be that specific. I would have to go
10 back and look. I don't have a recollection of a specific
11 diagnosis like that.

12 Q But would it be fair you would trust that that's
13 what the record suggests, that that would be accurate if
14 that's what's stated in the record?

15 A I would say that they were simply consistent with
16 each other. I cannot recall exactly what it was they did
17 or didn't agree to.

18 Q Was each of their conclusions as to applicant's
19 mental state was that she could not discern legal right
20 from legal wrong?

21 A That's right.

22 Q So all three of your witnesses, expert witnesses
23 were supporting your strategy chosen for when you started
24 the case.

25 A Yes.

1 Q And you called all these three witnesses at trial,
2 correct?

3 A Yes.

4 Q Did they testify -- to your recollection, did they
5 testify well?

6 A Well, you know, "well" is a relative term. I would
7 say ---

8 Q Were you pleased?

9 A I would say they testified as they had reported to
10 me. And each made presentations to the Court. They were
11 all accepted as expert witnesses in forensic psychiatry
12 or psychology. So yes. I felt like the testimony of all
13 three went well.

14 Q And the consistency of diagnoses and the consistency
15 of their conclusion as to criminal responsibility, what
16 -- remained consistent when they testified to the jury.

17 A Yes.

18 Q Nothing changed.

19 A Yes.

20 Q Is it fair to say that they didn't -- they did not
21 only just provide their medical conclusions, but that
22 they discussed the factual matters and the medical side
23 that supported their medical conclusion as to NGRI?

24 A I believe that the record, the transcript of record
25 in this case would reflect that each of these witnesses

1 provided supporting factual information. It's difficult
2 for me to go back and say what one or the other did or
3 didn't say. I certainly can't say that. But they did --
4 they were asked to provide to the jury what supported
5 their opinion, and they testified to it.

6 Q Do you recall within the record and within the
7 various testimony that they testified they weren't just
8 relying on their interview with Ms. Simpson, but also
9 considered the records, the stories of family members in
10 the times prior to and after the events, all culminating
11 on why they reached their conclusions?

12 A The only way I think I can answer that is that each
13 of these experts were provided the same data by me which
14 included discovery material from the prosecution about
15 the actual facts of the incident, the medical history and
16 records of the client. None of them asked for additional
17 information. So ---

18 Q Let me try it this way. I apologize if I'm not
19 getting the question quite clear.

20 Each of these witnesses provided the long list of
21 Ms. Simpson's various delusions, paranoias, and
22 psychoses, correct? And they didn't just say she was
23 delusional, she was psychotic or that she was paranoid.
24 They provided examples of what was going on specifically
25 with her. Do you recall that?

1 A What they testified to at trial, I just -- I can't
2 really recall each one. I don't know what they said now
3 these years later. It's in the transcript, though, what
4 they testified that they relied on.

5 Q Let me try specifics then. Do you recall testimony
6 where multiple phone calls between Ms. Simpson and her
7 mother were made that demonstrated concern over her
8 mental health being extremely happy or extremely sad and
9 demonstrating paranoia, things of that -- do you recall
10 that?

11 A From the expert witnesses?

12 Q From the testimony offered in your case in chief.

13 A I recall Susan, the mother, being called as a
14 State's witness and talking about phone calls. I recall
15 that.

16 Q Do you recall your witnesses discussing that type of
17 material as well?

18 A I don't have a specific recollection of what was in
19 those calls.

20 Q That's fair.

21 Do you recall from the record the indication to the
22 jury that there was no criminal -- no prior criminal
23 history for your client?

24 A I recall -- I recall that being a fact.

25 Q Would you have any reason to doubt that that point

1 was made during the trial in front of the jury?

2 A I cannot say yes or no about that. I do not know.

3 Q As part of your presentation to the jury, did you
4 highlight the fact that Dr. Frierson was not a, quote,
5 unquote, hired defense expert but was the court-appointed
6 expert?

7 A I believe I did.

8 Q Would that be important to demonstrate that there
9 would be no basis for bias?

10 A I certainly would have done that for that purpose.

11 Q Mr. Mauldin, do you personally have any medical
12 expertise or a formal education in medicine?

13 A Say that -- did I ---

14 Q Do you personally have any medical education or
15 medical expertise?

16 A No.

17 Q And certainly, nothing that would go into the field
18 of forensic psychiatry.

19 A Absolutely not.

20 Q So is it safe to say that with you lacking that
21 knowledge, you relied on the information provided to you
22 by your experts?

23 A I did.

24 Q Okay. And would you agree that under the law, it is
25 appropriate under your standard of representation that

1 you were permitted to rely on your experts?

2 A That was my method used for almost 50 years.

3 MR. MAYE: And, Your Honor, rather than stall and
4 provide cases, I'm referencing the Fourth Circuit opinion
5 of Water -- man, I'm tongue-tied today -- Walton vs.
6 Angelone. It's 321 F.3rd 442.

7 BY MR. MAYE:

8 Q Mr. Mauldin, regarding Dr. Smith, he was the
9 treating psychiatrist, correct?

10 A Right.

11 Q And you had Dr. Smith's records, correct?

12 A We requested and received information that
13 represented to be Dr. Smith's records.

14 Q And you provided those to your experts?

15 A I did.

16 Q And your experts relied at least in part on those
17 records in formulating their own medical opinions.

18 A You know, you're asking me what my experts relied
19 upon. I can tell you what I gave them, but I think they
20 would have to tell you what consideration they gave for
21 any particular record. I can't answer that.

22 Q Okay. That's fine. I'll move on.

23 We've already covered that Dr. Smith was not a
24 forensic psychiatrist.

25 A Right.

1 Q Would you agree that in comparison to the witnesses
2 you had and Dr. Smith lacking the forensic specialty,
3 that he would not be best suited to present the case that
4 you had chosen to pursue?

5 A I believe that's fair to say.

6 Q Do you recall the fact that your witnesses had
7 spoken to Dr. Smith in advance of trial?

8 A I recall that the forensic psychologist, Dr. Price,
9 advised me that he had had a conversation with Dr. Smith.

10 Q Okay. So the experts you're relying upon had
11 Dr. Smith's records and had contacted Dr. Smith.

12 A That's -- yes. I mean...

13 Q Did your three experts give you any indication that
14 it was imperative that you personally interview Dr. Smith
15 in preparation for this trial?

16 A No.

17 Q And you relied upon ---

18 A I didn't -- they didn't request that I do it. I,
19 you know, period.

20 Q But we've established you relied upon your experts
21 when it comes to matters of medical -- medical topics.

22 A Yes.

23 MR. MAYE: A moment of indulgence, Your Honor.

24 BY MR. MAYE:

25 Q On direct examination, you discussed that you did

1 not think Mr. Smith would be coming in initially, that's
2 correct, by the State?

3 A Yes.

4 Q When it came to your attention that that would
5 potentially be changing, you raised a number of legal
6 arguments to either prevent his testimony entirely or
7 limit it in the sense of not providing a criminal
8 responsibility opinion; is that correct?

9 A That's right.

10 Q You also went through -- let's see. You conducted a
11 voir dire of Dr. Smith prior to his qualification as an
12 expert?

13 A Yes.

14 Q Did you believe that that was a thorough voir dire?

15 A Well, I felt like it had established what I needed
16 to have the Court take into account, and that was that he
17 was not qualified as a forensic and therefore could not
18 express the opinion -- the ultimate opinion in the case.

19 Q But ultimately, the Court did not rule in your
20 favor?

21 A He did. That's right.

22 Q And all of that took place immediately prior to
23 Dr. Smith taking the stand on the final day of trial. Do
24 you recall that being the timeline?

25 A That's the timeline.

1 Q Do you recall -- again, this kind of goes to the
2 timeline of the trial. Do you recall that a lot of those
3 issues were discussed at the very end of the previous
4 day, and the Court basically said we're going to tackle
5 all that tomorrow, we'll get into it, but you were on
6 notice that that was coming?

7 A It was -- it was a multi-day trial. I can't
8 remember. Three or four days. And exactly where those
9 breaks -- there were breaks. The arguments we made
10 opposing Dr. Smith as a rebuttal witness were made. And
11 if I'm not mistaken, I believe there was an overnight
12 break. The trial continued the next morning, I believe.
13 And that's when Dr. Smith was called as a rebuttal
14 witness.

15 Q Okay. Over the course of that particular light that
16 you just referenced as well as the trial as a whole when
17 you learned that the State may, in fact, call Dr. Smith,
18 did you do preparation as far as cross-examining
19 Dr. Smith?

20 A Well, yes. Stayed up all night working, if that's
21 what you mean.

22 Q That is precisely what I mean. Thank you.

23 A Right.

24 Q In conducting your cross-examination, do you recall
25 being as thorough as to address the very short time frame

1 of the various meetings that were in his records
2 essentially showing what appeared to be six-minute or
3 seven-minute types of meetings? Do you recall that?

4 A I do.

5 Q Okay. Was the purpose of that to demonstrate that
6 -- let me try that again. The essential testimony from
7 your experts presented in case in chief demonstrated they
8 all had multiple hours of interviews with your client,
9 correct?

10 A Correct.

11 Q In highlighting those short interval minutes, was
12 that a purpose of demonstrating that perhaps your experts
13 had a better understanding of Ms. Simpson's issues than
14 might have been able to be pulled out from Dr. Smith's
15 sessions?

16 A Yes. We certainly were attempting to establish
17 reasons for the jurors to question the credibility and
18 weight of Dr. Smith's opinion that we knew was coming or
19 had been presented on direct with Mr. Wilkins. So, I
20 mean, we were just attempting to reduce the value of his
21 testimony, and that was one of the ways we attempted to
22 do it.

23 Q Is another way that you attempted to do it was
24 highlighting for the jury both during voir dire and in
25 questioning that he was not a forensic psychiatrist as

1 opposed to a practicing clinical psychologist?

2 A Yeah. Right.

3 Q And you explained to the jury -- or you explained in
4 questioning why that difference is important?

5 A Yes.

6 Q During your cross-examination of Dr. Smith, did
7 Dr. Smith confirm that he had spoken to Dr. Price in
8 advance of trial? It's a recollection. Do you recall?

9 A I don't recall whether he confirmed that or not. It
10 would be in the transcript. Whatever the transcript
11 says, I believe it.

12 Q To that point, do you recall that the transcript
13 demonstrates that Dr. Smith testified on your
14 cross-examination that in reviewing Dr. Price's analysis
15 and evaluations and notes, that he essentially agreed
16 with Dr. Price's finding as to diagnoses and criminal
17 responsibility?

18 A I do not recall that. I mean, whatever the
19 transcript reflects.

20 MR. MAYE: If I may have just a moment, Your Honor.

21 THE COURT: Yes, sir.

22 MR. MAYE: Apologize, Your Honor. A lot of record.

23 THE COURT: No apologies necessary.

24 MR. MAYE: May I approach the witness, Your Honor?

25 THE COURT: Certainly.

1 BY MR. MAYE:

2 Q I am referencing page 649 and into 650 of the
3 transcript. Can you begin with line 17 and read the
4 highlighted portion?

5 A It appears that this is all one person. Is
6 this ---

7 Q I would assert for the Court that this is the
8 testimony of Dr. Smith during questioning.

9 A Okay. And this is his answer beginning at line 17
10 (as read), "I met in person with Dr. Price in early March
11 of this year. He allowed me to briefly look over the
12 report that Dr. Frierson, the forensic psychiatrist, had
13 prepared, and he also told me what his findings were. I
14 don't think he had dictated his report at that time. He
15 asked my opinion. I said, well, based upon what you were
16 seeing at that time, I can see how you arrived at your
17 decision. But I was very pointed in telling Dr. Price
18 that this is an entirely different individual than the
19 one I saw for 34 visits."

20 Q That's enough. You can stop right there. That's
21 all I needed. Thank you.

22 So in referencing that portion, the jury heard
23 Dr. Smith, the State's witness, essentially agree with
24 Dr. Price's conclusions based on the evidence or the
25 materials and records and interviews that he had

1 available to him. Would you agree that that is what that
2 demonstrates?

3 A Well, I did not get that impression from that
4 testimony. And certainly, I was -- may I ask if that was
5 direct or cross that we are referring to?

6 Q I will double check. It does appear to be direct.

7 A Okay. So what I just read was an answer during a
8 direct exam. That would have been Mr. Wilkins?

9 Q That's correct.

10 But still, my question is the response that
11 Dr. Smith gave in testimony was that in light of what
12 your experts had, specifically Dr. Price, that he agreed
13 that that is a medically reasonable conclusion to reach.

14 A Well, it speaks for itself what he said.

15 Q And I'll believe ---

16 A My impression was that he was going to, at the end
17 of his direct testimony, going to say that it was -- that
18 it was a matter of her not being able to conform her
19 conduct to the requirements of the law which was not in
20 agreement with my three experts, if that answers your
21 question.

22 Q All right. I want to explore that for a minute.

23 So the first statement that we just discovered --
24 just discussed is based on all of the evidence that your
25 experts took into consideration, correct? The interviews

1 after the event occurred, the police reports, the medical
2 records, all that they have at their disposal, that was
3 their conclusion. And Dr. Smith -- that was Dr. Price's
4 conclusion which is consistent with the others.

5 A That's correct.

6 Q And Dr. Smith said, given what you're looking at, I
7 can see how you got to that conclusion. That's what he
8 said; is that correct?

9 A That's right.

10 Q Okay. That's in the ---

11 A That's right.

12 Q My next question is, as you've already said,
13 Dr. Smith was not a forensic psychologist, so you weren't
14 calling him for purposes of the defense, correct?

15 A I was not calling him.

16 Q And you weren't providing him these additional
17 materials, additional opportunities to speak with your
18 client; is that correct?

19 A That's right. I was not going to and I did not.

20 Q Okay. So is it fair to say that the opinion that
21 was offered by Dr. Smith that differed in essentially
22 providing a guilty but mentally ill conclusion was based
23 on evidence that was incomplete compared to your experts?

24 A Well, I can't ---

25 Q It's a yes or no.

1 A I don't -- I don't know. I don't know what he -- I
2 don't know what he used to support his opinion which was
3 different from my three experts other than what he says
4 in the record that he reviewed. I mean, he reviewed
5 materials, he considered his treatment history with my
6 client and he ultimately was allowed over our objection
7 to express what I considered to be a forensic opinion.

8 Q Okay. And for clarity, his opinion was guilty but
9 mentally ill, correct?

10 A His opinion was that she could not conform her
11 conduct to the requirements of the law which is the
12 foundation for a guilty but mentally ill conclusion.

13 Q But at the foundation of his finding, that still
14 conveyed to the jury that even he believed that your
15 client was mentally ill.

16 A Right.

17 Q But the jury did not find any mental illness in
18 their verdict.

19 A Absolutely. The jury found a guilty verdict and --
20 yeah. They basically found -- they disregarded the
21 mental health testimony basically across the board.

22 Q That's your presumption, correct?

23 A That's right. I mean, that's what I have concluded
24 to the extent that's relevant to this case.

25 Q In addressing Dr. Smith on cross-examination, was

1 one of your goals to demonstrate that he was not as well
2 informed or at least in some way mistaken compared to
3 your experts?

4 A Well, yes. That was an intention.

5 MR. MAYE: May I approach the witness, Your Honor?

6 THE COURT: Sure.

7 BY MR. MAYE:

8 Q This is page 687 of the transcript again. Can you
9 just read those highlighted lines?

10 A Just the highlight.

11 Q Just the highlight.

12 A (As read) "But it would appear that you were not
13 aware or did not realize how sick Anna Simpson was; is
14 that fair to say?

15 "Answer: That is fair to say."

16 Q So is it fair to say that your goal in that
17 cross-examination was fully met in those two lines?

18 A Well, apparently not.

19 Q I asked about your goal to demonstrate the
20 difference between that witness and yours, was that
21 demonstrated in those three lines?

22 A That was the best I could do in attempting to seek
23 my goal, yes.

24 Q Mr. Mauldin, addressing the discussion of lay
25 witnesses that you didn't call that counsel has discussed

1 in previous direct examination, would you agree with the
2 premise that character evidence is generally not
3 permitted to be -- not permitted to be admitted for
4 purposes of demonstrating compliance therewith?

5 A I'm not really sure I understood that.

6 Q Apologies. Let me get the law for a second.

7 Would you agree with the statement of law that
8 evidence of defendant's character is generally not
9 admissible to show a propensity to act accordingly?

10 A If that -- are you quoting like a case?

11 Q I am. But I was asking your opinion.

12 A I'll accept that as a statement of that case,
13 yeah.

14 MR. MAYE: Your Honor, may I approach?

15 THE COURT: Sure.

16 BY MR. MAYE:

17 Q This is State v. Young. And I'll hit footnote -- or
18 Head Note 1. It discusses the admission of good
19 character evidence.

20 When you introduce good character evidence and
21 you're attempting to demonstrate that they could not have
22 committed the crime, that's generally not permitted,
23 correct?

24 A That's true.

25 Q Okay. But in this case, there was no dispute that

1 she pulled the trigger, correct?

2 A That's true.

3 Q Okay. So would you agree with me that there is an
4 issue of relevance on demonstrating good character
5 evidence when you can no longer put it forward for
6 demonstrating she's a good person, she wouldn't have done
7 this in the face of a theory that she was mentally ill
8 and could not distinguish between right and wrong and
9 that's why she did this?

10 A Well, and I apologize. I'm not really sure I
11 followed that question. It seems like it -- if you're
12 asking me to compare these -- this possibility or ---

13 Q I'm trying to get at the lack of relevance of good
14 character evidence in light of your theory of the mental
15 illness that did not allow her to know right from wrong.
16 And here's my question to that. Would you agree -- and I
17 recognize you've already said that you're not a medical
18 expert, but I think we'll get away with this question --
19 that both good people and bad people, people with good
20 character and people with bad character can all be
21 mentally ill?

22 A Yes.

23 Q So is it fair to say that if your argument to the
24 jury and the purpose -- the entire goal of your defense
25 is to demonstrate the mental illness, that it is

1 irrelevant whether she has good character or bad
2 character? It all comes down to demonstrating that she
3 was not mentally well under the criminal responsibility
4 standards that we discussed.

5 MR. BANNISTER: Your Honor, I'm going to object to
6 have Mr. Mauldin reach what is in essence a legal
7 conclusion that is going to be before the Court here.

8 THE COURT: I'm going to overrule. I'm going to let
9 him answer it.

10 THE WITNESS: You know ---

11 THE COURT: And your objection is noted.

12 THE WITNESS: Whether or not a presentation of -- or
13 an attempt to present evidence of character over -- with
14 an objection is just going to be a matter of the Court
15 ruling on whether or not it's going to be allowed or not.
16 It was not attempted in this case so I have no idea
17 whether or not such evidence that you've described would
18 have been allowed or not, whether it was evidence of how
19 good a person Anna Simpson was or whether it was evidence
20 from lay witnesses about her -- how she was acting or
21 behaving prior to the incident. None of that testimony
22 was offered, therefore, there was never any ruling about
23 whether it was relevant or not, whether it -- so I don't
24 know whether that's an answer to your question. We did
25 not present -- we did not attempt ---

1 BY MR. MAYE:

2 Q Hang on. Do you agree with me that in presenting an
3 NGRI, the only way you get to that ruling is to
4 demonstrate to the jury that medically she could not
5 determine legal right from legal wrong?

6 A That's correct.

7 Q Does good character demonstrate that to a jury in
8 any way?

9 A I don't think they're self-exclusive. I don't -- is
10 that -- are you saying ---

11 Q My question is a yes or no. Do you think good
12 character evidence provides the jury with a medical basis
13 to find that she was not capable of distinguishing right
14 from wrong?

15 A I don't know how a jury would take that into
16 consideration. I don't know what weight they would give
17 to it ---

18 Q That's it. Thank you.

19 A --- or whether it would be admissible. I do not
20 know that.

21 Q A few other matters. Your expert witnesses had the
22 records which would have demonstrated the medications
23 that Ms. Simpson was taking throughout her care, correct?

24 A They had the records that we had provided them which
25 included medication.

1 Q And did those experts raise any alarm to you that
2 the doses prescribed, the -- any indication from the
3 records that she would be abusing medications to an
4 extent that it is no longer their opinion that she fell
5 into a psychosis but was chemically induced into one?

6 A Their reports to me did not indicate that.

7 Q On direct examination, you testified that you felt
8 you had three good experts, correct?

9 A Yes.

10 Q And that with those three experts, you pursued the
11 NGRI and that that was -- and would you agree that that
12 was a strategic decision on your point -- your part?

13 A Yes.

14 MR. MAYE: One moment, Your Honor. I'm almost done.

15 THE COURT: That's fine.

16 MR. MAYE: One moment, Your Honor.

17 Your Honor, that's all I have. Thank you.

18 THE COURT: All right. Okay. Mr. Bannister, do you
19 have anything?

20 MR. BANNISTER: Just briefly, Judge.

21 REDIRECT EXAMINATION

22 BY MR. BANNISTER:

23 Q Mr. Mauldin, character evidence is not medical
24 evidence, is it?

25 A I apologize. If you'll speak into the mic there I

1 can hear you.

2 Q Character evidence is not medical testimony, is it?

3 A Right.

4 Q Those are two totally different types of evidence.

5 A In my opinion, that's true.

6 Q And so would it -- the State to some extent relied
7 on lay witness testimony to try to establish Anna Brown
8 Simpson's competency at the time of the incident.

9 A Yes.

10 MR. BANNISTER: And -- well, let me leave it at
11 that. I think that's all I have. No further questions.

12 THE COURT: All right.

13 MR. MAYE: May I have a brief recross?

14 THE COURT: Sure.

15 RE CROSS EXAMINATION

16 BY MR. MAYE:

17 Q Mr. Mauldin, on the topic of the lay witnesses,
18 opposing counsel just referenced that the State
19 introduced lay witnesses for purposes of demonstrating
20 her behavior at the time of the incident. In presenting
21 family and friends, were they going to be present at the
22 time that this incident occurred?

23 A Obviously not.

24 MR. MAYE: That's all I have. Thank you.

25 THE COURT: Anything else, Mr. Bannister?

1 MR. BANNISTER: No, Your Honor.

2 THE COURT: Okay. All right. Mr. Mauldin, you are
3 -- well, do y'all want him to hang around? What do you
4 need?

5 MR. MAYE: I'm good.

6 MR. BANNISTER: No. He can be released, Judge.

7 THE COURT: I think we're going to be releasing you
8 okay?

9 THE WITNESS: Thank you, Judge.

10 THE COURT: Take care, Mr. Mauldin.

11 THE WITNESS: I appreciate it. Thank you so much.

12 THE COURT: All right. Can counsel approach?

13 (WHEREUPON, a bench conference was held off the record.)

14 THE COURT: We'll break until 2:15.

15 (WHEREUPON, a recess is taken at 12:59 PM; proceedings
16 reconvened at 2:14 PM.)

17 MR. BANNISTER: Your Honor, Ms. Simpson will call
18 Dr. Price.

19 THE CLERK: Please place your left hand on the Bible
20 and raise your right hand.

21 WHEREUPON,

22 DAVID PRICE

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated. Please
25 state your full name for the record.

1 THE WITNESS: David Richard Price.

2 MR. BANNISTER: May it please the Court.

3 DIRECT EXAMINATION

4 BY MR. BANNISTER:

5 Q Dr. Price, if you will, just kind of give us a brief
6 idea of your involvement in the case involving Anna Brown
7 Simpson.

8 A I was approached by John Mauldin in I think 2014
9 about evaluating Ms. Simpson. I saw her on nine
10 occasions between 2014 and 2016. I testified on her
11 behalf in 2016, again called by Mr. Mauldin.

12 Q All right. I think the Court knows this already,
13 but just for the record, you testified at the trial that
14 you believed Anna Brown Simpson was -- your opinion was
15 that she was not guilty by reason of insanity.

16 A That is correct.

17 Q What was the diagnosis that you assigned to her?

18 A I felt that Ms. Simpson had what we call a
19 schizoaffective disorder bipolar type. That's a disorder
20 that has elements of a mood disorder, and a bipolar
21 disorder is a mood disorder and schizophrenia. So I felt
22 that she was manic and that she had elements of the
23 schizophrenia, and that's the psychotic symptoms of
24 hallucinations, delusions, that type.

25 Q And would it have been that part of the diagnosis

1 that was directly related to her psychotic event that
2 occurred May 13, 14 of 2014 when the incident occurred?

3 A That is correct.

4 Q So I'm not sure how much you've been in the
5 courtroom for, but there was -- Dr. Smith was her
6 treating physician.

7 A That is correct.

8 Q All right. So I just want to focus you for a minute
9 on the treating physician. Was there a time when you
10 went and spoke with Dr. Smith?

11 A I actually interviewed both of her treating
12 physicians, Dr. Smith and Dr. Wayne Hanna, which was her
13 family physician.

14 Q And was that roughly about three years after the
15 incident date?

16 A Yes, sir.

17 Q And at the time when you met with Dr. Smith, did you
18 describe to him what you had found in your criminal
19 responsibility forensic analysis?

20 A I actually shared with him a copy of my preliminary
21 report. I think it was someone testified earlier today
22 that is was Dr. Friesen's [phonetic], but it wasn't. It
23 was my report.

24 And I met with him and discussed -- I not only
25 discussed Ms. Simpson, I discussed her prodromal

1 development of the schizoaffective disorder over time.
2 When you get a major psychiatric disorder, you often have
3 what we call a prodromal period. That's when people get
4 more odd or ill over time, and she clearly manifested
5 that.

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

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

9 Q Was your perception of his affect, would that have
10 included that he almost appeared apologetic about how she
11 had gotten this way?

12 MR. MAYE: I'm going to object to that, Your Honor.

13 THE COURT: Sustained.

14 BY MR. BANNISTER:

15 Q How did he appear to you when you were discussing
16 Ms. Simpson and what had happened May 13th and 14th and
17 the fact that he was a treating physician?

18 A Very concerned.

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

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

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

1 A None at all.

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

4 A That's correct.

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

7 A That is correct.

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

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

20 Q Would you have been -- I realize that during the
21 course of the trial, you had testified and sometime later
22 Dr. Smith had testified on rebuttal. And if the issue
23 about what he had actually said to you had become an
24 issue that needed to be put in front of the jury, were
25 you available to come back and offer that testimony?

1 A I was available.

2 Q And at least initially, do you recall that your
3 attempt to talk about that conversation with Dr. Smith
4 was met with some objections that got sustained based on
5 hearsay?

6 A That is correct.

7 Q During your analysis and your creation of your
8 report as to Ms. Simpson's criminal responsibility, did
9 Mr. Mauldin ever give you any direction to try to
10 ascertain beyond what was going on at the moment of the
11 incident, the how we got here relevant to her history?

12 A I don't remember getting specific instruction from
13 Mr. Mauldin about that, but I did cover some of that in
14 my report about the previous signs of mental illness that
15 she had shown up until, you know, the two psychotic
16 breaks in 2012 and then the diagnosis by Dr. Smith about
17 the severe bipolar disorder.

18 Q Is Adderall as a prescription contraindicated for
19 patients with psychotic disorders?

20 A It is contraindicated with patients with psychotic
21 disorders, and it's particularly problematic for bipolar
22 patients, because 20 percent of bipolar patients have
23 ADHD as a pre-existing condition as did Ms. Simpson.

24 Q And was there ever any focus with Mr. Mauldin about
25 how or whether Adderall played some role in her psychotic

1 breaks either in August of 2012 or May of 2013?

2 A Not that I recall. And I don't recall any mention
3 of that in any of her medical records that I had
4 reviewed.

5 MR. BANNISTER: Okay. All right. Your Honor, may I
6 just have a moment?

7 THE COURT: Sure.

8 BY MR. BANNISTER:

9 Q Dr. Price, would you have, at the time when you were
10 putting this together, have reviewed all of Dr. Smith's
11 notes, medical notes from his office?

12 A All the ones that I had at the time. I reviewed
13 over four file boxes of records, and I think the list of
14 records I reviewed takes ten pages in my report.

15 Q It was a hefty load, I'm sure, too.

16 All right. When you say that she was -- as it
17 relates to Adderall, do you have any specific
18 recollection about that in her records? And primarily, I
19 was going to show you at least one record from
20 Dr. Smith's and then maybe ask a question or two about
21 it.

22 A I don't recall any specific reference about Adderall
23 other than it had been prescribed to her.

24 Q Okay. All right. Let me show you -- this is a log
25 note dated April 22, 2013, from Dr. Smith. Why don't you

1 just take a look at this one note.

2 A (Reviews document) Yes, sir.

3 Q Does that help refresh your recollection a little
4 bit?

5 A It does.

6 Q All right. Was there at least some indication that
7 Ms. Simpson had called in and asked for an additional
8 prescription for Adderall at or before the time of the
9 incident based on her representation that her
10 prescription had gotten washed?

11 A Yeah. That note would indicate that she got two
12 refills.

13 Q Yeah. All right. And would it be fair to say that
14 the medical records relevant to the August psychotic
15 event and the May psychotic event had pretty good workups
16 done in terms of blood reports, urinalysis, that kind of
17 thing?

18 A Yes, sir.

19 Q So whatever's in those records would be something
20 that you at least had access to and would be hopefully an
21 accurate representation of what the results would be.

22 A That's correct.

23 MR. BANNISTER: Okay. All right. I don't have any
24 further questions, Judge. Thank you.

25 THE COURT: Mr. Maye?

CROSS EXAMINATION

BY MR. MAYE:

Q Good afternoon, Dr. Price.

Just over the course of the records that you reviewed, the full four boxes, is it accurate to say that Ms. Simpson was on Adderall approximately starting from the time of college until perhaps even beyond 2013 after the crime occurred?

A She was certainly on Adderall in college. I thought maybe she started in high school.

Q Okay. But considerable amount of time.

A That's correct.

Q Bordering on decades, correct?

A That's correct.

Q I know you were a forensic psychiatrist, correct?

A Psychologist.

Q Psychologist. Excuse me.

Are you able to prescribe medicines?

A I am not.

Q Okay. See if you can answer this question. Is it unheard of for an individual who takes a medication over the course of a decade having to get a refill maybe once over the course of that because they were negligent and accidentally washed it in the washing machine?

A It happens.

1 Q My follow-up would be is one record an indication to
2 you that she is habitually abusing one of her
3 medications?

4 A It would be one data point, but it would be
5 noteworthy, yes, sir.

6 Q Does that create a trend of any kind to you?

7 A I didn't -- I didn't notice a trend when I reviewed
8 those records, and I would have remembered that if I had.

9 Q Okay. And if you didn't notice any, you certainly
10 didn't report any kind of trend like that to Mr. Mauldin?

11 A And it's not in my report. No, sir.

12 Q And is it fair to say, in your review of four boxes
13 of records, there was nothing that presented itself so
14 clear that you had a concern that her mental status was
15 due to some abuse of the medication?

16 A Well, I'm a forensic psychologist, not a forensic
17 psychiatrist, so I would look at the records a little bit
18 differently as far as prescriptions and blood work and
19 whatnot. But as a psychologist, I didn't see anything.

20 MR. MAYE: One moment, Your Honor.

21 BY MR. MAYE:

22 Q You testified that you interviewed both of her
23 treating physicians in preparation for providing
24 testimony for the defense?

25 A I did.

1 Q And you conveyed the contents of those interviews
2 with Mr. Mauldin, told him what he needed to hear?

3 A Yes, sir.

4 Q Do you have any recollection that Ms. Simpson
5 reported to you actually not taking her Adderall on the
6 day preceding the event?

7 A I don't recall.

8 Q You don't recall.

9 The Adderall she was prescribed was for purposes of
10 her ADD; is that correct?

11 A That's my understanding, yes, sir.

12 Q And is it your understanding she was also on a mood
13 -- mood ---

14 A Stabilizer.

15 Q Thank you very much. Also on a mood stabilizer?

16 A Yes, sir.

17 Q In treating ADD with Adderall and having a bipolar
18 disorder that requires a mood stabilizer, is that an
19 appropriate approach to treating those disorders in your
20 review of reviewing the records?

21 A Yeah. One of the things you'd look for in reviewing
22 the records, and I'm sure I looked for it, I don't recall
23 right offhand, is that people that have bipolar
24 disorders, particularly the manic kind, it feels good to
25 be manic so they don't comply with the mood stabilizer

1 while they might comply with the Adderall.

2 Q Okay. Can you testify how many hours approximately
3 did you interview Ms. Simpson in preparations for trial?

4 A I saw her nine times over three years. I can't
5 recall the specific hours, but a number of them.

6 Q If we're in the ballpark of 18 to 20 hours, does
7 that sound about right?

8 A Sounds about right, yes, sir.

9 Q Anything in discussions with her that led you or
10 that would have put you on notice or made you at all
11 suspicious that she was abusing or misusing or otherwise
12 habitually not using her medications appropriately?

13 A I would have commented on that in my report had I
14 felt that way, and I didn't do that.

15 Q You did not?

16 A No, sir.

17 MR. MAYE: That's all I have. Thank you.

18 THE COURT: Anything on redirect?

19 MR. BANNISTER: Just very briefly, Judge.

20 Your Honor, may I approach just briefly?

21 THE COURT: Sure.

22 REDIRECT EXAMINATION

23 BY MR. BANNISTER:

24 Q Dr. Price, just take a look at one more medical
25 record, if you don't mind.

1 A (Reviews document) Yes, sir.

2 Q And would this have been one of the medical records
3 that you would have reviewed? I realize it was
4 extensive, but...

5 A Yes, sir.

6 Q All right. And was there a urinalysis taken on or
7 about May 14, 2013?

8 A Yes, sir.

9 Q And did that urinalysis reflect that Ms. Simpson was
10 positive for amphetamines and methamphetamines?

11 A Yes, sir.

12 Q And is one a precursor to the other?

13 A Yes.

14 Q And how does it work? Amphetamine if it's the
15 Adderall drug, which one's the precursor and which one is
16 the processed version?

17 A The amphetamine.

18 MR. BANNISTER: Thank you.

19 Judge, I think that's all we have for this witness.

20 THE COURT: Anything else?

21 MR. MAYE: Just a brief recross, if I may.

22 RECROSS EXAMINATION

23 BY MR. MAYE:

24 Q Dr. Price, in reviewing that record, are you able to
25 identify precisely when she would have taken her last

1 dose of Adderall?

2 A No, sir.

3 Q Does Adderall remain in the system for a potentially
4 number of days that might show up in a urinalysis?

5 A I think it excretes pretty quickly, so I don't think
6 it would be for days.

7 Q Could it be 24 hours?

8 A Maybe 24 hours, but I don't think longer than that.

9 Q Okay. Do you recall on the record that Ms. Simpson
10 was on Adderall for three doses over the course of the
11 day?

12 A That would be about right.

13 Q Would it be certainly possible if she skipped a day
14 -- or, excuse me -- if she skipped a dose but had other
15 doses from that same day, that would most certainly show
16 up?

17 A Yes, sir.

18 MR. MAYE: If I may approach the witness, Your
19 Honor?

20 THE COURT: Sure.

21 BY MR. MAYE:

22 Q With this document, does it indicate precisely how
23 much is in her system?

24 A No, sir.

25 Q It just shows positive? Just positive?

1 A Just positive, yes.

2 MR. MAYE: That's all I have, Your Honor. Thank
3 you.

4 THE COURT: Anything else?

5 MR. BANNISTER: No, sir, Your Honor.

6 THE COURT: Okay. You may be excused. Good to see
7 you.

8 MR. BANNISTER: Judge, the attorney general and I
9 have now neglected twice to put something on the record,
10 and this would be a convenient time to put on the record
11 as I'm waiting on Dr. Frierson. He should be here, but
12 he's not quite in the courtroom yet.

13 So this is a Pickens County case. This was the
14 available docket for PCR here in Greenville County. And
15 so to the extent that there could be an issue or should
16 be, anyway, we both agree that we want to get this done
17 and we're willing to do it here in Greenville County
18 despite the fact that originates as a Pickens County
19 case.

20 THE COURT: Well, I just assumed that. I mean, it's
21 the thirteenth circuit and I would hear Pickens and
22 Greenville when I was sitting here.

23 MR. MAYE: We discussed here.

24 THE COURT: But I'm glad that we got that on the
25 record. And we've got some more Pickens cases tomorrow,

1 too, right?

2 MS. KEMP: Yes, sir.

3 THE COURT: But I guess we will put that on the
4 record tomorrow. Or maybe that's -- or is it Thursday?
5 Maybe it's Wednesday.

6 (Pause in proceedings.)

7 MR. BANNISTER: All right. Judge, I am ready to
8 call my next witness, but give me just a second. I'm
9 working out of three different places because of a lack
10 of access to the Internet in my office for the last two
11 weeks. So give me an indulgence for just a second,
12 please.

13 Okay. Your Honor, if I may?

14 THE COURT: Yes, sir.

15 MR. BANNISTER: Ms. Simpson calls Dr. Frierson.

16 THE CLERK: Mr. Frierson, please place your left
17 hand on the Bible and raise your right hand.

18 WHEREUPON,

19 RICHARD FRIERSON

20 After having been duly sworn, testified as follows:

21 THE CLERK: Thank you. You may be seated. Please
22 state your full name for the record.

23 THE WITNESS: My name is Richard Lesesne,
24 L-E-S-E-S-N-E, Frierson.

25 MR. BANNISTER: May it please the Court.

DIRECT EXAMINATION

BY MR. BANNISTER:

Q Dr. Frierson, at some point, did you become involved with a case involving Suzanna Brown Simpson, also known as Anna?

A Yes.

Q And I think we know, but tell the Court briefly how you got involved.

A I work for the University of South Carolina School of Medicine. I'm a professor of the Department of Psychiatry, and I teach forensic psychiatry. We have a contract with the Department of Mental Health that they hire me to perform forensic evaluations on clients, defendants from throughout the State of South Carolina from the Court of General Sessions. This was one of those cases that was assigned to me to do the evaluation.

Q How often in your career, and you can just use a percentage if it's easier, have you found a criminal defendant to be not guilty by reason of insanity?

A Probably less than 1 percent, but it's very low. If it's over 1 percent, it's not much.

Q Understood.

All right. And is that, in fact, what you concluded in this particular case with Ms. Simpson?

A Yes.

1 Q And -- so did you convey that to the Court and to
2 both parties at that time?

3 A Yes. I met with both the solicitor's office and the
4 public defender prior to trial in this case so they knew
5 my opinion. I produced a report that they both received,
6 and I provided testimony at trial.

7 Q And just to be clear, neither of the parties was
8 necessarily the one that had requested you to do this.
9 This was coming from a court order.

10 A I don't know who made the motion for the order, but
11 my understanding, it was the prosecution who made the
12 motion after the defense had submitted intent to use an
13 insanity defense. So I was court-appointed.

14 Q This case dates back to the trial at least in 2016.
15 Is this one of the cases that has kind of stuck with you?

16 A Oh, yeah.

17 Q And what in particular stuck with you about this
18 case if there is one thing?

19 A A lot. A lot has stuck to me about this. This is
20 one of the few cases -- there's probably two cases in my
21 career, two or three where the opinion that I offered was
22 not the final outcome. So it sticks into my mind that
23 way. And one way is what could I have done better? You
24 know, was I not clear? Did I confuse the jury? Did they
25 understand or not? Certainly, a jury can decide

1 differently than my opinion, but it's not happened a
2 whole lot in my career.

3 Number 2, I was just shocked at how short this trial
4 was. You know, this is a double murder trial with a lot
5 of very complex issues involving mental illness and
6 involving what otherwise was a loving mother up until
7 this happened by all accounts. So I just cannot believe
8 that you can adequately portray everything that I would
9 think would be fair and justice to have portrayed in a
10 week's time.

11 Q All right. Let me focus you on your testimony in
12 particular. And you were called by Dr. Mauldin -- I mean
13 by Mr. Mauldin, correct?

14 A Yes.

15 Q And did you feel like you had a robust opportunity
16 to give the jury a narrative of both her medical history
17 and the other pertinent aspects that would help the jury
18 reach a conclusion about whether or not she was not
19 guilty by reason of insanity?

20 A No.

21 Q And what was it about the question and answer that
22 you felt was deficient for you to be able to convey
23 entirely a robust picture of Ms. Simpson?

24 A Well, when I was providing testimony, he would ask
25 the question and I would go to answer it and then he

1 would interrupt me with something that wasn't relevant to
2 the opinion that I was trying to render. And it was
3 peripherally relevant. But like I reviewed the
4 transcript of my testimony that I asked you to
5 provide ---

6 Q Yes, sir.

7 A --- prior to coming today, or at least someone read
8 it to me while we were driving because I had very short
9 notice about today. And it just sticks in my mind how
10 many times he interrupts me when I have my train of
11 thought to go and paint -- cross all the I's -- cross all
12 the T's and dot all the I's for the jury.

13 Q So if we could go back and sort of re-create that
14 moment and you were given the opportunity to answer these
15 questions in a more robust fashion, let's start with the
16 abundance of evidence that there was that Anna, up until
17 this moment, maybe August and May, had been a loving,
18 caring and doting mother and loyal, faithful wife. And
19 just kind of tell me what you see early on in the records
20 or that you would have liked to have had the opportunity
21 to talk about had you been given that opportunity.

22 A Right. She, you know, was adopted at birth. We
23 know that her biological father was very elderly and the
24 biological mother was incredibly young which is why she
25 was placed -- I think it was a housekeeper/patron sort of

1 relationship.

2 She was adopted by a loving family who gave her a
3 normal, happy childhood. There were no problems. She
4 was a decent student. She went to college, finished
5 college, got married to -- she met her husband in high
6 school that they didn't start dating till after high
7 school. But they married and by all accounts had a good
8 marriage, at least that's what he told me when I met with
9 him. It was a loving marriage. She had the two kids.
10 Now, she had a miscarriage as well, I think, in between
11 the two kids. But -- and that was very difficult for
12 her. But outside of that, they were pretty much a
13 normal, happy family.

14 He worked in, I think, auto parts for a dealership.
15 He wanted her to stay home and take care of the kids.
16 She had worked at a bank prior to having children, and he
17 wanted her to stay home and take care of the kids, which
18 she did. She was very active in their lives. She made
19 their lunches every night.

20 She was like the homeroom mother or what have you,
21 you know, your child's class. You're the one that
22 organizes things and does stuff for the kids.

23 And then, unfortunately, you know, the travesty of
24 her developing psychotic symptoms and a mental illness
25 that the family sort of pretended was not happening.

1 They were concerned, but, you know, I don't know that
2 they knew.

3 She was seeing a psychiatrist who saw her for five
4 or ten minutes, medication management checks that I'm not
5 sure was aware of the extent of her illness, what was
6 going on, certainly was not aware of all of the paranoid
7 stuff that came out that was going on in the months and
8 actually years, two years before this happened.

9 Q And you're talking about Dr. Smith at this point?

10 A Yes.

11 Q The treating physician.

12 A Yes.

13 Q And so the bumps in the road, if you will, where
14 there were some psychotic symptoms coming out, as an
15 expert, what was so significant about those particularly
16 as it related to her treatment with Dr. Smith and sort of
17 how we got where we got in August and May?

18 A Well, she needed -- hold on a second. Let me get my
19 -- because I have not reviewed his records. But she
20 needed to be on an antipsychotic medication, and I don't
21 believe -- let me go right to the time that this
22 happened. The last time he saw her -- saw him -- sorry.
23 The last time Dr. Smith saw her ---

24 Q It should be February of '13, if that helps you get
25 there.

1 A February of 2013?

2 Q Yes, sir.

3 A Okay. I'm back to May. Here we go. Here's
4 February. Yes.

5 She was on a type of antipsychotic medication called
6 Latuda, but -- and she should not have been taking
7 Adderall. She should not have been prescribed Adderall
8 because she had psychotic symptoms. And Haldol before
9 that, Dexedrine or stimulants.

10 Stimulates cause the release of a chemical on the
11 brain called dopamine. Excess dopamine is what causes
12 psychosis, so it will lose touch with reality. So if
13 someone is delusional or hallucinating, they should not
14 be receiving the stimulant medication such as Adderall.

15 When we train doctors, psychiatrists, residents in
16 our program in Columbia, if they have a patient they're
17 prescribing Adderall and they develop any sort of
18 psychotic symptoms or manic symptoms, that's an absolute
19 no more. I mean, that's much more risky than simply
20 having ADHD or having difficulty concentrating.

21 Q Doctor, I noticed that there was the diagnosis
22 between what Dr. Smith has, that is bipolar with some
23 severe issues, versus schizoaffective disorder with
24 bipolar tendencies. At the end of the day, if a patient
25 is having psychotic symptoms, does it really matter what

1 the diagnosis is?

2 A No. It's the symptoms you worry about. The
3 treatment's the same.

4 Q So how far back do you see in the records that would
5 indicate that there were some paranoid or psychotic
6 ideations?

7 A That's going back well before her hospitalization
8 which was months before. If you look back at 2011, she
9 thought that someone was tampering with her computer.
10 She thought something was going on behind the curtain
11 involving the government.

12 She thought that people in the house across the
13 street were drug dealers and were coming to her house at
14 night in order to use her computer or mess with her
15 computer. Her husband set up a camera in the garage to
16 try to prove to her that this was not happening, Anna,
17 this isn't true, no one's coming in, but she still
18 believed that they were.

19 She thought somebody bugged the ceiling fan. She
20 had gone to Lowe's to take pictures of an identical model
21 ceiling fan to come back to her house to compare it to
22 see if she could see what the bug was or the camera was,
23 if she could spot how it was different than the one in
24 the store.

25 And there were just lots of paranoid, delusional

1 things going on long before May of 2013. In fact, in
2 August of 2012, they entered her in the hospital because
3 she thought her in-laws were grooming her daughter for
4 sex trafficking.

5 Q Okay. Let me stop you there for just a second. So
6 aside from the evidence that she was having mental health
7 issues back in 2010, was this a moment where a treating
8 physician you would have expected would realize now we
9 know that there's a psychotic event that has occurred and
10 Adderall is no longer appropriate here?

11 A Correct.

12 Q All right. And were you given the opportunity to
13 explain how the Adderall was interacting with
14 Ms. Simpson's mental health illness during the trial of
15 the case?

16 A Not that I recall. I didn't hear that on the drive
17 up here.

18 Q Okay. And is that something that you believe is
19 important ---

20 A Yes.

21 Q --- to have a full understanding of how we had the
22 incident that occurred on May 13th and 14th of 2013?

23 A I want to be clear that I don't think that Adderall
24 caused this. I mean, I think she had an underlying
25 mental illness. But Adderall made the symptoms worse.

1 And Adderall is contraindicated when you have psychotic
2 symptoms.

3 It appears to me that Dr. Smith had no idea, was not
4 aware of the severity of her psychotic symptoms. Her
5 family certainly was, but there was no communication with
6 him.

7 Now, he should have known because she went to
8 Piedmont -- I mean she went to Palmetto Lowcountry
9 Behavior Health and before that St. Francis. And she
10 expressed these delusions about her child and her in-laws
11 and that they were potentially grooming -- I think her
12 name was Carly, was the daughter -- grooming her for
13 something which was not based in reality. Dr. Smith
14 should have gotten those records and should have looked
15 at those records. And if he had, he certainly should
16 have known that this is more than just bipolar disorder.
17 She's, you know, really psychotic.

18 Q So I think -- let me be clear here. Is it the
19 Carolina for Behavioral Health was the ---

20 A Psych hospital.

21 Q Yes.

22 A She goes to -- she went to the emergency department,
23 at ---

24 Q I'm pretty sure at St. Francis.

25 A St. Francis. Right. And they thought she needed to

1 be in the hospital. And she was going to go voluntarily,
2 so in other words, they didn't need to fill out emergency
3 hospital patient. They arranged for her to go there on
4 Monday morning, and that's what she did. I think they
5 sent her home on Saturday or something from St. Francis.
6 And then she was in Palmetto Lowcountry Behavioral Health
7 for some time.

8 Q And you keep saying Palmetto. I think it's
9 Carolina.

10 A I'm sorry. Carolina Center for Behavioral Health in
11 Greer.

12 Q Right. Okay.

13 A Carolina Center -- I'm sorry if I said Palmetto.
14 You know, it's been a crazy day so far.

15 Q Okay. So Dr. Smith has testified prior, and I'll
16 represent to you that he had the Carolina Behavioral
17 Health records from that psychiatric moment in August of
18 2012. Would those records have been a notice moment for
19 a treating psychiatrist relevant to the severity of the
20 psychosis and whether or not Adderall could or should be
21 prescribed from that point forward?

22 A Yes.

23 Q And would that notice have been in essence a red
24 flag saying this patient can no longer be on ADD
25 mediation, particularly Adderall?

1 A There are other ways to treat ADHD besides
2 stimulants.

3 Q Sure.

4 A One of those other medications maybe, but they
5 should not be on an amphetamine-like drug.

6 Q All right. So you have described very briefly how a
7 stimulant works. But if you could, just walk us through,
8 okay, so if somebody who's psychotic, the medications
9 that they're on, generally, aren't they designed to tamp
10 down dopamine?

11 A Yes. The medicines we use to treat psychotic
12 symptoms are what we call dopamine blockers. They block
13 the receptors or neurons that dopamine attaches to.
14 Giving a stimulant causes cells to release dopamine. So
15 there's a lot more dopamine that could go to a receptor.
16 So with the stimulant, you're increasing dopamine
17 transmission, with an antipsychotic medication, you're
18 blocking dopamine. It makes no sense to -- it would be
19 like icing something that you're also using a hairdryer
20 on. I mean, it's cross purposes.

21 Q So the regimen of prescription that Ms. Simpson was
22 on after coming out of her hospitalization at Carolina
23 Behavior Health, to your way of thinking, did not make
24 sense from a treatment standpoint.

25 A Correct.

1 Q And did you see in the records where or if her
2 Adderall dosage was actually increased between August and
3 May -- August of '12 and May of 2014? I can help you
4 with that.

5 A Let me look real quick (reviews document). I know
6 that when she got out of Carolina Center, he was giving
7 her -- he increased -- she got out in August of 2012, and
8 in October he increased the Adderall dose once but left
9 it where it was after that.

10 Q Okay. All right.

11 A She had complained that her concentration and focus
12 isn't good.

13 The problem with concentration is when you're
14 psychotic, you can't concentrate because you're having
15 all these intrusive thoughts about this paranoid stuff.
16 And it's not ADHD that's making you have a concentration
17 problem.

18 Q So, I guess, in summary, not only was Dr. Smith
19 prescribing Adderall in a contraindicated way given the
20 patient's symptoms and particularly the records that had
21 come from Caroline Behavior Health, but potentially was
22 also misdiagnosing her self-reports in being unable to
23 concentrate as being further indicative that she was
24 having psychotic tendencies.

25 A That's -- what was causing it was being

1 misattributed to being ADHD. And the bottom line is,
2 she's not in school, she's not doing a desk job. In the
3 scheme of things, treatment for ADHD is not urgent.

4 Q All right. So did it appear to you that Ms. Simpson
5 had been noncompliant with her mood stabilizers both in
6 the August hospitalization and later in May of 2013?

7 A I don't recall. You'd have to show me. This case
8 was a long time ago. I don't recall every month and
9 every bit of treatment that she got. I'm sorry.

10 Q That's okay. And I'll get that to you here in just
11 a second. But let me try it a different way. Are there
12 treatments -- once you know that a patient is
13 noncompliant with any of their medication, but let's just
14 stick with somebody who's bipolar and we're talking about
15 their medications, are there options that a treating
16 physician has to bring in compliance or bring the patient
17 into compliance?

18 A Yes.

19 Q And what are those?

20 A There's several. You could offer someone, you know,
21 that's chronically noncompliant or not adherent to
22 medication, you could offer a long-acting injectable
23 medication is one option where you don't have to remember
24 to take a pill every day. You just get a monthly
25 injection. You could elicit their family members to be

1 more vigilant and assisting to make sure that the
2 defendant is on medication and taking them appropriately.
3 You can meet with a patient and find out why you're
4 missing doses. And if it's for some side effect or
5 something like that, you could maybe offer alternative
6 medications.

7 So there are a lot of things that could be done to
8 try to increase compliance.

9 Q All right. For just a minute, we'll focus on the
10 family members. Is that something that is the patient's
11 responsibility to bring that to the doctor or is it the
12 treating physician that, if they're potentially
13 considering having a family member deputized, for lack of
14 a better word, that's on them to try to get somebody in
15 with the patient?

16 A I think it's on the psychiatrist. But obviously,
17 the psychiatrist cannot do it without the patient's
18 permission.

19 Q But it's not one where you'd rely on the patient to
20 come up with it. You're looking for their acquiescence.

21 A Right, right.

22 Q Okay.

23 A I mean, we don't talk to family members without our
24 patient's permission, but if you notice a person's
25 critically not complying, you think because of their

1 illness they need some assistance from a family member
2 that you would say I would like to reach out to your
3 family member, is that okay?

4 Q And in cases that you've been involved in where
5 noncompliance with medication has created legal issues
6 for a particular patient, are these things that you would
7 have wanted the factfinders to know about, that is, that
8 the patient's noncompliant, the treating physician had
9 other options just in the general sense?

10 A Yeah. If there were time.

11 Q Sure.

12 A You know, I got the sense the day that I testified
13 that I think the judge had sort of prodded the defense
14 this needs to move along. Like they were always
15 discussing the schedule.

16 Q And did you feel like your testimony was rushed in
17 some sense?

18 A Yes.

19 Q All right. And was there a moment where you were
20 trying to describe what you have now discussed relevant
21 to the Adderall and how it affected dopamine and how it
22 was contraindicated in the case? And maybe it was like
23 the very last part of your testimony, if you can just
24 take a look at that last part.

25 A I think that was on cross-examination is when that

1 -- it had come out early briefly, but then the
2 prosecution was trying to paint a picture that she was
3 abusing the Adderall.

4 MR. MAYE: Objection, Your Honor. Witness can't
5 speak to the strategy of the prosecution at trial.

6 THE COURT: Mr. Bannister?

7 MR. BANNISTER: That's fine.

8 THE COURT: Sustained.

9 BY MR. BANNISTER:

10 Q I was more getting at, Dr. Frierson, that you were
11 making an attempt with Mr. Mauldin to get into a deeper
12 level of how the Adderall had impacted what happened
13 particularly between August of 2012 and May of 2013. And
14 let me ask it this way. Do you feel like you had a
15 sufficient ability at the trial of the case to give a
16 robust explanation of how Adderall had impacted the
17 incident that occurred May of 2013?

18 A No.

19 Q At the time, were you prepared to offer that
20 explanation?

21 A I think that had come up in my meetings with them
22 prior to the trial. But I had met with them, it was
23 several months before the trial. There was -- my
24 understanding is there were negotiations about a plea,
25 and potentially an NGRI plea.

1 But I was asked, for example, to talk to the
2 victim's -- the husband's parents about what kind of
3 facility she would be going to, whether it's, you know,
4 secure, whether she would ever get -- be potentially
5 released. I don't think I ever had that discussion, but
6 I had those questions asked to me by the prosecution on
7 the phone so they can relay them to the husband's family,
8 the husband and his family. And it sort of became clear
9 to me that they would have been okay with -- based on
10 what I was asked, the follow-up questions, okay with her
11 going to a hospital, but they wanted to make sure she
12 never got out. And I could not give them -- the purpose
13 of hospitalization in insanity cases is for treatment,
14 not punishment. And so I could not guarantee someone
15 would never get out.

16 Q All right. Let me get you back a little bit to
17 post-August, again, Dr. Smith, and he's gotten her on the
18 medications which she had, in essence, been on up to the
19 psychotic event in August, the mood stabilizer and the
20 Adderall. There was -- in Dr. Smith's file, there was a
21 follow-up that was a counseling appointment. And at that
22 counseling appointment, do you see that there was still
23 some indications of psychotic thought processes that
24 Ms. Simpson was experiencing?

25 A Yes.

1 Q Was that roughly August the 23rd?

2 A Yes. Carol Rentz Mitchell is the counselor.

3 And once again, paranoid, suspicious thoughts about
4 her mother-in-law being a bad influence on her children.
5 So that's recorded in Carol Rentz Mitchell's note. And I
6 would have expected Dr. Smith to have access to that
7 note, to have read that note, and then to explore that
8 with Ms. Simpson.

9 Q Is that some indication that potentially whatever
10 she's on for a mood stabilizer or antipsychotic is not
11 strong enough?

12 A Or the Adderall is not helping either.

13 Q So hard to tell with Adderall involved whether it's
14 a not strong enough dose of the ---

15 A It's something's still not working correctly. And
16 it's either she needs more antipsychotic or less or no
17 Adderall or both.

18 Q Okay. And were you permitted or asked questions
19 relevant to that moment during trial?

20 A No.

21 Q What was your perception of the treatment for
22 Ms. Simpson by Dr. Smith between August of 2013 and May
23 of -- I'm sorry -- 2012, May of 2013? Were there
24 opinions that you had that you would like to have
25 expressed to the jury about either a prescription regimen

1 or counseling or the frequency of visits, that kind of
2 thing?

3 A Yes.

4 MR. MAYE: Your Honor, I'd like to raise an
5 objection. We've gone for a while now treating this as
6 almost a malpractice case against Dr. Smith. I don't
7 think it's relevant to the efforts of counsel. This is
8 an ineffective assistance of counsel claim, and we're
9 discussing essentially what amounts to ineffective
10 assistance of a treating physician. And as it relates to
11 the law, not only is that not relevant, but ineffective
12 assistance of counsel of an expert witness is not even a
13 ground for postconviction relief. So for that purpose, I
14 would object for continued ---

15 THE COURT: Mr. Bannister?

16 MR. BANNISTER: Thank you, Judge.

17 So my understanding of what appellate courts want to
18 see is they want to see a fulsome record developed at the
19 trial level where if you're going to say a witness is
20 going to testify to something, you can't just represent
21 to the Court. You've got to get the witness on the
22 stand, have them testify. So in my view, it's
23 ineffective assistance of counsel here because
24 Mr. Mauldin had at his disposal a much broader
25 presentation available to put before the jury about how

1 we got to the situation we got to in May of 2013. In
2 particular, this witness wanted to talk about these
3 particular issues, and there really is no reason that
4 they shouldn't have or didn't go into it that I can
5 ascertain. So what I'm trying to do is just establish
6 what he would have testified to. And then whether that's
7 ineffective or not will ultimately be for the Court to
8 decide. But we can't get there if I don't have a chance
9 to get this on the record.

10 THE COURT: Anything in response?

11 MR. MAYE: Understanding that argument, much of what
12 has been said has been was she being medicated properly.
13 It still speaks to the standard of care that's
14 appropriate for a civil lawsuit, but that's not what
15 we're here for today.

16 THE COURT: I'm going overrule. I'm just going to
17 allow him to develop a record, and you've got your
18 objection noted.

19 Thank you, Counsel.

20 BY MR. BANNISTER:

21 Q All right. So I think where I was before the
22 objection was I had asked did you have an opinion as to
23 Dr. Smith's course of treatment relevant to prescriptions
24 that he prescribed for Ms. Simpson, counseling, times
25 that he's met with her, that kind of thing, particularly

1 in light of what he knew or was on notice of after the
2 August treatment and hospitalization. Go ahead.

3 A Yes. It is my opinion that she should have been
4 seen more frequently than once every three months by the
5 psychiatrist, that she should not have been prescribed
6 Adderall, and if there were compliance issues, that he
7 try to address those.

8 Q And you did not see that in his medical records?

9 A No.

10 I mean, the whole issue here is the family members
11 and everybody I talked to who saw Suzanna Brown Simpson
12 around the time of this offense and for the months before
13 that describe a picture of her that is almost
14 diametrically opposed to what's in Dr. Smith's record.
15 And so I ask myself how does this happen that this person
16 is doing all of these psychotic things and displaying all
17 of this paranoia and the doctor doesn't know about it and
18 doesn't realize it? And even in his own office notes
19 from the counselor, there is evidence of it.

20 MR. BANNISTER: And -- all right. Hang on. I was
21 going to look for a couple of records for you
22 specifically relevant to her noncompliance.

23 Judge, if I could just have a moment because it is a
24 voluminous record. Just give me just a second.

25 (Pause in proceedings.)

1 BY MR. BANNISTER:

2 Q Dr. Frierson, if I can approach, I'm going to show
3 you a record from May 14, 2013.

4 A (Reviews document.)

5 Q So was there any question that she was testing
6 positive for Adderall or at least amphetamine,
7 methamphetamine right at the time of the incident,
8 May ---

9 A Yeah. She tested positive at 8:40 a.m. on May 14,
10 2013.

11 Q So there's no question then that the Adderall was in
12 her system. Is there any way to know from a urine test
13 whether or not the mood stabilizers or antipsychotics
14 were in her system?

15 A They're not drugs of abuse, so they're not tested
16 for. Of course, amphetamines and Adderall are a
17 controlled substance.

18 MR. BANNISTER: Okay. Sure.

19 Judge that's all the questions I have for the
20 moment. Thank you.

21 THE COURT: Cross?

22 MR. MAYE: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. MAYE:

25 Q Good afternoon, Dr. Frierson.

1 Referring back to the direct testimony you just
2 offered, correct me if this is a fair summation, you're
3 not necessarily blaming Adderall as the sole purpose of
4 her psychosis, but you're willing to argue today that
5 that was a contributing factor to her psychosis.

6 A I don't know -- I'm confused by the term of argue
7 because I'm not arguing with anybody. She has an
8 underlying mental illness, yes, regardless of whether she
9 was using Adderall or not. I think the symptoms of that
10 illness were worsened or made more severe by the
11 continued use of Adderall.

12 MR. MAYE: Okay. If I may approach the witness,
13 Your Honor?

14 THE COURT: That's fine.

15 BY MR. MAYE:

16 Q I want you to read out loud slowly because I want it
17 to be on the record. I know this is not highlighted in
18 color, but you can see where some is darker in text.
19 Does that make sense to you? Okay. Can you start right
20 there, go to here, and then read the remainder of the
21 highlighted there?

22 THE COURT: And, Counsel, where is this in the
23 transcript?

24 MR. MAYE: Yes, Your Honor. It is beginning on page
25 553 and will continue in portions into 555.

1 THE WITNESS: You want me to start on line 22 where
2 you have it highlighted?

3 BY MR. MAYE:

4 Q Yeah. I want you -- yeah. Like 22 right there, and
5 it goes from here, here.

6 A (As read) "Question: But my question to you was in
7 your report, she said she didn't like it, take it that
8 day."

9 And I said, "Well, you know, she may have taken it
10 the day before. It -- they still show up. It tends to
11 be a fairly short-acting drug, but it didn't surprise me
12 that it was in there, and it doesn't make me think that
13 necessarily she didn't take it, that she did take it that
14 day.

15 "Question: But" ---

16 And I said, "Maybe she was confused about whether
17 she took it or not.

18 "But in your report you say" -- this is a question
19 -- "she reports that she was not using excessive Adderall
20 around the time of the alleged offense, on the day prior
21 to the alleged offense, had the day prior -- had mistaken
22 this medication all together."

23 I said, "That's what she told me, yes.

24 "And then you would agree psychotic episodes can be
25 caused by excessive use or overuse of Adderall?

1 "Answer: Overuse of any amphetamine or abusing like
2 methamphetamine, I'm sure everybody has heard of that.
3 Overuse of amphetamine could cause worsening of psychotic
4 symptoms. Well, you know, in this particular case,
5 however, that is not the cause of her psychosis, because
6 when she was admitted to St. Francis hospital, she had no
7 amphetamines in her system in 2012.

8 "Question: Did she" -- now, I'm skipping the part
9 that you don't have gray. "Did she admit to you in your
10 report or she admit to you that she has in the past
11 overused, I don't want to say hoarded, but had used more
12 Adderall than she was prescribed?"

13 And I said, "Yes. But not excessively. I mean, she
14 would say that when I had an important task to complete,
15 that she might take one -- an extra Adderall, and that --
16 but, you know, clearly wasn't calling her doctor for
17 prescriptions early. There was no evidence from the
18 pharmacy that she was trying to get" -- and then I get
19 interrupted.

20 "Did you review any" ---

21 And then I said, "I was really concerned -- I wasn't
22 really concerned about abuse."

23 And he said, "Did you review any pharmacy records?"

24 And I said, "I reviewed the" ---

25 And then he interrupted me and said,

1 "Prescriptions."

2 And then I said, "Prescriptions."

3 Q And just for clarification, at the very top, does
4 that indicate that that was actually on cross-examination
5 by the State and not Mr. Mauldin?

6 A Yes. That was Mr. Wilkins, I believe.

7 MR. MAYE: May I approach, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. MAYE:

10 Q So in review of that, you're at trial and you have
11 the opportunity to discuss Adderall, and you're
12 essentially suggesting, one, that Ms. Simpson told you
13 she didn't take it the day of the crime, and not only
14 that, you're also saying that, in reviewing your
15 interviews with her, that you were not concerned with her
16 abusing Adderall, and that she was not hoarding Adderall.
17 It seems to me, correct me if I'm wrong, you had a decent
18 opportunity to discuss Adderall in this case.

19 A I was on cross-examination.

20 Q That's fine.

21 A And cross-examination you are limited as to how much
22 explanation you can give. So, you know, I was trying to
23 answer the questions that he was asking me as briefly as
24 possible.

25 Q Okay. However, in here on cross-examination, which

1 is the State's argument, you are apparently shifting the
2 blame away from Adderall saying she might have been on
3 it, but she wasn't abusing it, that's not the cause of
4 this. But today you're in here saying she shouldn't have
5 been on it, and this is probably a reason that has
6 exacerbated the underlying issues and trying to point the
7 finger at Adderall and Dr. Smith's prescription of it as
8 to why there's a crime in this case.

9 A I have made it abundantly clear I think to both of
10 you that I think she has an underlying mental illness.
11 And that's the cause of this crime.

12 Q Okay.

13 A I do think the symptoms of that mental illness can
14 be worsened by Adderall, and they can be worsened about
15 -- depending on the amount of Adderall that you're
16 taking. So taking some Adderall is bad. Abusing
17 Adderall would make it even worse, taking excess amounts
18 of Adderall. It's a cause, a dose and affect. It's a
19 causative thing.

20 Some people take, you know, stimulants, they smoke
21 meth, they never get psychotic. But as their use of the
22 meth increases to higher amounts and higher amounts of
23 dopamine are being released in the brain, all of a sudden
24 they get paranoid and psychotic. It's a dose-dependent
25 thing. But any of it is not indicated and can worsen if

1 you have an underlying pre-existing mental illness that's
2 already there.

3 Q Certainly. But in answering those questions, you
4 did not say the Adderall contributed to this crime.

5 A I'm saying the Adderall likely ---

6 Q That's a yes or no question. Would you say ---

7 A Answer the question -- ask me the question again,
8 please.

9 Q In this section where you're discussing Adderall on
10 cross-examination, at no point did you indicate that you
11 believed Adderall contributed to her committing a crime.

12 A I think that's the whole reason I was being asked
13 about it.

14 Q And you told the solicitor that you were not
15 concerned about it, correct?

16 A I wasn't -- I didn't have the evidence that she was
17 abusing it. I wasn't concerned that she was taking more
18 than intended because I had seen the prescriptions from
19 the pharmacy, and she wasn't like calling up saying I'm
20 running out. I need more.

21 Q And she's been on that medication for at least a
22 decade.

23 A Quite some time, yes.

24 Q And you also indicated that her previous psychotic
25 break came when she wasn't on Adderall at all.

1 A That's correct.

2 Q So all of those would tend to suggest to a jury that
3 Adderall is not something that's really impacting her
4 psychosis at the time of the crime.

5 A I disagree.

6 Q Can you show me in that section why that would be a
7 disagreement?

8 A I met with both the prosecution and the defense
9 prior to this trial. I explained to both of them what
10 Adderall does, how Adderall contributed to her illness,
11 how it worsened the symptoms of her illness. So maybe
12 I'm wrong. I'm assuming that's why this Adderall ever
13 came up initially in ---

14 Q Again, you said it's contributed to her illness.
15 But in that segment of testimony, you basically said the
16 opposite. She was having psychosis issues without
17 Adderall in her system and you said you were not
18 concerned about her abusing it and it was not causing the
19 issue.

20 A That's not -- I said I was not concerned about her
21 abusing it. I never said that it wasn't causing any of
22 her problems. Let me take away the word "causing."
23 Contributing.

24 Q Okay. Let's move on to something else. Regardless
25 of the contribution or cause, your purpose for presenting

1 testimony was to demonstrate to the jury that Ms. Simpson
2 was exhibiting a criminal responsibility where she could
3 not distinguish between legal right and legal wrong,
4 correct?

5 A Yes. The statute now -- I had it wrong back then --
6 it's moral and legal. But we're splitting hairs.

7 Q Okay. And did you feel like you were able to do so
8 during your testimony?

9 A Not effectively as I would have liked.

10 Q Okay. Did you go into the courtroom that day and
11 just give the medical opinion and say that's my opinion
12 and that's the end of it, or did you provide specific
13 examples of her delusions, of her paranoia and of her
14 psychoses?

15 A I was able to -- first of all, there was plenty of
16 availability to talk about her psychosis. And I felt
17 that that was covered fairly well. What was not covered
18 was evidence of lack of knowledge of wrongfulness which
19 is the core issue in this trial, and specifically, her
20 behaviors immediately after the alleged offense.

21 There are a lot of behaviors that she engaged in
22 that was to indicate that not only did she not know it
23 was wrong, she wasn't totally aware of the consequences
24 of what she had done. And I don't recall any of that
25 being brought out at trial, specifically that she told

1 the coroner that her family was not dead, that they're in
2 the next room in the hospital when the coroner confronted
3 her your two children are dead. She didn't even, you
4 know, accept that as fact. And that never came out, to
5 my knowledge, in my testimony.

6 MR. MAYE: One moment, Your Honor.

7 THE COURT: Yes, sir.

8 BY MR. MAYE:

9 Q Your testimony just now is that you didn't believe
10 that you were able to present the element of wrongness.
11 I apologize if I didn't quite get that exactly.

12 A No. There are lots of behaviors that would show
13 that we got to talk about the hell on earth with
14 Mr. Stegall [phonetic], and that how that supported her
15 notion what she told me was she thought hell had come to
16 earth and what she did was to protect her children. And
17 that's why we get to the issue of she was doing something
18 that she didn't realize was wrong. She thought they were
19 going to go to a place between earth and heaven, and when
20 hell left earth, they were going to be able to come back
21 and be reconstituted as a family. So that doesn't fit
22 knowledge of wrongfulness. However, I was able to
23 present that.

24 What I wasn't able to present was all of her
25 behaviors after the incident. People that know they've

1 done something wrong, they hide evidence, they conceal
2 evidence, they lie about what they did, they try to avoid
3 apprehension. And there were a lot of behaviors that she
4 exhibited after the fact that would point to the fact
5 that she didn't understand the wrongfulness of what she
6 had done. I mean, you know, in fact, I think the day of
7 my testimony, it was -- it was revealed that someone who
8 was the first person on the scene who saw her said that
9 she said, "I've done nothing wrong." And that was
10 revealed to me, you know. I didn't have time to put that
11 in my report. I didn't have time -- I was never asked
12 about that on the witness stand. I mean, I think that's
13 pretty powerful evidence.

14 MR. MAYE: May I approach again, Your Honor?

15 THE COURT: Yes, sir.

16 BY MR. MAYE:

17 Q This is pages 508 and 509. Can you read those for
18 me as well?

19 A Just the highlighted part?

20 Q Just the highlighted portions again.

21 A (As read) "She believes that the world is becoming
22 unsafe. It is full of evil, and really that was her
23 belief was on the night of the 13th that she would shoot
24 her family and then kill herself and they'd all be
25 reincarnated in a better place."

1 Do you want this one, too?

2 Q Let's just stop with that one at the moment. Can I
3 have that back for a second?

4 So in that segment just right there, you've
5 demonstrated what her delusion is and demonstrated that
6 it was not out of a place of doing harm but believed she
7 was doing good; is that fair to say? Yes or no, is that
8 fair to say?

9 A It's fair to say that I was able to say that she was
10 thinking things that would indicate she didn't know what
11 was wrong.

12 Q Correct.

13 A But, see, this thinking and ---

14 Q You've answered my question.

15 A There's thinking and actions, and sometimes actions
16 speak louder than words. And so when it comes to proving
17 knowledge of wrongfulness, looking at certain behaviors,
18 not what she said or what she tells me she thinks, but
19 her actual actions are also very important to bring
20 forward. And that's what I'm saying was never brought
21 forward.

22 Q Okay. But you demonstrated that her psychosis was
23 putting her in a mental state where she thought she was
24 doing good for her family while killing her family ---

25 A Yes.

1 Q --- or attempting to kill her family in the case of
2 the husband. And your purpose for the jury is to
3 demonstrate that she can't distinguish between legal
4 right and legal wrong.

5 A That she could not at the time, right.

6 Q And at the time, that was her mindset.

7 A That's what she says her mindset was.

8 Q Okay. So you conveyed that to the jury. By that
9 testimony, you conveyed ---

10 A But it's not only what someone's thinking that
11 indicates knowledge of wrongfulness ---

12 MR. BANNISTER: Judge, I ---

13 THE WITNESS: --- it's also what they do. Anybody
14 can say I didn't think it was wrong.

15 MR. BANNISTER: Dr. Frierson, hang on. I have an
16 objection just right quick.

17 THE COURT: State your objection.

18 MR. BANNISTER: Your Honor, I've got his transcript
19 testimony starting at page 515. So if we're talking
20 about 508 and 509, I'm not sure we're talking about
21 Dr. Frierson. I think we're talking about Dr. Price.

22 MR. MAYE: Your Honor, I do apologize. That is --
23 sorry. Multiple experts. I apologize.

24 THE COURT: Three experts in a row?

25 MR. MAYE: Three experts in a row. I apologize.

1 Wrong section.

2 THE COURT: So for the record, the testimony that
3 you were just going over with Dr. Frierson ---

4 MR. MAYE: Was from Dr. Price. And I didn't mean to
5 interrupt you.

6 THE COURT: Thank you, Mr. Bannister.

7 MR. BANNISTER: Thank you, Judge.

8 BY MR. MAYE:

9 Q That actually brings up another question I wanted to
10 ask you. Are you the sole expert witness in this case?

11 A No.

12 Q Are you one of two experts in this case for the
13 defense?

14 A I'm not for the defense.

15 Q Called on behalf of -- called during the defense's
16 case in chief, were you one of two?

17 A I recall three.

18 Q You were Number 3. Yes. Correct. You were one of
19 three.

20 So your testimony is that you didn't believe your
21 testimony was complete, but there were two other forensic
22 psychologists or psychiatrists speaking to essentially
23 the same legal issue that you were also presenting; is
24 that correct?

25 A I believe so, yes.

1 Q Is it fair to say that if something has been drawn
2 out in other testimony, that it does not necessarily need
3 to be repeated by all three witnesses?

4 A That is correct. But I also was never witness to
5 their testimony, and her behaviors after the fact didn't
6 come out.

7 Q Okay. Discussing the ability to make your legal
8 medical opinion resound with the jury, was there also a
9 demonstration -- if I may pull for just a moment, Your
10 Honor -- okay. Was it also part of your testimony to
11 indicate to the jury that you do not just rely on the
12 interviews that you have with the defendant or your
13 client, but you also look for corroborating testimony?

14 A Yes.

15 Q And you did that in this case?

16 A Yes. I -- I -- I looked for the -- I don't go about
17 looking for corroborating evidence. I look to the
18 evidence that I'm provided on everything that happened
19 and see if there's anything that corroborates what she
20 says.

21 Q So you conveyed to the jury for the purposes of
22 demonstrating criminal responsibility that not only was
23 Ms. Simpson providing you the details of her delusions
24 and psychosis, but also that you went into her records,
25 into her family comments, family statements, everything

1 that you had available to you and demonstrated it's not
2 just coming from her, this is being corroborated by other
3 sources.

4 A Yes. For example, the SLED ballistics that said the
5 gun was loaded wrong.

6 Q So all of that -- would that not also all go to
7 demonstrating the power of your testimony being that she
8 could not distinguish between right and wrong to the
9 jury?

10 A It would be relevant to that issue.

11 Q Would it be more than relevant but ---

12 A It corroborates what she told me. The collateral
13 information corroborates what she told me. What her
14 mother said about what they conversed with that night,
15 the fact that Ned Stegall or -- I think it was Ned --
16 Mr. Stegall's pager or phone has a text message "hell on
17 earth." She never texted him before ever, and the night
18 that this happens, we can actually see that on his phone
19 there was that text. So it makes sense that it
20 corroborates what she's telling me. So it bolsters my
21 credibility to the statement that she's making -- her
22 credibility to me.

23 Q And in discussing credibility being presented at
24 trial that day, you made clear that you were also a
25 court-appointed expert, not a defense-hired expert,

1 correct?

2 A That was how I was introduced, yes.

3 Q Meaning that you haven't been hired to give a
4 specific opinion. That was essentially what came of
5 demonstrating that; would you agree?

6 A I don't agree with your premise that defense experts
7 are hired to give a certain opinion.

8 Q That's fair. I misspeak. But you weren't hired for
9 specific purposes by the defense to help the defense's
10 team in preparing their case. You were hired to provide
11 an independent court-ordered medical assessment.

12 A No I'm having trouble with the word "hired." I was
13 appointed by the judge. I was not hired by the defense
14 to do anything.

15 Q That's perfectly fine. Thank you.

16 Also, in discussing the types of facts that you say
17 that you didn't have an opportunity to get into, the
18 State's case in chief focused on a lot of question of
19 does Ms. Simpson seem to be hearing voices, was there
20 anything that would suggest that she was having
21 hallucinations, things of that nature. Do you recall
22 that?

23 A I was not there for the State's case.

24 Q Okay.

25 A So I have no idea what the State did.

1 Q Okay. Any reason to not believe that that's part of
2 the record for you?

3 A I have no reason to believe or not believe.

4 Q As part of your evaluation by defense counsel during
5 examination, were you asked if psychosis has to present
6 with voices being heard and hallucinations?

7 A I recall that, yes.

8 Q And did you indicate that that is not a guaranteed
9 form of exhibiting psychosis?

10 A Oh, no. That's not what I said. I said you don't
11 have to have hallucinations to be psychotic. If you have
12 hallucinations, by the very definition of the fact that
13 you have them, you are psychotic. There are other ways
14 to be psychotic without having hallucinations.

15 Q Okay. But you demonstrated to the jury that that is
16 not a -- there is not a -- the absence of hearing voices
17 and hallucinations does not preclude a psychosis.

18 A That's correct.

19 Q And in light of what I've made aware to you is from
20 the State's case, did that directly seem to address what
21 the State's case was trying to pull out?

22 A I don't know what they were trying to pull out.

23 Q As I've dictated to you today.

24 MR. BANNISTER: Judge, I'm going to object to -- I
25 mean, he's asking him to speculate about what the State

1 was doing and why. He's trying to tell him this,
2 speculating on his part.

3 MR. MAYE: Can I attempt to rephrase, Your Honor?

4 THE COURT: Rephrase the question. Thank you.

5 BY MR. MAYE:

6 Q You were asked directly about whether hallucinations
7 and hearing voices, things of that -- delusions of that
8 nature is required for a psychosis to be present. You
9 were asked and you said that those do not have to be
10 present for someone to be psychotic, correct?

11 A Your question just had two things that --
12 hallucinations and delusions are two separate things.

13 Q Okay.

14 A Okay. You don't have to have hallucinations to be
15 psychotic. I believe that was asked of me on the witness
16 stand, and I believe I answered in the affirmative.

17 Q Okay. In answering that way, would that be helpful
18 in demonstrating the mental status of Ms. Simpson if she
19 has been previously described as not having seen any
20 hallucinations or hearing voices?

21 A Would that be -- what's the very first part of the
22 question? I'm sorry. Would that ---

23 Q In providing that testimony, would that assist and
24 bolster your testimony of her mental status by
25 demonstrating that she does not have to suffer from those

1 conditions to still have the requisite mental status for
2 NGRI, which is not guilty by reason of insanity?

3 A The core symptom that makes more -- most people not
4 guilty by reason of insanity is delusion. It's not
5 hallucination.

6 Q That was not responsive to my question.

7 A I think the answer to your question is whether she
8 has hallucinations or not is irrelevant to me in
9 establishing whether she was psychotic. It's the
10 delusions themselves that interfere with her knowledge of
11 wrongfulness.

12 Q And did you present evidence of those delusions to
13 the jury?

14 A Yes.

15 MR. MAYE: One moment, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. MAYE:

18 Q You briefly discussed the opportunity of -- or what
19 you say was not the opportunity -- no opportunity to
20 present other parts of Ms. Simpson's life, to cast her in
21 a different light I think is how you presented it. Would
22 you disagree with me if the record demonstrates that she
23 has no prior criminal record prior to this crime and that
24 the jury heard that?

25 A Would I disagree?

1 Q Yeah. Would you have any reason to believe the
2 record does not convey to the jury that there was no
3 prior criminal history?

4 A I don't know. I haven't looked at the record. But
5 if you say that was given to them, I don't dispute that.

6 Q Would that be part of casting her in an appropriate
7 light?

8 A That is not enough. But that's one thing.

9 Q That's one thing.

10 Would you have any reason to disagree that the
11 record demonstrates that she was adopted?

12 A I don't know if that's in the record.

13 Q Okay. So you haven't reviewed the record.

14 A I've only reviewed the pages of my testimony.

15 Q Okay. So to that point, again, you're only one of
16 the three experts. Other testimony could have come into
17 those issues that you didn't -- you say you didn't get to
18 speak to?

19 A Yes. I was there, like I said earlier, for those
20 other two experts, and I don't recall whether that was
21 brought up.

22 Q So you were there for the other two experts. Do you
23 recall discussions of the phone calls between
24 Ms. Simpson's mother and Ms. Simpson where Ms. Simpson's
25 mother indicated that she was telling Ms. Simpson's that

1 she was a good mother?

2 A I don't recall. But I'm not going to -- if it's in
3 the record, I'm sure it happened.

4 Q If you don't recall, that's fine. But I've got to
5 ask the question.

6 A You know, this is a trial. When was this trial?
7 It's been a while.

8 Q That's fine. "I don't recall" is a perfectly
9 acceptable answer, but I need to ask the question.

10 Same central question. Do you recall testimony
11 being entered into the record where Ms. Simpson's mother
12 said that she absolutely wanted Ms. Simpson when
13 Ms. Simpson was expressing doubt or concern that she was
14 an unwanted child?

15 A Was -- that was Ms. Simpson was testifying, the
16 mother, her mother?

17 Q That was not when her mother was testifying, but
18 produced through the expert witnesses that these
19 conversations were taking place.

20 A I don't recall.

21 Q Evidence that she went to college was in the record.
22 I believe you're aware of that.

23 A You know, I assume it was. I just don't recall what
24 everybody testified to, and I haven't reviewed their
25 testimony prior to today.

1 MR. MAYE: One more second, Your Honor.

2 THE COURT: Take your time.

3 MR. MAYE: Nothing further, Your Honor.

4 THE COURT: Any redirect, Mr. Bannister?

5 MR. BANNISTER: Yes, please, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. BANNISTER:

8 Q Dr. Frierson, you testified on cross that there
9 were a list of behaviors that supported Ms. Simpson's
10 belief in her delusion and that you had not had an
11 opportunity to go through those. Do you mind just
12 running through what that list would have been had you
13 been allowed to testify to it if you have that front and
14 center?

15 A (Reviews document) Yeah. There were -- there were
16 things from the Greenville Hospital System, and, Lord,
17 now we're Prisma, so time flies, I guess.

18 She told the consulting psychiatrist in the
19 emergency room that she did what she did to set her
20 children free. And he recorded that. So that's him
21 recording something from her into the medical record
22 which corroborates that she told him what she was
23 thinking. And that's, once again, another sort of
24 collateral source.

25 She also told the deputy coroner Kandy Kelley that

1 she was trying to help her children.

2 When the neighbor first approached her, she said,
3 "Why am I here," which is consistent with not believing
4 she could be dead.

5 She told the nurse that she wanted her children to
6 leave this awful -- did not want her children to live in
7 this awful world.

8 When the neighbor asked where is your husband, she
9 said she didn't know. Once again, she thought by killing
10 him, he had gone somewhere, they were going to be all
11 together. That corroborates what she says she was
12 thinking at the time. None of this came out.

13 And there is something in the record that -- the
14 Greenville medical record that she didn't think her kids
15 were dead. They're in the next room.

16 All of those would indicate statements that she made
17 to others that were recorded of her mental state at the
18 time of the crime that would indicate not only didn't she
19 not realize the wrongfulness of what she'd done, I don't
20 think she realized the nature and quality of the act,
21 that her kids were dead, her two children.

22 MR. BANNISTER: Your Honor, I don't have any further
23 questions.

24 Thank you, Dr. Frierson.

25 MR. MAYE: Brief recross.

RECROSS EXAMINATION

BY MR. MAYE:

Q The list of that testimony, things you just mentioned, if they came in through other portions of the record but not through your testimony, does the jury still hear it?

A Did they hear it if it came through ---

Q It's a yes or no. Did the jury still hear it?

MR. BANNISTER: Judge, I object to the basis for the question.

THE COURT: I think you opened the door.

Go ahead.

BY MR. MAYE:

Q If it comes in through other witnesses, other experts or other witnesses and the jury hears it but it didn't come from you, did the jury still hear it?

A Yes.

MR. MAYE: That's it. Thank you, Your Honor.

MR. BANNISTER: I don't have anything further, Judge. Thank you.

May Dr. Frierson be excused?

THE COURT: Can he be released?

MR. BANNISTER: Yes.

THE COURT: Doctor, thank you.

THE WITNESS: Thank you.

1 THE COURT: Do y'all need to approach?

2 MR. BANNISTER: No. I think I can go and move into
3 the next witness unless we need a break.

4 THE COURT: Y'all need a break, a quick break?

5 (WHEREUPON, a recess is taken at 3:48 PM; proceedings
6 reconvened at 3:57 PM.)

7 MR. BANNISTER: Your Honor, May it please the Court.
8 Ms. Simpson calls Teal Johnson.

9 THE COURT: Thank you.

10 THE CLERK: Ms. Johnson please raise your right
11 hand.

12 WHEREUPON,

13 TEAL JOHNSON

14 After having been duly sworn, testified as follows:

15 THE CLERK: Thank you. You may be seated. And
16 please state your full name for the record.

17 THE WITNESS: Teal Alease, like a lease on a house,
18 Johnson.

19 MR. BANNISTER: May it please the Court.

20 DIRECT EXAMINATION

21 BY MR. BANNISTER:

22 Q Ms. Johnson, if you would, were you one of the
23 attorneys that was representing Ms. Simpson during her
24 trial back in 2016?

25 A I was.

1 Q And were you involved with the case fairly early,
2 that is, shortly after the incident in May of 2013?

3 A That's correct. As soon as she was brought to the
4 Pickens County Detention Center, I met Ms. Simpson.

5 Q Can I get you to pull that microphone a little bit
6 closer? Thank you. I've got some complaints from the
7 audience. They can't hear what we're doing up here.

8 Ms. Johnson, did you and Mr. Mauldin kind of divide
9 responsibilities a little bit in terms of the case
10 between the two of you?

11 A Yes. At that time, I worked in Pickens and so I was
12 available to see Anna like we needed to see her and, you
13 know, make sure she was getting -- there were some
14 medical issues. I remember getting those addressed and
15 just, you know, making sure that, you know, those were
16 addressed, and then just getting information from her
17 and, you know, ultimately building a defense.

18 Q And would it be fair to say that the defense became
19 very focused on the expert reports that had concluded
20 that she was not guilty by reason of insanity?

21 A Yes. That's correct. Once we got that report from
22 Dr. Frierson, we kind of hung our hat on the defense, you
23 know, the NGRI defense.

24 Q And was there really much other exploration in any
25 other potential defenses that she might have or things

1 that she could have put forward to help support those
2 conclusions?

3 A No. It was pretty much a laser-focused mental
4 health defense at that point.

5 Q All right. Were there meetings that you had with
6 Ms. Simpson's family?

7 A Yes.

8 Q And I assume that was more than one.

9 A I remember meeting with Ms. Simpson's parents many
10 times.

11 Q And at any time, do you recall the parents
12 suggesting to you that there was a list of witnesses that
13 might be helpful to Anna, particularly from her past and
14 friends and family kind of things?

15 A Yes. I do remember them getting us names of people
16 who know Anna and knew, you know, about Anna, you know, I
17 guess grown up with her, were friends, were her -- I
18 believe we were given the name of her children's teacher.
19 Just other random people.

20 Q Do you recall reviewing a newspaper report out of
21 Pickens that included an interview with one of the
22 teachers that had been the oldest daughter's teacher,
23 Nancy Zeigler, where she was talking about Anna and her
24 perceptions of Anna prior to the incident?

25 A I definitely remember that article. I don't

1 remember when I read it, but yes, I definitely remember
2 that article.

3 Q Was your impression that Nancy Zeigler would have
4 been a positive witness for Anna Brown Simpson?

5 A Yes.

6 Q And to the extent that you conducted some
7 investigation, if any, into those witnesses, do you
8 believe that what you were getting back was information
9 indicating that Anna had been a caring and loving mother?

10 A Yes. Everybody I talked to -- I remember talking to
11 her friends. She had really good friends. You could
12 tell that, you know, these were not people that she just
13 met, you know, like out running across in my business as
14 a public defender, oh, yeah, I met somebody last week.
15 No. These are people that I feel like Anna had known
16 most of her adult life or maybe even her -- when she was
17 in high school, just really good friends, solid friends
18 for her that really stood by her and, you know, loved
19 her. I remember two. I can't remember their names, but
20 I know that they were there involved, I want to say,
21 asking us, you know, about the case. But yes. I regret
22 that, you know, I didn't get more from them.

23 Q All right. Would one of those names, and let's see
24 if this jogs your memory, be Jessica Cummings?

25 A Yes, yes. And I feel like there was another one.

1 Q Beth Simmons?

2 A Yes.

3 Q All right. Were they actually in the courtroom
4 during the trial of the case?

5 A I know Jessica was. I believe Beth was also.

6 Q And how about Nancy Zeigler, the teacher that had
7 been Carly's teacher?

8 A I don't remember if she was in the courtroom. I
9 feel like she was concerned, but I couldn't say that for
10 sure.

11 Q All right. So do you recall that Ms. Brown, Anna's
12 mother, was called as a witness in the State's case in
13 chief?

14 A I don't remember that. But ---

15 Q Do you recall Mr. Mauldin having the opportunity to
16 ask her questions on the stand?

17 A Like I said, I don't remember that specifically.
18 But, you know, if you say so, I believe you. I'm sure he
19 had, you know, the opportunity.

20 Q All right. So did -- well, let me ask it this way.
21 In your interviews with Ms. Brown, did she describe Anna
22 as being a loving, caring mother?

23 A Absolutely. She gave us pictures. I remember we
24 had pictures of the Mother's Day and that Anna was just a
25 really involved mother, you know, talked about all the

1 crafts they did. I mean, you could tell it wasn't just
2 anything the mother was saying. But yes, you could -- I
3 remember looking at pictures of the little girl's smock
4 dresses and the toys that she had and, you know, thinking
5 these children are really loved.

6 Q And I was going to ask, what was your impression of
7 what kind of mother Anna had been to the children prior
8 to the incident date?

9 A I mean, I think she was a great mother. I really
10 do.

11 Q And also, as a wife, what was your impression based
12 on the information you had from folks you were talking to
13 about her life prior to these two psychotic events?

14 A I don't -- I mean, I think she probably was a good
15 wife. I think there were some like evidence of mental
16 illness cropping up and that was probably hurting the
17 marriage, I don't know, was my impression. But yeah. It
18 seemed like it was a loving family.

19 Q All right. So are you aware that a defendant has
20 the right to put forth character evidence -- good
21 character evidence in their case in chief?

22 A Yes.

23 Q And are you aware that a defendant would have the
24 ability in an appropriate case to have a jury charge to
25 the jury indicating that good character can in and of

1 itself be proof of reasonable doubt if believed and
2 sufficient?

3 A Yes.

4 Q All right. Was there any strategic reason that you
5 know of for not having called some of these friends and
6 family that would have been -- presented a humanizing
7 picture of Anna?

8 A I think we were still laser focused on the mental
9 health. I don't know why, you know, we didn't also
10 explore that, you know, possibly putting on the character
11 evidence or a defense.

12 Q Do you regret that?

13 A Yes. Absolutely. I think it was detrimental to her
14 defense or her -- you know, her case.

15 Q Have you had a chance to at least think about or
16 review the overall trial of the case? Maybe not the
17 transcript itself, but at least think back about the
18 case?

19 A I have.

20 Q And what was your impression of how ultimately Anna
21 got presented to the jury from both sides, really?

22 A I mean, this is going to sound harsh and I don't,
23 you know, believe it, but it's just presentation or
24 perception, but a monster, you know, who killed her
25 children. And I regret that we didn't, you know, take

1 steps to humanize her.

2 Q And that evidence would have been available to you.

3 A Yes, it was. We just didn't focus on it.

4 Q And so at this point, is there any reason you can
5 think of that you didn't do it? In other words, if y'all
6 had spent more time focusing on it, is there any reason
7 not to do it?

8 A No. I mean, looking back, there is not any reason
9 not to do that.

10 Q And to the extent that Mr. Mauldin, if he did, I
11 understand you don't recall, but to the extent that he
12 had the opportunity to cross-examine Ms. Brown, would
13 there have been anything that was potentially detrimental
14 to Ms. Simpson or the strategy of the case that Ms. Brown
15 would have brought out relevant to Anna's childhood
16 growing up and being a mother and wife after college and
17 really up to maybe the eight months prior to the
18 incident?

19 A Looking back, I wish we had.

20 Q Okay. Was there -- was there much, in your view,
21 discussion or consideration given to addressing
22 deficiencies in the treatment that Dr. Smith gave to
23 Ms. Simpson particularly after her psychotic episode in
24 August? In other words, were there discussion with
25 Mr. Mauldin, hey, maybe this is an issue we ought to

1 bring out, or did that even make it on the radar screen?

2 A I remember there was talk of it maybe after we
3 talked to Dr. Frierson, but I don't remember that
4 specifically. I think we did not expect the State to
5 call the treating psychiatrist as a forensic psychiatrist
6 or to be able to offer that opinion.

7 Q Was there ever any determination that maybe this is
8 somebody we ought to at least go interview and talk to,
9 that is, Dr. Smith, the treating psychiatrist?

10 A Looking back, yeah, I wish we had talked to him. I
11 think, you know, my impression was maybe he would have
12 not welcomed our, you know, meeting with him. But, you
13 know, I wish, obviously, you know, we would have been
14 able to prepare better for the ultimate -- like, you
15 know, the fact that he -- for his testimony.

16 Q Just generally, as a defense lawyer, is it better to
17 at least make the attempt to speak with every potential
18 witness regardless of whether you think they're good or
19 bad?

20 A Yes. I regret that we didn't at least go talk to
21 him in this.

22 Q All right. And then on -- let's see. One other --
23 I'm going to turn your attention just for a minute to the
24 moment when you found out that Dr. Smith was actually
25 going to come in and offer some testimony in rebuttal.

1 Is it accurate to say that the first time y'all were made
2 aware of that fact was by the State when the trial had
3 basically started, y'all were in pretrial motions and
4 getting ready to get going with the jury?

5 A Yes. I mean, we maybe assumed, you know, like --
6 but we thought it was going to be possibly an expert,
7 like some kind of blind expert witness. But, you know,
8 we did have him on a list of possibilities.

9 Q Okay. And so if you had his name as on the list of
10 possibilities, was there some reason that y'all decided
11 not to go talk to him? Dr. Smith I'm talking about.

12 A Probably that he wasn't going to be receptive, but,
13 you know, I can't say for sure.

14 Q And do you know who you got that perception from
15 that he wouldn't be receptive? Where did that come from,
16 if you know?

17 A I don't remember. I don't want to misstate, you
18 know, attribute that to somebody. I don't remember. But
19 that was just my impression.

20 Q Okay. But that didn't come from any direct
21 conversation with him.

22 A No, no. We never talked to ---

23 Q Okay. And the only person that was on the defense
24 team that talked to him was Dr. Price, correct?

25 A That's my -- well, Dr. Frierson may have talked to

1 him, but I don't want to speak out of turn. I don't
2 know.

3 Q But we know that Dr. Price spoke to him.

4 A I believe he said he did.

5 Q Okay. And did Dr. Price relay to you that Dr. Smith
6 was going to support the conclusions that all of the
7 other forensic psychiatrists had reached?

8 A Yes. That was my understanding.

9 Q And did that weigh in to any extent the decision not
10 to go talk to Dr. Smith?

11 A Probably.

12 Q Okay. Was there any discussion about filing a
13 motion or doing something long before you got to trial to
14 force the State to reveal any potential expert that it
15 was going to call whether it was a blind expert or
16 Dr. Smith or anybody else?

17 A No.

18 Q Were you under the impression that the State had an
19 obligation to give you advanced notice of any experts it
20 might rely on whether they were blind or Dr. Smith?

21 A I mean, just makes sense out of like fundamental
22 fairness, you know. I'm not a legal scholar by any
23 stretch, but, you know, I just assumed.

24 Q But that didn't happen in this particular case.

25 A No.

1 MR. BANNISTER: Your Honor, may I have just a
2 moment?

3 THE COURT: Certainly.

4 MR. MAYE: Your Honor, if I may, standing objection
5 covers all the witnesses, correct?

6 THE COURT: Yes.

7 MR. MAYE: Thank you.

8 MR. BANNISTER: I have no further questions. Thank
9 you, Ms. Johnson.

10 CROSS EXAMINATION

11 BY MR. MAYE:

12 Q Ms. Johnson, you were second chair in this case; is
13 that correct?

14 A Yes. If you want to call it that.

15 Q Is that a fair assessment?

16 A Yes.

17 Q In considering good character propensity evidence,
18 there's no question who pulled the trigger in this case,
19 correct?

20 A That's correct.

21 Q So given the fact that we know who pulled the
22 trigger, your sole focus was on demonstrating that she
23 was not guilty by reason of insanity; is that correct?

24 A That's correct. But, you know, I think saying why
25 the trigger was pulled and how, you know, things happened

1 and, you know, showing why this, you know, is not a
2 typical thing, this was caused by mental illness, to
3 contrast that with how she behaved.

4 Q Well, all that goes to demonstrating her delusions,
5 her psychosis, the reasons in her head for why she was
6 doing the action all stemming to the same criminal
7 responsibility argument that y'all were trying to make
8 was that she could not distinguish right from wrong.

9 A Right.

10 Q And in order to do that, correct me if I'm wrong,
11 you're going to need expert witnesses to convey that
12 medical mental status to a jury.

13 A Right. But as you said, the only issue was about
14 who pulling the trigger. And that's a bad fact, you
15 know. They've got to give more, and I regret that we
16 didn't do that.

17 Q But she pulled the trigger which is why you were
18 left with the NGRI singular focus.

19 A Correct. We had a singular focus.

20 Q And the witnesses you considered or discussed so
21 far, were any of them around Ms. Simpson at the time that
22 she committed the crime or immediately before or
23 immediately after?

24 A Do I think they were there when it happened? No.
25 But were they there like maybe a couple of days or -- I

1 don't know. We didn't investigate. But to contrast
2 that, you know, with ---

3 Q Well, my question was, were they there when they can
4 view her mental state when she committed the crime? And
5 the answer's no.

6 A No. Right.

7 Q So they would not be able to inform the jury as to
8 her mental state even as a layperson.

9 MR. BANNISTER: Object to the form of the question,
10 Judge.

11 THE COURT: I'm going to allow it.

12 BY MR. MAYE:

13 Q So because they were not there at the time of the
14 shooting or immediately prior or immediately after, they
15 would not be able to inform the jury as to her mental
16 status as a layperson at trial, yes or no? It's a yes or
17 no question.

18 MR. BANNISTER: Judge, he keeps saying that, and he
19 interrupts her when she tries to answer and then explain.

20 THE COURT: Let her answer. Your objection is noted
21 for clarification and qualification.

22 THE WITNESS: I mean, can anybody get in Anna
23 Simpson's head? No. But do we rely on experts to come
24 back and, you know, think they, you know -- you know,
25 assess what was going on in Anna Simpson's mind, yes.

1 BY MR. MAYE:

2 Q Would those laypeople be able to provide their
3 perceptions of Ms. Simpson at the time she committed the
4 crime or immediately prior or immediately after?

5 A I mean, I think it's worth a shot.

6 Q But they weren't there.

7 A And neither were the EMS workers or the policemen,
8 you know. But yeah. Right -- right after. But, you
9 know ---

10 Q Okay. But what I'm asking you is, the people that
11 have suggested the friends and family, whether it be
12 distant, old, young friends, new friends, family,
13 whoever, if they had been there just prior to, during or
14 prior after -- excuse me -- after ---

15 A Right.

16 Q --- they would be able to, as a layperson, at least
17 present their perceptions of Ms. Simpson.

18 A Yes.

19 Q But they weren't there?

20 A They weren't there. Nobody was there.

21 Q So they would not be able to offer any indication of
22 what her mental status was when she committed the crime,
23 yes or no?

24 A I mean, I don't know what you want to say.

25 Q I want you to say yes or no to that question.

1 A I disagree. I mean, you know...

2 Q I'll ask it again. If they weren't there
3 immediately prior and they weren't there at the time and
4 they weren't there after, could they provide their
5 perceptions of Ms. Simpson so as to demonstrate to the
6 jury as a layperson some understanding of her mental
7 status at the time she committed the crime?

8 A I feel like her mother was there like two days --
9 like a day before. Like that's before.

10 Q Did she kill anybody the day before?

11 A Obviously not. But she ---

12 Q Then I'm going to ask the question again.
13 Immediately prior, during or immediately after, were any
14 of these friends available to witness and see using their
15 ears and their eyes and their nose and their mouth --
16 excuse me, not their mouth -- but their senses to provide
17 layperson testimony as to the mental status that you need
18 to convince the jury that she did not understand right
19 from wrong, yes or no?

20 A They were not there.

21 MR. MAYE: Thank you, Your Honor. That's all I
22 have.

23 MR. BANNISTER: Briefly, Judge.

24 THE COURT: Any redirect?

25 MR. BANNISTER: Yes, please.

REDIRECT EXAMINATION

BY MR. BANNISTER:

Q Does the fact that the lay witnesses we discussed, Anna's friends and family, were not there during the actual conduct of the incident mean that they're not relevant to a fulsome presentation of the defense?

A Absolutely not.

Q Does the fact they have evidence that would have been relevant to Anna's nature or good character, is that something you would have liked to have explored, call witnesses and put in front of the jury now that you can look back at it and see?

A Yes. I think it was highly relevant.

Q Do you feel like you were ineffective for not doing that?

A I do. Because she came across as a monster, and, you know, looking back at it, you know, looking back between the pages, you know, that's what she came across. And we should have at least tried to humanize her and to show what a good mother she was, what a good daughter she was, and how, you know, this -- there was, I guess, another -- that she was a person.

Q Right. And so the idea that it got presented at the trial from both sides that she was ultimately some kind of monster who just finally snapped, that was not

1 true.

2 A Right. That was not true, but I believe that's what
3 it came across as.

4 MR. MAYE: I'm going to object. I don't think
5 that's an accurate reflection of the record. I don't
6 believe the monster was used terminology-wise.

7 MR. BANNISTER: She's giving her impression of how
8 it all came together, Judge, which I think is important
9 to whether she believes she's ineffective or not.

10 THE COURT: I'm going to overrule.

11 MR. BANNISTER: Thank you, judge.

12 BY MR. BANNISTER:

13 Q Was there an underlying issue in the case that was
14 how in the world did we get here with somebody who had
15 otherwise been such a good person and then all of a
16 sudden we're in the middle of a double homicide and
17 attempted murder?

18 A Yes. And I think the friends and family, you know,
19 people that knew her could have explained that.

20 Q Do you think there wasn't an explanation?

21 A The mental health defense, you know, which we
22 focused on and obviously wasn't effective.

23 Q Do you regret not having some or more information
24 relevant to how the doctor's mistreatment played into the
25 incident that took place in May of 2013?

1 A I do.

2 Q And do you think the lay witnesses, had they
3 testified in the positive things about Anna, would have
4 further bolstered that this was more a medical issue than
5 somebody who just decided all of a sudden they were going
6 to kill their children?

7 A Absolutely.

8 MR. BANNISTER: I don't have any further questions,
9 Judge.

10 MR. MAYE: Brief recross?

11 THE COURT: Yes, sir.

12 RECROSS EXAMINATION

13 BY MR. MAYE:

14 Q The friends and family, were any of them medical
15 experts?

16 A No. But I don't think it matters.

17 Q I didn't ask if you thought it mattered. Were any
18 of them medical experts?

19 A No.

20 Q Were any of them forensic psychiatrists or
21 psychologists?

22 A No. But neither was Dr. Smith. He was not a
23 forensic ---

24 Q Was Dr. Smith one of your witnesses?

25 A No.

1 Q Was he the State's witness?

2 A Surprise witness, yes.

3 Q In the sense that you say "surprise," were you all
4 noticed at pretrial during hearings that he was a
5 potential rebuttal or case-in-chief witness?

6 A Obviously, I said he was a potential witness. But
7 did I ever think that the State would call a treating
8 psychiatrist to offer a forensic opinion? No. That was
9 not in my like realm of possibility. But obviously, it
10 happened.

11 Q Going back to the witnesses -- or excuse me -- to
12 the friends and family. None of them are experts. Would
13 they have been able to articulate to a jury her mental
14 status and how it might have been impacted over the
15 course of three months in a sense that they could
16 demonstrate criminal responsibility?

17 MR. BANNISTER: Judge, I'm going to object to the
18 form of that question as being compound. He's asked her
19 two questions in one, I'm afraid.

20 MR. MAYE: I'll try and rephrase, Your Honor.

21 THE COURT: Clarify the question. I understand what
22 you're asking.

23 MR. MAYE: I'm sorry, Your Honor?

24 THE COURT: I said I understand what you're asking,
25 but ---

1 BY MR. MAYE:

2 Q Are any of the friends and family members that
3 you've mentioned able to offer, from their perceptions of
4 Ms. Simpson, any testimony that would go to demonstrating
5 her criminal responsibility in this case?

6 A I mean, I think that's the ultimate issue.

7 Q Criminal responsibility being the inability to
8 determine legal right from legal wrong and being
9 delusional?

10 A I can't -- I can't -- obviously, they're not
11 doctors, but, you know, they can't give an opinion. But
12 can they -- their testimony go to that?

13 Q So let me ask you this. It's your position that you
14 didn't even think Dr. Smith was able to offer that kind
15 of opinion.

16 A Right. That's correct.

17 Q So if a licensed psychiatrist who just happens to
18 not be a forensic psychiatrist, in your opinion, can't
19 offer that opinion, but you want to testify today that
20 you think the friends and family who have no medical
21 basis knowledge whatsoever would have been able to offer
22 that kind of opinion.

23 A Possibly with a Pickens County jury, yes, because
24 they might have believed friends and family over a
25 big-city doctor. So yes. It's worth a shot. That

1 coupled with all of the medical testimony and the
2 forensic psychiatric testimony and the psychiatric
3 testimony by Dr. Smith, all of that possibly together.
4 The jury gets to make that decision. They get to decide
5 whether somebody's ultimately criminally responsible or
6 not.

7 Q And you gave them three different forensic
8 psychologists and psychiatrists who all said she did not
9 have that mental status, and you just said it's worth a
10 shot. Is worth a shot the Strickland standard for
11 determining whether you're ineffective or not?

12 A No. But it was a very clinical, cold presentation
13 by the doctors. And, again, you've got a Pickens
14 County jury. So, you know, real people, not doctors,
15 that may have made a difference. And I regret that we
16 didn't at least explore their, you know, potential
17 testimony more.

18 Q You were there for the whole trial; is that
19 correct?

20 A Yes.

21 Q Was there testimony offered throughout the course of
22 the trial where Ms. Simpson received confirmation from
23 her mother that she was a good mother?

24 A I don't remember, but I believe so. Yeah.

25 Q Was there confirmation within the record that her

1 husband expressed that they did not feel they were having
2 marital troubles?

3 A If you say so.

4 Q Was there confirmation within the record that she
5 was worried about the safety of her children?

6 A I believe so, yes.

7 Q Delusional -- or whether it's connected to a
8 delusional issue or not.

9 A Yes. I remember that.

10 Q Do all of these things demonstrate that she was a
11 caring mother and not someone who has been monstrously --
12 or, excuse me -- a monster in your opinion?

13 A Yes.

14 MR. MAYE: So that was in the record.

15 Thank you, Your Honor. That's it.

16 MR. BANNISTER: I don't have any more questions for
17 this witnesses.

18 THE COURT: You may step down.

19 It's 4:30. Any more witnesses?

20 MR. BANNISTER: Your Honor, I've got one witness
21 that will be here tomorrow. We could start another
22 witness, but I'm not sure we'd get through with her
23 today.

24 THE COURT: How many witnesses do you have left?

25 MR. BANNISTER: I have one expert witness and then

1 I've got four lay witnesses.

2 THE COURT: So we're going into Wednesday now?

3 MR. BANNISTER: No, no.

4 THE COURT: I'm joking. All right. So one expert,
5 four ---

6 MR. BANNISTER: I think we may be done by lunch
7 tomorrow is what I'm hoping.

8 THE COURT: I hope we're going to be done by lunch.

9 Okay. All right. Do you want to start at
10 9 o'clock?

11 MR. BANNISTER: Yes, sir. That will be fine with
12 me.

13 THE COURT: I mean, I'll start at seven if you want,
14 but I don't think -- there would be some people that
15 would be particularly happy with me.

16 9 o'clock, is that okay?

17 MR. MAYE: Yeah. We're going back to Columbia. I
18 mean, we can do nine. If the Court wants to do nine, I
19 think we can manage nine.

20 THE COURT: I'll do 9:30. I'm just trying to
21 manage ---

22 MR. BANNISTER: It's no problem for me. I'm seven
23 minutes from the courthouse.

24 MR. MAYE: 9 o'clock should be fine, Your Honor.

25 THE COURT: It will?

1 MR. MAYE: Yes.

2 THE COURT: Y'all are traveling? Okay. 9 o'clock.

3 (WHEREUPON, proceedings recessed at 4:30 PM.)

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1 Tuesday, October 8, 2024

2 (WHEREUPON, proceedings reconvened at 9:02 AM.)

3 THE COURT: Anything from the attorneys before we
4 get rocking and rolling?

5 MR. MAYE: Nothing, Your Honor.

6 THE COURT: Still shooting for noon?

7 MR. BANNISTER: Still shooting for noon. I've got
8 all my witnesses lined up with that in mind.

9 MR. MAYE: Your Honor, there is one thing I'd like
10 to ask just in anticipation of everything for today.

11 THE COURT: You want to come up?

12 (WHEREUPON, a bench conference was held off the record.)

13 THE COURT: Are you ready, Mr. Bannister?

14 MR. BANNISTER: Yes, sir, Your Honor.

15 THE COURT: All right. Please call your next
16 witness.

17 MR. BANNISTER: May it please the Court. Your
18 Honor, Ms. Simpson would call Dr. James Ballenger.

19 THE CLERK: Mr. Ballenger, please place your left
20 hand on the Bible and raise your right hand.

21 WHEREUPON,

22 JAMES BALLENGER

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated. Please
25 state your full name for the record.

1 THE WITNESS: Dr. James C. Ballenger.

2 MR. BANNISTER: May it please the Court.

3 THE COURT: Yes, sir.

4 DIRECT EXAMINATION

5 BY MR. BANNISTER:

6 Q Dr. Ballenger, let's start with first off you got
7 doctor in front of your name so I assume that you are a
8 doctor?

9 A Yes. An MD.

10 Q All right. And are you board certified in
11 psychiatry?

12 A Yes. I've been board certified in psychiatry and
13 neurology since 1977, I think.

14 Q Are you also board certified in forensic psychiatry?

15 A I'm sorry. Yes, I am.

16 Q And how long have you been certified as a forensic
17 psychiatrist? Or when were you certified last --
18 recertified? 2010 sound correct?

19 A Yes.

20 Q Have you been recognized as an international expert
21 in the treatment of bipolar and schizophrenic mental
22 health disorders?

23 A I have really since the middle 70s when I was at the
24 National Institute of Mental Health in Bethesda on the
25 unit that studied full-time the illness bipolar disorder

1 which we used to call manic depressive disorder, but now
2 the official nomenclature is bipolar disorder.

3 Q And have you studied this specific spectrum of
4 mental illnesses for a significant period of time?

5 A I have. I mean, not only in my basic training in
6 Boston, but I went specifically to the National Institute
7 of Mental Health specifically to the bipolar unit which I
8 ran for several years. And that was exclusively the best
9 research unit in the world studying bipolar disorder.

10 Q Have you helped develop treatments for the treatment
11 of bipolar and schizophrenic mental health illnesses?

12 A Yes. Thank you. I have. Probably specifically and
13 most pertinent to this case, I introduced to the field of
14 psychiatry the use of anticonvulsants or antiseizure
15 medicines which is used all the time in neurology to
16 treat seizures. In my early talks, I used to joke that I
17 read a book by the leading neurologist who said we're
18 using this medicine that treats kindling and some
19 psychiatrists should study this because it works really
20 well on mood and thinking. And so in the late 70s, I
21 brought in carbamazepine or Tegretol, and now every
22 bipolar person in the world if available is on an
23 anticonvulsant as one of the four medicines they're on.

24 Q So to just state that back, so would it be correct
25 to state that you helped introduce a known drug but to a

1 different manner of treatment and that has become a
2 standard of care for bipolar treatment?

3 A I have. I wrote the first paper in the English
4 language about the use of carbamazepine or Tegretol. The
5 title of my -- that first paper in the American Journal
6 of Psychiatry was "Carbamazepine, Tegretol, a new
7 treatment for manic-depressive illness, question mark."
8 It's the only time there's ever been a question mark in
9 any one of my paper titles because it was the first time.

10 And then that Tegretol was began to be used
11 particularly in rapid cycling bipolar illness which is
12 pertinent here. But then multiple other anticonvulsants
13 have been introduced like Depakote, Lamictal, which
14 Mrs. Simpson has been on briefly.

15 Q All right. Let me just back up for a little bit. I
16 neglected to ask, where did you go to undergrad?

17 A I went to the University of North Carolina in Chapel
18 Hill.

19 Q And where did you do your studies in medicine?

20 A I went to Duke University in Durham.

21 Q All right. And have you served as part of a
22 peer-review panel for scientific journals and
23 publications in your fields of expertise?

24 A I've been on many review panels, career development
25 panels. I've chaired several of them. In that capacity,

1 I review grants. Particularly in my areas of expertise,
2 they'll give the bipolar ones to me to review.

3 Q And are you published?

4 A I have published over 350 scientific articles or
5 chapters and 36 books I've either written or edited.

6 Q Have you been qualified before in courts in South
7 Carolina in the field of psychiatry?

8 A Multiple times.

9 Q Have you been qualified as an expert in South
10 Carolina in the field of forensic psychiatry?

11 A Multiple times.

12 Q Have you ever failed to be qualified in psychiatry
13 or forensic psychiatry in any court which you appeared as
14 an expert witness?

15 A No.

16 MR. BANNISTER: Your Honor, at this time, I would
17 offer Dr. Ballenger as an expert in the fields of
18 psychiatry and forensic psychiatry with a subspecialty in
19 the treatment of bipolar and schizophrenic mental
20 illnesses.

21 THE COURT: Any objection?

22 MR. MAYE: No objection.

23 THE COURT: Okay.

24 MR. BANNISTER: Thank you.

25 THE COURT: He is accepted as an expert in those

1 areas.

2 BY MR. BANNISTER:

3 Q All right. Dr. Ballenger, have you had a chance to
4 review the extensive medical records as it relates to
5 Suzanna Brown Simpson?

6 A Yes. To my knowledge, all of them, all of her
7 treatment records and evaluation records.

8 Q Have you also had a chance to look at some of the
9 forensic psychiatric reports that were part of the trial
10 of her case?

11 A Specifically, the forensic reports by Drs. Price and
12 Frierson, yes.

13 Q And what is -- in your opinion, what illnesses does
14 Ms. Simpson suffer from?

15 A Well, I actually think to an extraordinary degree
16 there's really no argument about that. She has what we
17 call schizoaffective disorder, bipolar manic type. Now,
18 that really means it's two illnesses, Schizophrenia and
19 bipolar disorder, both woven together, sometimes one more
20 prominent than the other.

21 Q And is that a particularly complicated illness when
22 it comes or related to treatment?

23 A Well, each of them are the two most complicated
24 disorders to treat in psychiatry.

25 Q And you had mentioned some -- you'd used some terms

1 in describing some of the drug protocols that you had
2 helped research and put forward. And one of those terms
3 was "kindling." Do you mind going over what kindling is
4 for us?

5 A Yeah. I've probably written a hundred-plus papers
6 about kindling.

7 Q Well, give us the briefer version.

8 A I will.

9 Kindling is a phenomena first seen with electrical
10 kindling. If you put an electrode in an animal brain and
11 give it a very faint stimulus so the animal doesn't even
12 notice it, if you give that same faint stimulus -- little
13 stimulus for nineteen straight days, over that period,
14 the animal starts reacting to the stimulus that was
15 previously not noticed, and then on the nineteenth day or
16 the thirty sixth day or whenever kindling is established,
17 you give the same previously sub-threshold stimulus, and
18 the animal has a seizure. Now, you leave the animal
19 alone for a year and then give him that same faint
20 stimulus, they have a seizure again. It establishes a
21 hyperresponsivity state.

22 Now, pertinent to this case, you can do the same
23 thing, but we call it sensitization. You can do it with
24 amphetamines. You can give amphetamines over and over
25 and over again and that response gets bigger and bigger

1 and bigger and bigger.

2 It's particularly pertinent here because people with
3 these two illnesses are especially prone to the
4 sensitization with amphetamines.

5 Q And does the kindling occur for other reasons than
6 dopamines or amphetamines, or is that just pertinent to
7 this particular case?

8 A Well, part of what led me to say, okay, Tegretol is
9 the most powerful antikindling, you give it to an animal
10 and do that stimulation, they don't kindle. The most
11 prominent, the most powerful one is Tegretol, the
12 anticonvulsant. So that was our rationale -- theoretical
13 rationale. Give that to human beings. If kindling is
14 pertinent, then maybe it will treat their illness.

15 What we had noticed about -- I'm saying Bob Post and
16 I had noticed is that the bipolar illness starts mild and
17 gets often around an event like loss of a relationship
18 and the person gets depressed, like me and you depressed.
19 But what we noticed on the unit where we had people who
20 would come and live with us for a year, it goes from
21 little things causing little reactions to little things
22 causing bigger and bigger and bigger reactions. One of
23 the phenomena on the unit, people would have birthdays,
24 and the birthday, seemingly a positive event, would cause
25 a two-month long depression.

1 And so the illness seems to fit the kindling model,
2 and so when we put all that together and started using in
3 bipolar people, we discovered that the anticonvulsant did
4 work in people who had never responded before. I'll
5 never forget the first patient, she left medical school
6 in a manic state and she'd been in hospitals for 18
7 years. We gave her Tegretol, and she woke up. She got
8 essentially well. And we discharged her to outpatient
9 status for the first time in over 18 years.

10 Q So going back to your -- the diagnosis for
11 Ms. Simpson, the schizoaffective disorder bipolar type,
12 did you see evidence of kindling in her medical records?

13 A Well, I didn't specifically look there, but
14 specifically, the first episode of perhaps sensitization
15 was the first time she was given an amphetamine, she went
16 on a spending, buying spree and got into credit card
17 debt. And that was when she was a young person. Both of
18 these disorders unfortunately start -- part of why
19 they're so bad for people, they start late teens, early
20 twenties, both of them most typically.

21 So she had a spending spree. That should have
22 alerted us or Dr. Smith taking care of her that
23 amphetamines were not for her. They are -- and the
24 phrase is relatively contraindicated, forbidden for use
25 in bipolar disorder and schizophrenia because they make

1 those two disorders worse, typically. We should have
2 noticed it then, but then noticed later when her disorder
3 got more and more frequent, more and more established,
4 more and more severe.

5 Q And when you were discussing kindling, now that
6 you've explained that to us and how it relates
7 particularly to Adderall, you said Adderall is a
8 stimulant, so do schizophrenic or the bipolar folks, if
9 they've got Adderall and let's say it's on a steady
10 prescription, that is, the amount is not being increased,
11 am I correct in saying that that particular type of
12 illness, the kindling that can occur is at the same dose,
13 the body gets sensitized to it, and then the body
14 produces more dopamine over time?

15 A Yes. Short answer, yes. There's a lot of evidence
16 that, in fact, the amount of dopamine that the
17 amphetamines like Adderall kick out and make -- produce
18 -- the brain to produce, the amount is greater in people
19 in the schizophrenic bipolar spectrum. And clearly, she
20 was in that spectrum. And so it causes more to be
21 released.

22 The evidence goes further, though, that they develop
23 psychosis much more frequently than people who are not in
24 the spectrum.

25 So yes. It very frequently makes them worse. And

1 even though sometimes I have used amphetamines, rarely in
2 bipolar people, but you have to watch like a hawk to see
3 if there's any evidence that it makes them worse.
4 Because if it is, then you really have to throw it away.
5 You can't use it again. And, in fact, that's one of the
6 problems in Ms. Simpson's management is that that never
7 happened. And so she was on high doses of Adderall,
8 20 milligrams three times a day. The pharmacist won't
9 fill a prescription any higher than that.

10 Q And so if I'm hearing you correctly, that dosage
11 over a period of time, the sensitivity or at least the
12 probability exists that the sensitivity in a patient
13 overreacts to the same dose, produces more dopamine over
14 time even though the dose may even remain the same and --
15 well, let me stop there. Have I got that correct?

16 A That is correct.

17 And from the get-go, it also, in these people,
18 spectrum people, it produces a greater release of
19 dopamine and therefore more destructiveness, more
20 symptoms that it does in the person who takes it just for
21 ADHD. Although, people with ADHD, 1 in 600 of them will
22 develop an amphetamine-induced psychosis. So the
23 children that we put -- I put on ADHD medicine
24 stimulants, Adderall, very popular, one of the most
25 commonly used, 1 in 600 of them become psychotic. And we

1 are shocked when it happens. But, in fact, if you go to
2 the research, it does happen.

3 Q And is it the dopamine that is the catalyst for the
4 delusional or psychotic state?

5 A We think so. The best -- we still don't know
6 exactly what causes either one of these illnesses. We
7 know that a very complex genetic vulnerability they
8 inherit. There's that.

9 The hypothesis that there is increased dopamine
10 sensitivity or release in the brain of people with
11 particularly schizophrenia, it introduces their psychotic
12 episodes. And part of the evidence is the antipsychotic
13 medicines all block the release of dopamine. And so by
14 inference, we think that that's one of the strongest
15 pieces of evidence that dopamine is central to
16 schizophrenia and, to a lesser extent, bipolar disorder.

17 Q So to some extent, does the prescription regimen
18 that Ms. Simpson was on -- you've got two drugs working
19 in opposite directions. She was on an antipsychotic mood
20 stabilizer and was on Adderall. If I'm hearing you
21 correctly, one is designed to reduce the amount of
22 dopamine and the other is stimulating the amount of
23 dopamine.

24 A I think -- again, the short answer is yes. And at
25 another level, the macro level, what we see is

1 amphetamine destabilizes people with these two disorders
2 and causes schizophrenia. The expression of psychosis
3 causes quiescent, cause Ms. Simpson to go from a period
4 of being essentially normal to being psychotic or manic.
5 We see that happen.

6 Q All right. And the prescriptive drug of choice, in
7 your opinion, to avoid this kindling whether there was --
8 without the Adderall is Tegretol?

9 A Well, the average bipolar patient is on four
10 different types of medicine all the time, 365 days a
11 year. Because what they treat is the propensity to have
12 another episode.

13 Briefly, bipolar illness is a cyclical disorder. It
14 starts with normality, and then usually the first episode
15 is the depression. And that was the case with
16 Ms. Simpson. She started having depression, particularly
17 in college. And then they cycle from that through a
18 severe depression, maybe treated, maybe not, maybe back
19 to normality, and then eventually start having manic
20 episodes. Those have to be hospitalized and treated
21 usually. And then they cycle out of that often into a
22 depression or into normality, and then it starts again.
23 So it's a cyclical disorder. So we treat the cycling
24 first.

25 Q And what is the drug of choice for cycling?

1 A Well, there's actually several. There -- for
2 regular cycling, it's lithium. It's a disorder called
3 Mediterranean relapsing fever where people get a fever
4 and then it goes away, and then it comes back, goes away,
5 comes back. If we treat them with lithium, simple
6 lithium salt, that -- those fevers go away. So that
7 seems to be a cycling, any cycling. That was the first
8 one we discovered.

9 But rapid cycling, four or more episodes, and
10 Mrs. Simpson has -- had before being adequately treated
11 rapid cycling. The best is the antiseizure medicines,
12 the first one being Tegretol but subsequently Depakote,
13 Lamictal, Keppra have also been demonstrated to be
14 effective.

15 Q All right. You mentioned four drugs. I think we've
16 talked about the antikingling and the anticycling are the
17 two others that are involved.

18 A Well, the kindling idea and the cycling really is
19 one category. So as I mentioned, the bipolar patient
20 should be, in my professional opinion and everybody
21 else's, on three or four medicines. One of them is an
22 anticycling like lithium or the rapid cycling like
23 Tegretol.

24 The others are antipsychotic medicines. In the old
25 days, it started with Thorazine and Haldol, but now we

1 have a second generation of much more tolerable
2 antipsychotics like Zyprexa and Risperdal which she has
3 been on.

4 They also end up on something to treat depression.
5 Ironically, one of the main ones is an anticonvulsant,
6 again, Lamictal, but also Seroquel which she has been on
7 briefly in low doses is also there to treat the
8 depression. But they end up often on -- frequently on
9 traditional antidepressants as well. So an anticycling,
10 an antipsychotic and antidepressant at the very least in
11 sufficient doses.

12 Q So at what point -- we know that Ms. Simpson had
13 been prescribed Adderall early in her twenties. At what
14 point, in your opinion, particularly with Dr. Smith's
15 treatment that started in 2010, is or should he be on
16 notice that Adderall and amphetamines have got to come
17 off the table for her as a patient?

18 A Well, if he -- and I don't know whether he was
19 aware, although it's in the records, that she had a
20 hypomanic, which is sort of a lower level manic episode
21 with talking a lot, ebullient, spending money, sexually
22 indiscreet, stuff like that.

23 She had a hypomanic episode with spending and credit
24 card debt when she was first placed on a stimulant.
25 Should have noticed it then. But I think with the first

1 manic episode, it sort of schools out at that point. And
2 she had one in 2010 and '11 and '12. And didn't see it
3 with the first two, should have seen it with the second
4 manic or the third manic or the depressions. So there
5 were multiple places where they should have been taken
6 off the table.

7 Q And they being the Adderall.

8 A Adderall. And, in fact, to contrast, she not only
9 was left on high doses of Adderall, she also was treated
10 with Vyvanse, Focalin, methylphenidate. All of these are
11 stimulant amphetamine-type drugs.

12 Q At some point, Dr. Smith testified that he treated
13 here with Nuvigil. Or Nuvigil.

14 A Nuvigil.

15 Q Nuvigil. And he apparently did not believe that was
16 a stimulant; is that correct?

17 A No. Nuvigil was introduced as an alternative to
18 Dexedrine, Adderall and other clear stimulants. It
19 didn't work as well on the market, and it never really
20 took off. It seemed to make her -- he recognized it made
21 her worse. She complained that it made her worse.

22 Q So would that be yet another moment where if he had
23 actually known that it was a stimulant, it might have
24 been a red flag at least or a notice that it's time to
25 take her off the stimulants?

1 A I don't mean to be hyperbolic, but in a sea of red
2 flags, yes.

3 Q Okay. So this was just one in a sea.

4 A Yes.

5 Q And obviously, we had the delusional break that
6 occurred in August of 2012. And if there had been any
7 question up to that point, isn't that the moment where
8 you just can't do it after that?

9 MR. MAYE: Your Honor, I'd like to just renew my
10 objection from yesterday that this is turning into a
11 standard of care administered by Dr. Smith as opposed to
12 effectiveness of counsel.

13 THE COURT: Your objection is noted on the record.

14 MR. MAYE: Thank you.

15 BY MR. BANNISTER:

16 Q Go ahead.

17 A The question again?

18 Q I was just saying you've got this moment where she's
19 hospitalized at the Carolina Behavioral Health Center
20 from August 5th to 8th and we're back on Adderall a
21 couple weeks later?

22 A And the other evidence is that this was a really
23 critical issue about the mismanagement. When she became
24 delusional at the dentist about the dentist put something
25 in her tooth and other psychotic thinking, delusional

1 thinking was there all along. And that would be --
2 that's making the schizophrenia part of it worse. That
3 was another kind of red flag.

4 Q All right. So there was some indication that
5 Ms. Simpson may have been noncompliant with her mood
6 stabilizer. Whether that would have been sufficient or
7 not, I guess, is the question. But how do you deal with
8 patients that are noncompliant?

9 A You mean all patients, which is the case.
10 65 percent of patients don't fill the prescription that
11 doctors give to them, and another third don't fill it the
12 second time. It is the most noncompliant patients in the
13 world are bipolar patients.

14 So since it's been a specialty of mine, a specialty
15 of mine has also had to evolve. And I teach all the time
16 that there are a handful of things that I do. One of
17 them is that I give -- I have handfults -- copies of the
18 book *An Unquiet Mind* by Dr. Kay Jamison, and I have all
19 of my patients and their family read the book. You can
20 read it in an hour. And Dr. Jamison, who amazingly has
21 the best textbook on bipolar illness which replaced my
22 textbook. And honestly, hers is better. She had ten
23 years further along. But she has bipolar illness
24 herself. In the book, she says that's why I have people
25 read it, that if you have this illness, get a good doctor

1 and do every single thing they say, period. So she flies
2 back to Los Angeles from Johns Hopkins to see her doctor
3 and does everything he says. So I try to make that clear
4 to the patient and his or her family.

5 I get the family involved in all cases to help make
6 sure people take their medicine and to observe them and
7 report to me if they've become symptomatic. Because part
8 of the noncompliance is not taking the medicine and not
9 telling the doctor that you're sick again. So the
10 patient will say I'm doing fine. She would very
11 frequently say to Dr. Smith I'm fine, but if the family
12 had been asked, they'd say no, no, no. She's talking
13 about all sorts of things that are not right that are
14 delusional, essentially.

15 So I would -- and these are two of the major
16 feelings of the care that she got before and that needed
17 to be brought out in the trial is that the family wasn't
18 involved. I make a family member come to each one of the
19 sessions with them. I do everything I can to ensure
20 compliance including have them come much more frequently
21 than was required. So I have patients come at least once
22 every two, three weeks, four weeks and bring family with
23 them. So it's a major focus of treatment.

24 Q And what do you do in situations where your family
25 is not interested in participating or they're in denial

1 about mental illness or they just don't have the family
2 available?

3 A Well, I do whatever I can. But among other things,
4 I have the advantage of people look me up on the Internet
5 and stuff. And I come and say, you know, I'm not going
6 to treat you because I won't be able to treat you right
7 if your family is not involved. Now, so maybe I can
8 induce family to come out of the woodwork.

9 It's usually not a problem because these disorders
10 are so disruptive in families, they want help. They
11 really do. So they want -- but if somebody completely
12 did not, I would try to find some way to check. I might
13 use injectable medicines where you give a shot and the
14 person doesn't need any more medicine for two weeks.

15 Q And are mental health facilities in the counties
16 particularly set up to handle that kind of procedure with
17 shots and counseling?

18 A Yes. In fact, in many counties, the best place to
19 get injectable medications is not with a private doctor
20 but with the mental health center. Because they end up
21 treating people with these two chronic illnesses more
22 than anybody else does, and so that becomes the thing.
23 So they have clinics. You come in and get your
24 injectable antipsychotic.

25 Q All right. Turn your attention for a minute to the

1 onset of the psychotic piece of Ms. Simpson's mental
2 illness. Would you categorize this as having been a
3 relatively late onset as opposed to in terms of her age
4 and where she was in her life?

5 A Well, sort of -- not the earliest. I mean, there
6 are quite literally young children who have both these
7 illnesses. I once got booed talking about an 8-year-old
8 with both of these -- either and both of these illnesses.

9 But if you look at her history, this illness was
10 making itself known fairly early, laterally early.

11 Q And does that onset where it happened for
12 Ms. Simpson, would that indicate to you that she's more
13 likely to be manageable with the correct prescription
14 protocol or -- in other words, if you're saying, okay,
15 we've got this problem and we know it's here, did she
16 fall in the category of we expect to be able to manage
17 this going forward or this is going to be severely
18 problematic in the long run?

19 A Well, early-onset is not a good prognostic sign. On
20 the other hand, both of these illnesses, particularly
21 bipolar illness, if properly managed which is a very
22 complex thing to do, but if properly managed, people can
23 do well. She's done -- from the record, done much, much,
24 much better since she's been incarcerated because she's
25 finally on the right amount of antipsychotics, which she

1 had needed all along.

2 Q She's also off of the Adderall.

3 A Bingo. Yes.

4 Q Right. And so that's been roughly 11 years of at
5 least no psychotic events reported from the Department of
6 Corrections in their records.

7 A However long it's been. I didn't add it up.

8 Q In your opinion, had she been treated appropriately,
9 particularly between August and May of 2013, do you think
10 we'd be here dealing with a delusional episode that
11 resulted in the homicide of her two children and the
12 attempted murder?

13 MR. MAYE: Objection, Your Honor. Calls for
14 speculation.

15 THE COURT: Overruled.

16 BY MR. BANNISTER:

17 Q Go ahead. You can answer.

18 A I don't mean to be hyperbolic about it, but I don't
19 think we would be here today. I think this tragedy could
20 probably almost certainly have been prevented had that
21 delusion been treated. And we have many treatments for
22 it, and she got some of them. One of the treatments, as
23 you point out again, is that she's been taken off the
24 Adderall. But then given either of the antipsychotics
25 Risperdal or Zyprexa she was given, the delusions would

1 have responded quickly. Her -- the amphetamine-induced
2 psychoses respond quickly. And she had two episodes that
3 did respond surprisingly quickly, between a day or two or
4 three.

5 And so if she had been given proper treatment, she
6 would have been quickly back on her feet, being a good
7 mother and wife and just being somebody who needed to go
8 see the doctor every two to four weeks.

9 MR. BANNISTER: Your Honor, I don't have any further
10 questions.

11 Thank you, Dr. Ballenger.

12 THE COURT: All right. Mr. Maye?

13 CROSS EXAMINATION

14 BY MR. MAYE:

15 Q Good morning, Dr. Ballenger. How are you doing
16 today?

17 A Good morning, Mr. Maye. How are you?

18 Q I'm doing fine. Thank you.

19 A Me too.

20 Q Just a few quick questions for you. First off, have
21 you personally treated Ms. Simpson?

22 A No.

23 Q Have you personally administered or prescribed
24 Adderall for Ms. Simpson?

25 A No. I'm the forensic expert. I never treat people.

1 Q That's fine. I just wanted to get it on the record
2 that you haven't.

3 Have you personally been in Ms. Simpson's presence
4 when she had been administered by some other doctor
5 Adderall to observe her reaction to it?

6 A No. I just have the records.

7 Q Have you interviewed Ms. Simpson?

8 A No.

9 Q Are you familiar with the trial record, not
10 necessarily medical records in review, but the trial
11 record and testimony that came forward in her trial?

12 A Less so, yes.

13 Q Would you be able to speak confidently today as to
14 the various opinions not just on her criminal
15 responsibility, but on a number of medical and medical
16 record histories that were testified to by her other
17 three expert witnesses that appeared at her case in
18 chief?

19 A I'm aware of much of what they said, but not
20 everything.

21 Q Would you have any reason to disagree that the
22 record would demonstrate that her experts did discuss the
23 medications and her treatment that she was receiving?

24 A They did discuss it to some extent.

25 Q Do you have any recollection specifically of the

1 record containing the discussions of her receiving
2 antipsychotics, mood stabilizers as well as
3 anitconvulsants during her treatments?

4 A Yes. It was very little about the amphetamines to
5 say the least. That was the principal deficiency in
6 their testimony.

7 Q Are you aware that part of the record containing
8 testimony, that Ms. Simpson had informed her experts that
9 she had actually not taken her Adderall prior to
10 committing the crime?

11 A Well, in the records ---

12 Q Just a "yes" or "no" whether you're aware of that
13 coming in during the trial.

14 A That was one of the things she said about her
15 amphetamine use.

16 Q Are you familiar with the concept of drug tolerance?

17 A Of course.

18 Q If someone continually drinks alcohol over a long
19 period of their life, will they potentially develop a
20 tolerance for alcohol if where you were to obtain the
21 same level of intoxication or high or feeling, that it
22 would require more?

23 A It's a very complex answer. Yes, initially, that's
24 what happens. And then later reverse tolerance happens.

25 Q Is your testimony today that if someone were to be a

1 heavy drinker for 30 years, that they would, in the later
2 years of that 30-year span, become -- I don't mean to
3 make light of the situation, but a two-drink person to
4 obtain the same level of intoxication that they would
5 have as opposed to 15 years?

6 A I'm testifying as an expert that, yes, that, in
7 fact, does. All kinds of complexities occur. One of
8 them is that alcoholics, many later have reverse
9 tolerance and a drink or two makes them drunk.

10 Q Would you agree that tolerance applies not just to
11 alcohol, but to also other drugs such as cocaine,
12 methamphetamines, heroin, that the tolerance is a common
13 principle across various drugs?

14 A Across many drugs. Not all drugs. The reverse
15 occurs as I've testified today with amphetamines that
16 they become more and more sensitive to it.

17 Q But you haven't personally treated Mrs. Simpson and
18 you haven't personally observed her, correct?

19 A Correct.

20 Q And you stated that, in your opinion, 1 out of every
21 600 is potentially going to -- I don't want to use the
22 word "succumb," but experience an Adderall-induced
23 psychosis?

24 A Let me clarify that. If we're treating children for
25 ADHD with amphetamines, one in 600 of them will become

1 psychotic. If we're treating schizophrenia bipolar
2 spectrum people, the best study says between 8 percent
3 and 65 percent become psychotic.

4 Q Between 8 and 65, so a gamut or a span of
5 approximately 53?

6 A Yes. All of ---

7 MR. MAYE: That's all I have. Thank you.

8 MR. BANNISTER: May it please the Court.

9 THE COURT: Anything else?

10 REDIRECT EXAMINATION

11 BY MR. BANNISTER:

12 Q Dr. Ballenger, do you want to finish your answer to
13 that last question?

14 A Yes.

15 THE COURT: Why don't you ask him the question,
16 Counsel.

17 BY MR. BANNISTER:

18 Q You were asked a question by the attorney general,
19 and you were about to finish your answer. Can you finish
20 your answer?

21 A Yes. Everybody has a low chance of becoming
22 psychotic if they take regular amphetamines. People on
23 the spectrum are especially vulnerable, spectrum of
24 schizophrenia bipolar disorder. And the best study --
25 now, it's hard to do this study because most people are

1 not given amphetamines in the spectrum, but the best
2 study found -- a range of studies, the best summary said
3 that 8 percent become psychotic, and in some studies as
4 much as 65 percent become psychotic if they are in the
5 spectrum of the schizophrenia bipolar disorders.

6 Q And that's from the very first use of some
7 amphetamine or a stimulant like that.

8 A There's some truth to that. The study was not that
9 sophisticated to know. But, in fact, from the very --
10 one of the very sophisticated PET scan studies gave
11 amphetamines to people on the spectrum. And they had a
12 bigger response just like people with schizophrenia even
13 from the first exposure.

14 Q Are there peer-reviewed scientific journal articles
15 that deal with the issue of the sensitization of people
16 in the spectrum of bipolar and schizophrenic mental
17 illnesses to amphetamines?

18 A Yes. Part of what I was just quoting is those
19 studies. But there's actually a series demonstrating
20 these sensitivities that I've briefly outlined in people
21 with the spectrum disorders and their sensitivity and
22 vulnerability to amphetamines. It's actually quite a
23 rich literature from some of the main experts in
24 schizophrenia and bipolar evidence like Jeff Lieberman or
25 Ming Tsuang.

1 Q So while the drug tolerance may be applicable in
2 some situations for the population that have bipolar,
3 schizophrenia, we actually see the opposite when it comes
4 to the drug amphetamines.

5 A Completely the opposite. There's not -- there's not
6 any tolerance that's observed in this particular case.

7 MR. BANNISTER: All right. Thank you, Your Honor.
8 That's all.

9 THE COURT: Anything else?

10 MR. MAYE: Nothing further, Your Honor.

11 THE WITNESS: Am I excused?

12 THE COURT: You may step down. Thank you, sir.

13 THE WITNESS: Thank you.

14 MR. BANNISTER: He can be released, Judge?

15 THE COURT: Oh, yeah.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Thank you, sir.

18 Next witness.

19 MR. BANNISTER: Thank you, Judge. Ms. Simpson would
20 call Susan Brown.

21 THE CLERK: Ms. Brown, please place your left hand
22 on the Bible and raise your right hand.

23 WHEREUPON,

24 SUSAN BROWN

25 After having been duly sworn, testified as follows:

1 THE CLERK: Thank you. You may be seated. Please
2 state your full name for the record.

3 THE WITNESS: Susan Jernigan Brown.

4 DIRECT EXAMINATION

5 BY MR. BANNISTER:

6 Q Good morning, Ms. Brown. I know this is tough for
7 you, but I'm going to ask you to speak up into the
8 microphone. I know you're a little bit soft-spoken.

9 All right. And you are Anna Brown Simpson's mother.

10 A I am.

11 Q And you were also a witness in the trial; is that
12 correct?

13 A Yes.

14 Q Were you called by the State?

15 A Yes.

16 Q And you were cross-examined by Mr. Mauldin?

17 A Yes.

18 Q During that cross-examination, did Mr. Mauldin bring
19 out any of the aspects of Anna's life that were let's
20 just call them the normal parts of her growing up?

21 A No.

22 Q So let's kind of go back and go through that just a
23 little bit. And I want to get a little bit of just life
24 history here. So let me focus you there for the moment.

25 All right. Was Anna adopted?

1 A Yes, she was.

2 Q And how old was she when she was adopted by you and
3 your husband?

4 A She was 31 days old.

5 Q Was that something that she was aware of through her
6 growing-up years?

7 A Yes.

8 Q And did you have any other children?

9 A No.

10 Q And you were married?

11 A Yes.

12 Q And your husband is Mr. Brown?

13 A Yes.

14 Q And can you describe Anna as a young child, let's
15 say toddler and into the early grade school years?

16 A Very outgoing, precocious, spoke in sentences very
17 early.

18 Q Did she seem to hit all the normal benchmarks for
19 development and growth?

20 A Yes.

21 Q And during the grade school years, did you see --
22 was she performing well in school? Was she making
23 friends? Was she ---

24 MR. MAYE: Your Honor, I'd like to raise an
25 objection. This kind of testimony goes to an

1 intellectual disability type of claim. That has not been
2 raised.

3 THE COURT: Overrule.

4 MR. BANNISTER: Thank you, Judge.

5 BY MR. BANNISTER:

6 Q Go ahead.

7 A Would you repeat the question?

8 Q Yes, ma'am. Did Ms. Simpson exhibit meeting the
9 normal benchmarks and did she do well in school? Did she
10 make friends easily? I mean, just kind of describe those
11 grade school years.

12 A Yes, she did. She did well in school, made friends
13 easily, had a lot of friends, a lot of play dates.

14 Q And did she attend church? Did you attend church?

15 A Yes.

16 Q And did she attend church with you?

17 A Yes.

18 Q And was she raised in the church?

19 A Yes.

20 Q So as we move into the middle school years and maybe
21 early high school years, did she still have friends? have
22 good grades? And was she participating in
23 extracurricular activities?

24 A Yes, she was. She had friends, did well in school.
25 She was a cheerleader. Participated in school

1 activities.

2 Q Now, some folks, when their children get to the
3 middle school ages and early high school, their children
4 maybe start hanging out with folks that the parents don't
5 approve of, dating boys parents don't approve of, getting
6 into a little bit of miscreantism here and there. Was
7 Anna that type of child?

8 A No, she wasn't.

9 Q So talk to me a little bit about her high school
10 years. How were her academics?

11 A They were good. She began having a little trouble
12 focusing on her work.

13 Q But were her grades good?

14 A Yeah. Her grades were fine.

15 Q Was she a cheerleader throughout her high school
16 years?

17 A No. She was not a cheerleader in high school. That
18 was middle school.

19 Q And any extracurricular activities in high school?

20 A Yes.

21 Q And what were those?

22 A Chorus was the main one.

23 Q And did she have friends that you interacted with?

24 A Yes.

25 Q And were these friends that as a mother you approved

1 of?

2 A I did.

3 Q Did she make some pretty close friendships during
4 those years?

5 A She certainly did.

6 Q And did she go on to college?

7 A Yes.

8 Q And which college did she go to?

9 A Winthrop.

10 Q And how did she do at Winthrop?

11 A She did fine.

12 Q Is that when she met her husband?

13 A They knew each other in high school as speaking
14 acquaintances.

15 Q Okay. And did they stay in touch through college?

16 A They started dating right after high school
17 graduation, and they were dating throughout college.

18 Q All right. And was there anything in particular
19 about college that caused you concern or gave you any
20 indication that she was headed in the wrong direction?

21 A No.

22 Q Was she particularly affectionate with you and your
23 husband?

24 A Yes, she was.

25 Q Was there any question about the closeness of your

1 relationship with her and with her and your husband?

2 A No.

3 Q And did she continue to maintain friendships
4 throughout her college at Winthrop?

5 A She did.

6 Q When did she get married?

7 A 2004.

8 Q And how long after that before they had their first
9 child?

10 A Two years.

11 Q And who was the first child?

12 A Carly.

13 Q And did you get an opportunity to observe her as a
14 mother?

15 A Yes.

16 Q And did you get an opportunity to -- let's see. By
17 May of 2013, Carly would have been roughly 7?

18 A 7.

19 Q Okay. And so were you involved with her throughout
20 those years?

21 A Yes.

22 Q That is Anna and Carly?

23 A Yes.

24 Q Did you feel close to both of them?

25 A Very.

1 Q Did you interact with them on regular occasions?

2 A Yes.

3 Q Would you help with the care of Carly?

4 A Yes.

5 Q And would you have the opportunity to observe Anna's
6 mothering of Carly for that period of time?

7 A Yes.

8 Q All right. At some point, Anna had another child?

9 A She had a miscarriage.

10 Q So her second pregnancy was a miscarriage.

11 A That's right.

12 Q And was that tough on her?

13 A Yes, it was. It was very.

14 Q And did that period where she seemed to be affected
15 by the miscarriage, did that eventually subside?

16 A Yes. Eventually.

17 Q In your mind, was that during, you know, maybe an
18 appropriate period of time?

19 A I think so. I'm not sure what's appropriate for
20 that kind of loss, but I would say maybe she was more
21 normal maybe after about three months.

22 Q All right. And then after -- well, after that
23 pregnancy, did she become pregnant again?

24 A Yes.

25 Q And what was the sex of this child?

1 A Male.

2 Q And what was his name?

3 A Sawyer.

4 Q And roughly how old was he in May of 2013?

5 A 5.

6 Q Did you have a chance to observe her with Sawyer?

7 A Yes.

8 Q Did you have a chance to see her taking care of him?

9 A Yes.

10 Q Did Ms. Simpson begin after college, she -- was she
11 working?

12 A Yes, she was.

13 Q Did she eventually stop working to be a stay-at-home
14 mother?

15 A That's correct.

16 Q And was that her choice?

17 A Yes. Her husband wished for her to do that. She
18 had really enjoyed her years that she worked with the
19 bank, enjoyed the people. But she was willing to give
20 that up to be a stay-at-home mom.

21 Q To your observation, did she enjoy being a mother?

22 A Yes, she did.

23 Q All right. So I want to ask you about some
24 pertinent character traits. We are taking the position
25 in this litigation that there's some things that should

1 have been introduced that were not, so I want to just
2 focus on that for a moment, okay?

3 All right. So do you feel like you, as her mother,
4 had enough opportunity and time to observe Anna and how
5 she interacted both with her children and her husband to
6 offer an opinion about her character traits?

7 A Yes.

8 Q All right. So let's just stick with character
9 traits relevant to her being a mother. Was she loving?

10 A Yes, she was.

11 Q Did she, at all outward aspects, appear to care for
12 the children?

13 A Yes.

14 Q Was she patient with the children?

15 A Yes.

16 Q Was she empathetic with the children?

17 A Yes, she was.

18 Q Was she supportive with the children?

19 A Yes.

20 Q Was she reliable when it came to getting the kids to
21 school, getting them to their appointments and getting
22 them to whatever extracurricular activities?

23 A Yes, she was.

24 Q Was she affectionate with the children?

25 A Yes.

1 Q Was she committed to their growth development and
2 success?

3 A Yes.

4 Q All right. Let me talk to you a little bit about
5 your observations about pertinent character traits as it
6 related to her as a wife. Was she loving?

7 A Yes.

8 Q Was she supportive?

9 A Yes, she was.

10 Q Was she self-sacrificing?

11 A Yes.

12 Q In particular with her time and energy and where
13 that was ---

14 A Uh-huh, yes.

15 Q Was she reliable?

16 A Yes, she was.

17 Q Was she committed to the relationship?

18 A Yes.

19 Q Was she determined when it came to making the
20 marriage work?

21 A Yes.

22 Q And was she loyal?

23 A Yes.

24 Q All right. Now I want to step back out and talk a
25 little bit about some of the moments that you observed

1 and the timeframes prior to the first hospitalization in
2 late July/early August, okay?

3 So we've had a number of doctors testify about
4 various psychotic moments in Anna's life. Were you the
5 one that got her to the hospital on July 29, 2012?

6 A Yes.

7 Q And was your observations of Anna that there was --
8 that that was -- for some reason there was something
9 going on that was different than anything you had seen
10 before?

11 A Yes.

12 Q And how long had you been observing this change in
13 her?

14 A I had noticed little things for some time. But I
15 had been -- had not been really concerned until a day or
16 two before we took her to the hospital.

17 Q All right. Was this a trip that you were on to
18 North Carolina where you were with Anna for an extended
19 period of time?

20 A Yes, yes.

21 Q And during that trip, was she talking about things
22 that seemed bizarre and didn't make sense?

23 A Yes.

24 Q And was this to an extent beyond anything you had
25 seen up to that point?

1 A Yes.

2 Q And did it appear to come on relatively quickly?

3 A Yes, it did.

4 Q So as a result of that, you took her to the hospital
5 in July.

6 A Yes.

7 Q All right. When she received her treatment at the
8 ER, was she released for a brief period of time? Or
9 after she received her treatment in the ER is a better
10 question.

11 A Yeah. She was released on a Saturday, and she went
12 into Carolina Behavioral Center on Monday morning.

13 Q Was she there approximately about three days?

14 A Yes.

15 Q All right. Were you permitted to be -- or were you
16 involved in discussions with her doctors and the nurses
17 during her time at Carolina Behavioral Health?

18 A No.

19 Q Who was the other family member that was primarily
20 there during those -- that time?

21 A Her husband.

22 Q Do you know if anybody else in the family got
23 involved with her treatment or was informed about it in a
24 more specific way during that August 5th through the 8th
25 of 2012?

1 A I'm not aware of it.

2 Q Did Anna appear to you at least to kind of be back
3 to normal after she got out of her treatment from the ER
4 and Carolina Behavioral Health?

5 A Yes.

6 Q All right. Now I want to kind of fast-forward to
7 the days before May 13, 2013. Was there a period of time
8 before the incident that you began to get concerned again
9 like you had prior to the July 29th hospitalization?

10 A Yes.

11 Q And about how many days was it prior to the incident
12 that you became really concerned?

13 A Two or three.

14 Q Was it similar in terms of how this had sort of just
15 come on quickly as it had been before?

16 A Yes.

17 Q And were you in -- I can't remember what day of the
18 week this is, but were you basically in the process of
19 calling a doctor about the issue when the police showed
20 up in your driveway?

21 A Yes.

22 Q So that phone call you had finally decided I needed
23 to potentially get her back into the hospital.

24 A Yes.

25 MR. BANNISTER: Your Honor, I don't have any further

1 questions for Ms. Brown.

2 THE COURT: Cross?

3 CROSS EXAMINATION

4 BY MR. MAYE:

5 Q Good morning, Ms. Brown. How are you doing today?

6 A Good morning.

7 Q Do you recall that at trial you were called by the
8 State to testify before the defense got its chance to put
9 its case in front of the jury?

10 A Yes.

11 Q You recall that?

12 As part of the questioning that the State actually
13 asked you, did they go through a series of phone calls
14 that you had with Ms. Simpson essentially the day before
15 the crime was committed?

16 A Yes.

17 Q And did they go through that in fairly detailed
18 order?

19 A Yes. As well as I remember.

20 Q Did you, during that testimony before the defense
21 had come up, have a chance to describe it as bizarre and
22 uncommon for her?

23 A Yes.

24 Q Do you recall that during that testimony, it was
25 essentially five calls that you received?

1 A That's probably overall the number.

2 Q And at that point, did you have an opportunity to
3 testify that receiving that number of calls was very out
4 of the ordinary?

5 A Yes.

6 Q During your testimony during that portion of the
7 trial, did you essentially convey to counsel that each
8 phone call seemed to flip-flop between the person you
9 seemed to be talking to? Does that make sense to you?

10 A Not quite.

11 Q So if we've got five phone calls, do you recall your
12 testimony essentially being, you know, the first phone
13 call she seemed extremely sad and was asking very bizarre
14 questions that were of a very sad nature, and you had
15 talked with her about that, but then the next call she
16 would seem to be very happy and it basically alternating?
17 Do you recall that being your testimony?

18 A That would be two different days of calls, three
19 calls one day and two calls at night.

20 Q But in the same calendar day?

21 A No.

22 Q You don't believe that was during the same calendar
23 day?

24 A I don't believe so.

25 Q Okay. Without going to the record, would you still

1 agree that, over a very short amount of time, she was
2 making more than an unusual number of calls to you and
3 that those calls were essentially going back and forth
4 between her moods?

5 A Yes.

6 Q You testified at the outset of your testimony today
7 that you don't believe that counsel, that you had an
8 opportunity to discuss to the jury any of her -- any of
9 the life traits of your daughter, who she was as a
10 person.

11 A No, I did not.

12 Q Do you recall that, during your testimony discussing
13 those various phone calls, did it come to the jury's
14 attention that your daughter was a Christian?

15 A Yes.

16 Q Okay. So the jury got to hear that and that she
17 believed in heaven?

18 A Yes.

19 Q And was part of that phone call questioning whether
20 you believe that people who had passed were in a better
21 place by being in heaven?

22 A Yes.

23 Q Did that demonstrate a quality of her faith?

24 A I think so.

25 Q Did you, in one of the subsequent calls, have a

1 conversation with her how she was excited because she and
2 her husband were going to sit down and talk with someone
3 about their marriage?

4 A Yes.

5 Q Did that demonstrate, in your opinion to the jury,
6 that she was a devoted wife and willing to care for her
7 marriage?

8 A Yes. I -- I don't know that that was true that they
9 were going to sit down and talk with someone, but she
10 told me.

11 Q But that is what she conveyed to you.

12 A Yes.

13 Q Did she appear to be earnest on the phone in that
14 manner?

15 A Yes.

16 Q Do you recall Susan calling you, expressing doubt as
17 to her abilities as a mother?

18 A Yes.

19 Q Did you reassure her that she was a good mother?

20 A Yes.

21 Q The jury heard that?

22 A I don't recall.

23 Q You said it at trial.

24 A Okay, yes.

25 Q And were you telling the truth ---

1 A Yes.

2 Q --- when you told your daughter that?

3 During cross-examination after all of that had been
4 presented to the jury, do you recall Mr. Mauldin asking
5 if the defendant knew all along that she was adopted in
6 her life?

7 A I don't recall.

8 Q Would you have any reason to dispute that?

9 A No.

10 Q And do you recall testifying during that line of
11 questioning that your daughter liked to hear that story
12 because it was reassuring to her?

13 A Yes. I think so.

14 Q And do you recall that one of the things that she
15 was expressed was -- excuse me. Poorly phrased question.
16 During the phone calls you received, do you recall one of
17 the things she expressed to you was some doubt or a sad
18 feeling of whether she was even wanted, something along
19 those lines?

20 A Yes.

21 Q Do you recall that?

22 But on cross-examination, counsel was able to ask
23 you that she liked hearing the story that she was adopted
24 because it reassured her.

25 A Yes. That was the only time I recall her saying

1 anything about perhaps she wasn't wanted.

2 Q But you reassured her at that time.

3 A Yes.

4 Q Do you recall during cross-examination -- let me
5 start over for a second. So you've had discussion of
6 those five phone calls and their bizarre nature and how
7 they unfolded, and the jury heard all that. Would you
8 agree?

9 A I think so, yes.

10 Q Do you recall on cross-examination that Mr. Mauldin
11 asked you to go into detail as to how her hospitalization
12 at St. Francis and then her subsequent treatment at
13 Carolina Center took place? Do you recall that taking
14 place at the trial?

15 A I don't.

16 Q You don't. Would you have reason to dispute that
17 that was covered?

18 A No, I don't.

19 Q Along the same lines of questioning, do you recall
20 Mr. Mauldin asking you about what her behavior was like
21 and whether you considered it bizarre or not and asking
22 you to describe the events of that day prior to you
23 seeking to admit her into a hospital?

24 A Right. That time of testimony is quite a blur to
25 me. But I -- I would think that what you're saying is

1 correct.

2 Q No reason to dispute it, essentially.

3 Okay. In providing that kind of testimony
4 describing your daughter's behaviors, how you felt about
5 them, whether they were unusual or bizarre, having that
6 come out immediately after discussing the five phone
7 calls that you also called bizarre, would you agree that
8 that painted a very clear picture that the type of
9 behavior, the concerning level of behavior that she was
10 once admitted for was taking place again when she was
11 making those calls to you in the hours preceding the
12 crime?

13 A Yes.

14 MR. MAYE: One moment, Your Honor.

15 THE COURT: Yes, sir.

16 BY MR. MAYE:

17 Q In addition to discussing not just your opinion of
18 your daughter's behavior, did you also have an
19 opportunity to discuss the types of delusions and
20 psychoses that she was experiencing, the types of
21 paranoidias that she was experiencing?

22 A Again, I don't remember.

23 Q Any reason to dispute or doubt ---

24 A No.

25 MR. MAYE: Your Honor, I believe that's all I have.

1 THE COURT: Thank you.

2 Any redirect?

3 MR. BANNISTER: Just one, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. BANNISTER:

6 Q Ms. Brown, was there anything in Anna's character
7 that would lead you to believe that Anna was capable of
8 harming her children or her husband absent a psychotic
9 delusion?

10 A Nothing.

11 MR. BANNISTER: Thank you. Nothing else.

12 THE COURT: You may step down, ma'am.

13 We're going to take a quick break.

14 (WHEREUPON, a recess is taken at 10:20 AM; proceedings
15 reconvened at 10:41 AM.)

16 THE COURT: Next witness, Mr. Bannister.

17 MR. BANNISTER: All right. Ms. Simpson would call
18 Nancy Zeigler.

19 THE CLERK: Mrs. Zeigler please place your left hand
20 on the Bible and raise your right hand.

21 WHEREUPON,

22 NANCY ZEIGLER

23 After having been duly sworn, testified as follows:

24 THE CLERK: Thank you. You may be seated. Please
25 state your full name for the record.

1 THE WITNESS: My name is Nancy Louise Zeigler,
2 Z-E-I-G-L-E-R.

3 DIRECT EXAMINATION

4 BY MR. BANNISTER:

5 Q Ms. Zeigler, thank you for being here today.

6 Let me start off by asking, did you get interviewed
7 by a newspaper relevant to what happened on May 13, 2013,
8 with Ms. Simpson and the incident that occurred?

9 A I did. I talked with a reporter from a local
10 newspaper. I think it might have been a journal, maybe
11 the Seneca Journal. I just don't recall which one.

12 Q But anyway, your interview was published, in
13 essence.

14 A Yes.

15 Q And you had a particular interaction with
16 Ms. Simpson in the school year leading up to when the
17 incident occurred in 2013; is that correct?

18 A Yes, sir.

19 Q And you were Carly's teacher?

20 A Yes. First grade teacher.

21 Q And that was at Dacusville Elementary School?

22 A Yes.

23 Q And while you were at Dacusville Elementary School
24 as Carly's first grade teacher, did you have a lot of
25 interactions with Ms. Simpson?

1 A Yes. Quite a lot.

2 Q Pull that mic just a little bit closer so everybody
3 can hear good.

4 A Yes. I had quite a lot of interactions with her.

5 Q And what was the nature of that interaction, if you
6 could just explain?

7 A Well, I met her. I met Anna at meet the teacher
8 which would have been in August. I don't have access to
9 the calendars from that year. But at that time, we were
10 starting school usually the Monday before or the Tuesday
11 before Labor Day. So I would have met her mid-August
12 when she came to meet the teacher.

13 And she asked about volunteering. I always had
14 information out about that. She was very interested in
15 volunteering. She asked about being a room parent.

16 She took her volunteer training and did her SLED
17 check, passed that SLED check so that she could take that
18 role. And that's the role that she took in my classroom.

19 Q And what particularly does that role entail?

20 A Well, the room parent, as I said, has to have the
21 SLED check and the volunteer training. And that enables
22 them to be left with students in a supervisory realm. In
23 other words, if I walk out of the classroom, she -- it
24 was okay for her to be in the classroom with the
25 children.

1 She also went on field trips with us. She -- the
2 role of room parent really is helping the teacher be
3 ready for things coming up, holidays, celebrations and
4 that kind of thing. But she went further with that.

5 Q In what way?

6 A She -- Anna came to my room once a week. She hardly
7 ever missed a week. And she would spend the day there
8 organizing my files, helping children, working with
9 children who needed some extra help or needed to maybe
10 catch up on some work if they were out and I was working
11 with other students. She was a fixture in the classroom.
12 She was -- she was somebody that the kids loved and she
13 loved the kids.

14 Q And that's based on the observations that you
15 personally made of her.

16 A Oh, yes, sir. Uh-huh.

17 Q And did you have opportunities to interact with her
18 -- you personally as the teacher?

19 A Oh, yes, yes. Because she was there all day, she
20 would go to the cafeteria with us, and we would often sit
21 and chat while the kids were eating lunch and while we
22 were scarfing down our lunch.

23 Q And were you the one that gave her directions about
24 what needed to be done or could be done in the classroom?

25 A Yes. Yes, sir.

1 Q Would she go a little bit above and beyond what you
2 had experienced in the past with room moms?

3 A Absolutely, absolutely. There's -- it would have
4 been very difficult for me to do my job well without her
5 help. She was -- she was instrumental in keeping my
6 filing done and getting my copies made for me. I didn't
7 have to work as late at night when Anna came in because
8 she would help in that way.

9 Q And did you feel a personal connection with Anna?

10 A Yes, I did.

11 Q And did you consider her to -- did a friendship
12 develop over that year of school?

13 A Yes, yes. Definitely.

14 Q Were there special things that Anna did that
15 particularly stick out in your mind as it related to your
16 classroom and being a room parent?

17 A Well, she would -- like I said, she went on field
18 trips with us. I'm -- she would take a group and
19 supervise that group of children. But all of the kids
20 wanted to be with her. They all wanted to be with Anna.
21 And what I generally did was allowed the child of the
22 chaperone to choose one person to be in the group. But
23 she just loved being with the kids.

24 We went to the Happy Cow Creamery, and she went on
25 the wagon rides with the children and through all of the

1 stations. Was very attentive to them.

2 She also -- classroom parties can be stressful for
3 the teacher if they're not managed well. She helped me
4 manage our winter holiday party. She helped me set up
5 stations for the kids to go through to do different
6 activities, kept it very organized for me, made sure
7 things were flowing smoothly and helped with the craft.
8 I think -- I think I recall that her mom might have been
9 there that day as well helping.

10 Q And was this a little bit unusual in that she had
11 set up stations so that the children could move from one
12 to the other and it just wasn't a cake all day kind of
13 party?

14 A It was unusual in my experience, yes. I had never
15 had a room mother as attentive as she was.

16 Q How was she in terms of Carly's education and being
17 a mother to Carly, based on your observation?

18 A As far as Carly's education goes, I would say that
19 she was very conscientious. Carly was at school, and if
20 Carly had to miss something, I was going to be aware of
21 it. She would make me aware either by phone or by email.
22 She would let me know.

23 One instance that I recall vividly because it's
24 unusual was Carly had a doctor's appointment one day, and
25 it was a 10 o'clock appointment. And it's not uncommon

1 at all for students not be at school at all when that
2 happens. Not only did she bring her to school before the
3 appointment, she gave me information that she would be
4 picking her up and bringing her back. And she did that.
5 So Carly missed as little school as she had to for that
6 appointment. She made sure that Carly was there for as
7 much of the time as she could be.

8 Q In comparison to the other students, how was Carly
9 performing as a student?

10 A Carly was a top student in my class.

11 Q Did you attribute some of that to her mother's
12 involvement?

13 A Oh, definitely. Children do much better when
14 parents are involved, and Anna was very involved in her
15 education.

16 Q And how did Anna do when she was asked to do
17 one-on-one with helping other students catch up or
18 helping them with reading assignments, that sort of
19 thing?

20 A Anna did quite well. She was one person I could
21 rely on. It's not -- you can't always rely on every
22 parent who wants to help out. Anna knew how to help and
23 assist and help children come to an understanding rather
24 than just giving them all of the words. Does that make
25 sense?

1 Q Do you attribute that help that she provided to the
2 children and the way that she did it to one of the
3 reasons why the other children in the classroom were
4 attached to her?

5 A Oh, yes, yes. Definitely.

6 Q All right. And was she consistent with her help in
7 the classroom and how she was handling the other children
8 and Carly pretty much throughout the school year?

9 A Yes. Up until about four or five days before the
10 incident, she was very consistent. If she wasn't going
11 to be there, I knew it. I mean, she would let me know.

12 She also was very attentive to me in that if there
13 was anything special, it could be Halloween, it could be
14 -- it could be any little holiday, there was something
15 that she would send in for me letting me know that she
16 appreciated me and that she was thankful for how I helped
17 Carly and the other kids in the classroom.

18 Q And the little things that she was doing, did that
19 include notes?

20 A It included notes of appreciation, and also often --
21 one of the -- one of the things I remember was a little
22 jar that she gave me at Halloween. And it really -- it
23 wasn't much, but it was a lot, if you know what I mean.
24 It just was a little jar of candy corn. She had painted
25 a jack-o'-lantern face on the jar and sent it with a note

1 of appreciation. I still have the jar. I don't know why
2 it's so special to me, but it is.

3 Q Would she do that kind of thing for other teachers?

4 A I'm not aware. I wouldn't have any awareness of
5 that. I would assume she would have because I know that
6 the kindergarten teacher that had Carly loved having
7 Carly and loved having Carly's mom in the room.

8 Q All right. So let's fast-forward to the week before
9 the incident when you said you saw something different.
10 Was that a particular week of school? Was it teacher
11 appreciation week?

12 A It was teacher appreciation week.

13 Q And that was -- teacher appreciation week, and that
14 was leading up to what would have been Mother's Day.

15 A Yes. Uh-huh.

16 Q And so what caught your attention or took you by
17 surprise a little bit during that week?

18 A There was absolutely no communication from her at
19 all. None. And this is -- I hate to say "expect," but
20 because of what I'd seen all year, all school year, I
21 would have thought that I would hear from her at least
22 once and not just not at all, you know. There was
23 something special that the school would, you know, talk
24 about each day, and she's the kind of mom who I thought
25 would have had a little something each day even if it was

1 just a little note. But instead, there was absolutely no
2 communication from her.

3 Q And did that continue on through the week till the
4 incident?

5 A Yes. The entire week. And no -- we made Mother's
6 Day things, the kids did. I had thought she was going to
7 be there to help with that, and she was not. And I did
8 not hear from her. And I didn't hear from her with
9 regard to Mother's Day either.

10 Q And that was pointedly unusual in your experience.

11 A Very, very unusual. Carly was there every day. She
12 had -- Carly had school every day.

13 Q Okay. Did you have much interaction with Carly's
14 father?

15 A I never met him until the trial.

16 Q Okay. All right. And were you at the trial?

17 A I was at the trial. I missed the first morning, but
18 after that I was there.

19 Q And did you have some conversations with -- and I'm
20 not looking at what the conversations were about, but did
21 you make your presence known to some of the -- or one or
22 the other of the attorneys that were there at the trial?

23 A I did not. They did not attempt to interact with
24 me.

25 Q And I was going to ask you, did anybody ever call

1 you to interview you to find out what kind of background
2 information you might have on Anna?

3 A No. Only -- only press. Nothing. Media, but
4 nothing else.

5 Q And would you have welcomed that interaction?

6 A Yes, I would have.

7 Q During the trial, did you feel like you had things
8 that you wanted to say that were pertinent to what was
9 going on but you just weren't asked to be a witness?

10 A Absolutely.

11 Q And have you described most of those things now to
12 me in my questions to you?

13 A The only thing I -- may I add?

14 Q Yes, please.

15 A The only -- the only thing I would add, I think, is
16 that this is a woman who loved her children, and it was
17 obvious. She was very caring. And on the morning of the
18 incident when we were aware that there was something
19 going on up the street, we didn't know exactly where, we
20 knew it involved two children and we knew that one of
21 them was a first grader, the other first grade teachers
22 and I were kind of looking around to see who was not
23 there. And when we noticed that Carly wasn't there yet,
24 the first thing I said was, well, that wouldn't be Carly.
25 Her mother's probably keeping her home to not see

1 whatever's going on because that's the kind of mom she
2 was. That's the -- that's the woman I knew. And I think
3 what I would have liked to have said then is the person
4 that I knew would never have done that to her children
5 because she loved them and she cared for them.

6 Q And did you feel like you had enough interaction
7 with her and observed enough to make that opinion, reach
8 that conclusion for yourself?

9 A Yes, I do.

10 Q So let me just ask you about some of the pertinent
11 character traits that go to that. Did you find her to be
12 a loving mother?

13 A Yes.

14 Q Did you find her to be caring?

15 A Yes.

16 Q Was she patient?

17 A Yes.

18 Q Was she empathetic to her child and the other
19 children in the classroom?

20 A Yes.

21 Q Was she supportive of her child and the other
22 children in the classroom?

23 A Very much so.

24 Q Was she reliable?

25 A I'm sorry?

1 Q Was she reliable?

2 A Oh, yes.

3 Q Was she affectionate with her children and the other
4 children in the classroom?

5 A Yes, she was.

6 Q And did she appear in all respects to be committed
7 to their betterment? their growth? their development?

8 A Yes.

9 Q So I'll just ask it this way. Was there anything in
10 Anna's character that would have led you to believe that
11 Anna was capable of harming her children or her husband
12 absent a psychotic delusion?

13 A Absolutely not.

14 MR. BANNISTER: No further questions, Judge.

15 THE COURT: Cross-examination?

16 CROSS EXAMINATION

17 BY MR. MAYE:

18 Q Good morning, Ms. Zeigler.

19 A Good morning.

20 Q So in teaching Carly, you basically had a friendship
21 that lasted would you say approximately a year with
22 Ms. Simpson?

23 A Yes.

24 Q Had you known her before that?

25 A I had not.

1 Q And during your testimony, you had frequent
2 interaction with her?

3 A I'm sorry. I'm not understanding.

4 Q That's fine. Probably a bad question.

5 A The testimony today?

6 Q Yes. During your testimony today, you demonstrated
7 that you had fairly frequent interactions with
8 Ms. Simpson.

9 A Yes.

10 Q Throughout those interactions, did you notice any
11 bizarre behaviors, paranoias, delusions, anything that
12 stuck out as bizarre to you?

13 A No.

14 Q So she seemed perfectly sane to you?

15 A Yes. I'm not one to judge that, though. I'm not a
16 doctor.

17 Q Which was going to be my next question. You don't
18 have any medical expertise.

19 A The only medical expertise or training I ever had
20 was I served as emergency -- a certified emergency
21 medical technician for ten years.

22 Q Okay.

23 A Not during this time. Prior to that.

24 Q Any of that give you the opportunity to weigh in
25 medically on someone's mental state?

1 A No.

2 Q As far as, let's say, that -- you said you didn't
3 have any communication at all for about a week prior to
4 the accident -- or to the incident?

5 A Yes. The Monday through Friday prior to that. I
6 believe the incident was a Tuesday morning.

7 Q So is it fair to say that you would not have been
8 able to perceive in any way, be it visual or phone calls
9 or hearing, no communications, no ability to perceive
10 Ms. Simpson during the time before, during or after the
11 crime was committed?

12 A Will you ask that again, please.

13 Q Certainly. You wouldn't have had any opportunity to
14 perceive or communicate with or observe Ms. Simpson
15 before the crime was committed, during the time the crime
16 was committed or after the crime was committed within a
17 week on either side?

18 A Before or during, no. After, my initial reaction
19 was how could that be.

20 Q But you weren't able to communicate with her or see
21 her?

22 A I was not allowed to communicate with her, no.

23 MR. MAYE: That's all I have. Thank you.

24 MR. BANNISTER: No further questions, Your Honor.

25 THE COURT: Okay. You may step down. Thank you.

1 MR. BANNISTER: Your Honor, at this point,
2 Ms. Simpson will call Jessica Cummings.

3 THE CLERK: Ms. Cummings, please raise your right
4 hand.

5 WHEREUPON,

6 JESSICA CUMMINGS

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you. You may be seated. Please
9 state your full name for the record.

10 THE WITNESS: Jessica Marie Cummings.

11 DIRECT EXAMINATION

12 BY MR. BANNISTER:

13 Q Thank you. And like others, if you can just pull
14 that mic a little bit closer to you so everybody can
15 hear, that would be great.

16 A That good?

17 Q All right. Ms. Cummings, were you present during
18 the trial of Anna Simpson?

19 A Yes.

20 Q And did you have a moment or two where you
21 interacted with any of her attorneys?

22 A I spoke to Teal.

23 Q And in that interaction, did you inform her you were
24 Anna's friend, you had known her for a long time?

25 A Yes.

1 Q And you were present in the courtroom during the
2 trial.

3 A Every day.

4 Q And were you ever interviewed by anybody that was
5 representing Ms. Simpson?

6 A No.

7 Q Did -- were there things that you observed in the
8 trial where you thought you had information that might
9 have been helpful or you wished you had been asked to
10 talk about?

11 A Yes.

12 Q All right. So let's back up a little second because
13 I think would it be incorrect to say that -- well, let me
14 ask it a different way. Have you been lifelong friends
15 with Anna?

16 A Yes.

17 Q And how far back does that go?

18 A I was 1 and she was 2.

19 Q And were you -- were your parents friends also?

20 A Yes.

21 Q And where did the interaction take place mostly?

22 A At church.

23 Q And which church was it?

24 A The First Christian Church Disciples of Christ.

25 Q So if you can, just kind of walk me through the

1 years that you were with Anna because I know there were
2 some where you were in a different state.

3 A Right. So we were friends, like I said, from
4 church. Then we moved to Texas when I was like 5 or 6.
5 Moved back to Georgia when I was third grade, fourth
6 grade, and moved back here in sixth grade. And we
7 continued going back to the church. Anna and I picked up
8 our friendship and then we would, you know, hang out at
9 church and then we'd end up both going to Winthrop. She
10 was a year older than I was.

11 Q So did you go to the same schools?

12 A No.

13 Q But you continued to see each other, sleepovers ---

14 A Yes, yes.

15 Q --- and talk.

16 A Go shopping, you know. What teenage girls do.

17 Q So was she one of your best friends?

18 A Yes.

19 Q And if you can, just kind of describe her
20 personality during those teenage years.

21 A Outgoing, fun, sweet, I mean, giving. Just loving,
22 genuine.

23 Q Was she a good friend to you?

24 A Great friend.

25 Q And did that continue at Winthrop?

1 A Yes.

2 Q And I've asked her mother this, but, you know, in
3 your view, did Anna hang out with kind of the rougher
4 crowd or the more edgy crowd or was she more of a keep it
5 between the lines and ---

6 A Keep it between the lines, straight laced. Yes.

7 Q Do what you're supposed to do?

8 A Yes.

9 Q And did she do well in school?

10 A She did.

11 Q Now, did she ever offer to help you in school?

12 A Oh, yes.

13 Q All right. Can you tell me a little bit about that?

14 A She was like my mom, first of all, at school. She
15 would stay up late with me if I had art projects or if I
16 needed help with an English paper, and always willing to
17 drop whatever she was doing to help me.

18 Q And was there any benefit to her doing that?

19 A No, no.

20 Q And did it actually help?

21 A Oh, yes.

22 Q Did you know her husband?

23 A Yes.

24 Q And were you there during their dating years and on
25 into their marriage?

1 A Yeah. She would talk about when they went and go on
2 dates when she first, I guess, started dating and when he
3 proposed. And I was in the wedding.

4 Q Any question that she was in a committed, loving
5 relationship with her husband?

6 A No. She loved him, yeah.

7 Q And thereafter, did you interact with her while she
8 had her brief working career?

9 A Yes.

10 Q Did you also have time to spend with her after she
11 -- the birth of Carly?

12 A Yes.

13 Q Did you have the opportunity to observe her as a
14 mother?

15 A Yes.

16 Q And what were your observations about Anna in the
17 early years before Sawyer was born?

18 A Great mom. Would do anything for her. Loving.
19 She's young.

20 Q Did she quit her job in order to be a stay-at-home
21 mom?

22 A Yes.

23 Q And was that something that Anna enjoyed based on
24 what you could tell and observe?

25 A Yes.

1 Q Was Anna excited about the benchmarks and issues ---
2 not issues, but development of Carly as she grew up?

3 A Oh, yes.

4 Q Was the miscarriage tough on Anna?

5 A Very.

6 Q What sort of brought her back out of that?

7 A Time and just her friends being there and her
8 parents being there for her.

9 Q Was there any significant change for Anna when she
10 became pregnant her third time?

11 A No. Not when she's pregnant.

12 Q All right. How about when Sawyer was born?

13 A No. She was still a good mom.

14 Q And did you have an opportunity to observe her as a
15 mother with Sawyer?

16 A Yes.

17 Q Now, did you have children at this time?

18 A Yes.

19 Q Did the children, your children and her children,
20 interact much?

21 A They did at times.

22 Q You have older children.

23 A Yes, yeah.

24 Q How much older were your children?

25 A Mine -- let's see. Mine are now 18 and 19, so I

1 think three years older.

2 Q Okay.

3 A Yeah. They would come to my boys' birthday parties.

4 Q Let me ask it this way. Did your children know her
5 children?

6 A Yes.

7 Q And vice versa.

8 A Right.

9 Q And were there multiple occasions where y'all would
10 get together as two different families ---

11 A Yes.

12 Q --- but doing the same thing?

13 A Yes.

14 Q So at some point, I think Anna moved a little bit of
15 a distance from you when she moved to Dacusville; is that
16 correct?

17 A Yes.

18 Q All right. But did you still stay in touch?

19 A Oh, yeah.

20 Q And was it a regular kind of staying in touch?

21 A Yes.

22 Q What was the cadence of that?

23 A Well, we would talk on the phone. We didn't really
24 see each other as much. We would talk on the phone. She
25 would still like mail letters to me, you know. We could

1 text. She would mail letters in the mail.

2 Q And was this -- like in a week, are you going to
3 talk to Anna once? twice? three times?

4 A I mean, sometimes it was once a week, sometimes
5 three times a week, four times a week, just depending on
6 life.

7 Q And did you have an opportunity to observe Anna with
8 her husband, Mike?

9 A Yes.

10 Q And did they appear to have a loving and caring
11 relationship?

12 A Yes.

13 Q Was -- in your view, was Anna committed to that
14 relationship?

15 A Yes.

16 Q Did she work hard at it?

17 A Yes.

18 Q And were there occasions when Mike would be out of
19 town where she had to stay with the kids?

20 A Yes.

21 Q And did she accept that and was ---

22 A She did.

23 Q --- glad to be with the kids?

24 A Yes.

25 Q Okay. Now, did you have much interaction with Anna

1 right before she went into her hospitalization in August
2 of 2012?

3 A Yes.

4 Q And did you have much interaction with her just
5 those days before she went into the hospital in August of
6 2012?

7 A Trying to think back. Through the phone, yes.

8 Q All right. Would it be an accurate summary to say
9 that things got a little bit different in terms of Anna's
10 conversation, her behavior ---

11 A Yes.

12 Q --- in those few days leading up to her
13 hospitalization?

14 A Yes.

15 Q And was it bizarre conversations? Was it paranoia?

16 A It was. People following me, thought somebody put a
17 bug in her ceiling fan.

18 Q Okay. And was that a significant change in what --
19 maybe Anna had been quirky in the past, but was that a
20 significant change ---

21 A Yes.

22 Q --- to what you had observed with her prior to that?

23 A Yes.

24 Q After she came out of the hospitalization, did she
25 appear at least to kind of get back to a normal sort of

1 existence in life?

2 A Yes.

3 Q And were you in touch with her on occasions between
4 August and the May 13, 2013, day?

5 A Yes.

6 Q All right. Were you in touch with her right at the
7 time period leading up to, let's say, within a week or so
8 of the incident in May of ---

9 A I spoke to her on the phone that Friday before.

10 Q All right. And what was that conversation like?

11 A A little different.

12 Q In a significant way?

13 A I mean, it was just I could tell the paranoia was
14 back and that she was questioning, you know, people
15 following her again.

16 Q So did it feel a lot like what you had observed or
17 heard back ---

18 A Previous.

19 Q --- prior to August?

20 All right. And was this a pretty significant change
21 in her behavior ---

22 A Yes.

23 Q --- since the prior hospitalization?

24 A Uh-huh.

25 Q All right. Do you feel like you knew her well

1 enough to know something about her character and the kind
2 of person that she was?

3 A Of course.

4 Q Do you feel like you have enough information and
5 observed enough to know about her pertinent character
6 traits as a mother and as a wife?

7 A Yes.

8 Q All right. So let me just stick with the mother
9 first. Did she appear to you to be loving?

10 A Very.

11 Q Was she caring of both of her children?

12 A Yes.

13 Q Was she patient with them?

14 A Very.

15 Q Was she empathetic to them?

16 A Yes.

17 Q Was she supportive of them?

18 A Yes.

19 Q Based on what you had seen and observed, was there
20 any reason to believe she did not want to see their
21 development and welfare for them to grow up being happy
22 adults?

23 A No.

24 Q Was she affectionate with them?

25 A Very.

1 Q Was she reliable when it came to the children?

2 A Very.

3 Q And was she committed to their development?

4 A Very much so.

5 Q All right. So let me ask you about some pertinent
6 character traits as it relates to her as a wife. Was she
7 loving when it came to her husband, Mike?

8 A Yes.

9 Q Was she supportive of him?

10 A Yes.

11 Q Was she selfless in a lot of ways, particularly in
12 giving her time ---

13 A Yes.

14 Q --- so that he can do some of the things he liked to
15 do?

16 A Yes.

17 Q Was she reliable?

18 A Very.

19 Q Was she committed to that relationship?

20 A She was.

21 Q Was she determined to make the marriage work?

22 A Yes.

23 Q And was she loyal to Mike?

24 A Yes.

25 Q Was there anything in Anna's character that would

1 lead you to believe that Anna was capable of harming her
2 children or her husband absent a psychotic delusion?

3 A No.

4 MR. BANNISTER: No further questions, Judge.

5 THE COURT: Cross-examination?

6 CROSS EXAMINATION

7 BY MR. MAYE:

8 Q Good morning, Ms. Cummings.

9 A Good morning.

10 Q Do you have any medical expertise?

11 A No.

12 Q Were you in communication with Ms. Simpson in the
13 day or so before the crime took place, during the crime,
14 or in the time immediately after the crime took place?

15 A I spoke to her that Friday before.

16 Q Friday before?

17 A Uh-huh.

18 Q And that was the last time you spoke with her?

19 A I mean, I seen her like in prison -- or go to jail
20 afterwards, but not -- yeah.

21 Q That time range.

22 A Yeah.

23 MR. MAYE: That's it. Thank you.

24 MR. BANNISTER: Nothing further, Judge.

25 THE WITNESS: Thank you.

1 THE COURT: You may step down. Thank you.

2 Is that it?

3 MR. BANNISTER: One more and we're done.

4 THE COURT: All right.

5 MR. BANNISTER: Your Honor, Ms. Simpson calls Beth
6 Simmons.

7 THE CLERK: Ms. Simmons, please raise your right
8 hand, put your left hand on the Bible.

9 WHEREUPON,

10 BETH SIMMONS

11 After having been duly sworn, testified as follows:

12 THE CLERK: Thank you. Please state your full name
13 for the record.

14 THE WITNESS: Beth Rentz Simmons.

15 DIRECT EXAMINATION

16 BY MR. BANNISTER:

17 Q Hello, Ms. Simmons. Just be sure you speak kind of
18 close to that microphone. Yeah. There you go. Perfect.
19 Thank you.

20 All right. Ms. Simmons, were you present during the
21 trial for Anna Brown Simpson?

22 A I was there the first day and then had a family
23 vacation so I had to leave.

24 Q Were you there because you were friends with Anna?

25 A Yes. And I knew Mike as well.

1 Q And so how did you first get to know -- how old were
2 you when you first got to know Anna?

3 A It was '97, February, in a bathroom at a fraternity
4 house. We are just in there together, and we just became
5 fast friends at Winthrop. And she's like a sister to me
6 since then.

7 Q So you also knew Mike pretty well?

8 A Uh-huh.

9 Q Is that a yes?

10 A Yes.

11 Q I'm sorry. She has a hard time taking down a head
12 nod.

13 A Sorry.

14 Q And so you had -- well, you and Anna, I guess, sort
15 of did the life stages at roughly the same time; is that
16 a fair statement?

17 A Yes.

18 Q So let's just stick with your observations of her.
19 You said you were roommates with her at college?

20 A Yes.

21 Q So what was her personality like during college?

22 A The best. I seriously had the best time with her.
23 We would do so many things together. She was just fun,
24 loving, caring. She cared about me. She cared about my
25 family. My mom had cancer in college. She -- she was

1 there for me.

2 Q Was she -- so what contrast would you make with your
3 personality? Were y'all a little bit of she was more
4 outgoing than ---

5 A She was a little bit more outgoing, but it pulled me
6 into -- with her. And we just had a lot of fun. A lot
7 -- a lot of fun.

8 Q Okay. All right. So were you there for the
9 marriage?

10 A I was. I was in the wedding.

11 Q And were you there during the dating years that led
12 up to the marriage?

13 A I was through college, yes.

14 Q Would Mike come to visit and would Anna go to visit
15 him?

16 A Yes.

17 Q And were you also dating someone relatively serious
18 at that time?

19 A I was, yes.

20 Q And were there some double dates, interactions
21 together?

22 A I would hang out -- Anna would hang out with me and
23 my boyfriend sometimes, and I would hang out with Mike
24 and Anna, but my boyfriend at the time was a -- I think a
25 senior. He was older than me in college so he was -- did

1 his own thing.

2 Q Understood. Okay.

3 All right. So after college, where did you end up
4 residing?

5 A I, through many different routes, ended up back home
6 with my dad in Mauldin for a while until I got married.

7 Q All right. And where was Anna during this time
8 period?

9 A She was -- I had to leave school. She finished
10 school and then she came back down to the Greenville area
11 as well.

12 Q Was there a period of time where you were distant
13 geographically and did y'all stay in touch?

14 A We've been off and on geographically, I think,
15 through our whole friendship, but we've always managed to
16 get together, birthdays, talk on the phone. She's -- she
17 was like my sister. I love her very much.

18 Q Were you around for the birth of Carly?

19 A I was, yes.

20 Q And were you able to observe Anna as a mother,
21 especially during the toddler years?

22 A Yes. Very much.

23 Q Now, do you have children?

24 A I have three.

25 Q And were they older or younger or roughly the same

1 age?

2 A Roughly -- my oldest was right after Carly and then
3 my middle was right after Sawyer, and then I had my third
4 one which was in 2012, August 2012.

5 Q So at least Carly and Sawyer matched up somewhat
6 with your two oldest children.

7 A Correct.

8 Q So I'm anticipating, was there some get-togethers
9 where the kids got together?

10 A There -- especially with my oldest, because it was a
11 drive out to Dacusville. But we managed. And actually,
12 Anna helped me out a lot with my oldest. A lot of
13 pointers which were very helpful. Because I had a tough
14 time with my oldest as you can imagine, and she talked me
15 through a lot of tough times because she had been through
16 with Carly.

17 Q And so I'm imagining these are, you know, as a young
18 daughter is getting older and dealing with friendships
19 and that kind of thing in school. Are those the points
20 of wisdom that you were getting from ---

21 A Yes. Very mom -- mom wisdoms that I much
22 appreciated.

23 Q And based on that, what was your observation of her
24 as a mother during those early years?

25 A She was a wonderful mom. Like I said, she would

1 tell me all these things that she did with Carly to help
2 her to get to read, different things that she used that
3 she would recommend to me to use for my children that
4 would work. It was just she was a wonderful mom. A
5 wonderful mom.

6 Q All right. We've kind of had some testimony on this
7 already, but were you there for the miscarriage?

8 A I was, yes.

9 Q And then were you there ultimately for the birth of
10 Sawyer?

11 A Yes. I actually was the one that told her that she
12 was in labor because she didn't think she was in labor.
13 And I told her. And then Mike called me afterwards and
14 said you were right. She had her son.

15 Q Okay. That's great.

16 And did she have the same sort of relationship with
17 Sawyer in terms of mother and child?

18 A Yes.

19 Q And did she seem to be involved with her children?

20 A Very much so. She was a very loving mother. I like
21 to think we were pretty much the same on that. Very
22 loving to our children. Very caring.

23 Q Anna was very objective and ---

24 A Very protective.

25 Q Was she very interested in seeing them progress and

1 do well in school ---

2 A Yes.

3 Q --- and make good friends ---

4 A Very much.

5 Q --- and set themselves on the right course in life?

6 A Yes.

7 Q All right. How often would you -- so let's
8 fast-forward a little bit kind of leading up to the
9 August 2012 when she went to the hospital. During, let's
10 say, the months leading up to that August 2012, what was
11 your kind of cadence with speaking with Anna or talking
12 with her? I realize she was in Dacusville.

13 A Right.

14 Q But how often did y'all stay in touch or see each
15 other?

16 A She would -- she would call, and it would be like a
17 four-hour conversation on the phone. It was very hard to
18 kind of track what she was talking about. It went from
19 subject to subject to subject to subject.

20 And a lot of times we would meet sort of halfway
21 because I'm in Simpsonville, Dacusville. We would meet
22 for ice cream, things like that.

23 And it was very hard to be with her. It was just
24 different. And I could tell it was not my Anna at that
25 point. I was pregnant with my son at the time, and the

1 conversations would just not be great. And I could tell
2 that there was something off, definitely.

3 Q And did that get pretty pointed as we get closer to
4 the August 2012?

5 A Very much so. For instance, we had had a
6 conversation at Yogurt Mountain way back in the day or I
7 think it was that July. And we were talking, and she, I
8 guess, had got it in her mind that my father-in-law was
9 doing something inappropriate with my children, which
10 he's not for the record. He's a wonderful man. The next
11 day she drove from Dacusville to my house which is a good
12 30, 40 minute drive. Didn't know she was coming. I was,
13 in fact, getting ready to go to the pool with my
14 children, and she just showed up. And we just -- I mean,
15 it was alarming for her just to show up and talk. It was
16 not my Anna that showed up that day. It was different.
17 It felt different.

18 Q And looking back on it, does that sort of marry up
19 with what we now know about her kind of course with
20 mental illness?

21 A Yes. Very much so.

22 Q Did you have much interaction with her in the weeks
23 or months prior to the incident in May of 2013?

24 A I had just had my son in August, so I was a -- a
25 third child. Was very busy. Mother's Day, that Mother's

1 Day, we actually rode to Table Rock. We were going to
2 have a Mother's Day out there. And we rode by her house,
3 and Mike was outside. And I said we should stop so I can
4 wish her a happy Mother's Day. And I -- my son was not
5 having a good day that day and I just thought we should
6 just keep -- keep going. Maybe I'll call her Monday.

7 Q So there really wasn't much interaction between you
8 and her right leading up to that.

9 A She came to the hospital after my son was born. I
10 guess it was after she had gotten out of the hospital
11 prior. And she kind of scared me, to be honest. And I
12 just had my third child. I was in a very delicate place,
13 so I kept my conversations short between then and May.

14 Q Was it clear to you that something was wrong?

15 A Absolutely. Absolutely.

16 Q And that that had changed in the recent months
17 leading up to her hospitalization and then the incident.

18 A Very much so. And I like to think Anna and I were
19 -- I mean, she has been there through everything with me.
20 And I love her so much, and I would never not want to see
21 her ever. But that -- that was hard.

22 Q So prior to when you started seeing these signs of
23 her illness coming, did you have enough time to -- an
24 observation to understand Anna and sort of what her
25 inherent character traits were?

1 A Yes.

2 Q All right. So I'll just do it like I've done
3 before. Let's talk about mother, and then we'll talk
4 about as a wife.

5 As a mother, was she loving and caring with the
6 children?

7 A Absolutely.

8 Q Was she patient and empathetic with them?

9 A Absolutely.

10 Q Was she supportive?

11 A Oh, yes.

12 Q Was she reliable?

13 A Very much so.

14 Q Was she affectionate and committed to their
15 well-being?

16 A Yes.

17 Q All right. And how about as a wife? Was she
18 loving?

19 A Very much so.

20 Q Was she supportive of Mike?

21 A Beyond. Yes.

22 Q Was she selfless in that support?

23 A Yes.

24 Q Was she reliable and committed to their
25 relationship?

1 A Yes.

2 Q And was she loyal to Mike?

3 A Very much so.

4 Q And was she determined to make the marriage work?

5 A Yes.

6 Q Was there anything in Anna's character as you knew
7 her that would lead you to believe that Anna was capable
8 of harming her children or her husband absent a psychotic
9 delusion?

10 A Never.

11 MR. BANNISTER: Thank you.

12 No further questions, Judge.

13 THE COURT: Thank you.

14 Cross?

15 CROSS EXAMINATION

16 BY MR. MAYE:

17 Q Good morning, Ms. Simmons.

18 A Good morning.

19 Q Do you have any medical expertise, psychiatric
20 expertise?

21 A No.

22 Q Anything of that nature?

23 A No.

24 Q In relationship to when the crime took place, do you
25 recall the last time you would have had communication

1 with Ms. Simmons?

2 A I'll be honest. Third child, I had mommy brain. It
3 was at some point between August and that May I know I
4 talked to her, but I don't remember specific.

5 Q Okay. To narrow that down a little bit, did you
6 have any communications, either phone calls, visits,
7 opportunities where you would have had an opportunity to
8 perceive Ms. Simmons [sic] in the time leading up to the
9 crime, during the crime or after the crime?

10 A Not that I recall, no.

11 MR. MAYE: That's all I have. Thank you.

12 THE COURT: Thank you.

13 MR. BANNISTER: Nothing further, Judge.

14 THE COURT: You may step down, ma'am.

15 MR. BANNISTER: Your Honor, I would like to include
16 as part of our case in chief the record from the trial.
17 Unfortunately, Mr. Mauldin apparently has my only copy --
18 hardcopy. So if I could just provide that at a later
19 date or we can do it electronically. I'm not sure how we
20 normally do that.

21 MR. MAYE: Are we speaking to the ---

22 THE COURT: The trial transcript?

23 MR. MAYE: --- boxes and boxes of medical records?

24 MR. BANNISTER: No, no, no. Just the transcript.

25 MR. MAYE: Oh. I believe that's already been

1 provided.

2 THE COURT: I had -- yeah. I had the transcript in
3 what y'all had sent, I guess, a packet.

4 MR. BANNISTER: All right. Well, if that's part of
5 the record, then I'm good.

6 MR. MAYE: It's fine by me.

7 THE COURT: Just verify it. That's fine.

8 MR. BANNISTER: And then if that's in the record,
9 then I don't have anything further on behalf of
10 Ms. Simpson.

11 THE COURT: Anything else that you need to put in
12 the record?

13 MR. BANNISTER: No, sir.

14 MR. MAYE: Your Honor, I actually would like to call
15 one witness.

16 THE COURT: All right.

17 MR. MAYE: I don't plan to take long, but can we
18 take maybe ---

19 THE COURT: Take as much time as you need.

20 MR. MAYE: Thank you. Can we have maybe a
21 five-minute break.

22 THE COURT: Sure. That's fine.

23 MR. MAYE: Thank you.

24 (WHEREUPON, a recess is taken at 11:27 AM; proceedings
25 reconvened at 11:38 AM.)

1 THE COURT: Mr. Maye?

2 MR. MAYE: The respondent would call Solicitor
3 Wilkins to the stand.

4 THE CLERK: Mr. Wilkins, please place your left hand
5 on the Bible and raise your right hand.

6 WHEREUPON,

7 WALT WILKINS

8 After having been duly sworn, testified as follows:

9 THE CLERK: Thank you. Please state your full name
10 for the record when you're seated.

11 DIRECT EXAMINATION

12 BY MR. MAYE:

13 Q Good morning, Mr. Wilkins. Is it okay if I refer to
14 you as Mr. Wilkins instead of Solicitor Wilkins every
15 time?

16 A Absolutely.

17 Q I'm not going to offend you in any way?

18 A Not at all.

19 Q Thank you.

20 During the trial of Ms. Simpson, do you recall
21 certain types of evidence coming in even through some of
22 your questioning that demonstrated she was of a Christian
23 faith, that she was a good mother and was expressing
24 doubt and needed reassurance, things of that nature?

25 A Yes. Yes, I do. If I recall correctly, I believe

1 it came in through her mother who I was able to question,
2 and some of the conversations that she had with her
3 mother and maybe even some text messages or emails or
4 something like that. I can't remember. It's been a
5 while.

6 Q But you recall that happening?

7 A Yes.

8 Q Would that also include stuff about, you know, her
9 trying to work with her husband and her marriage, her
10 being reassured by the story of her adoption and things
11 of that nature?

12 A Yes. I do remember that.

13 Q And the way that that came in, the way that that was
14 presented both by you and by the cross throughout the
15 trial, did you ever feel that that crossed into the
16 threshold of character evidence under Rule 404?

17 A No. It never -- never was character evidence. I
18 mean, they never tried to submit character evidence. But
19 certainly, her character about her good nature and her
20 did come in through that.

21 Q If the defense had attempted to call a witness for
22 the purpose of admitting character evidence under
23 Rule 404(a)(1), I believe, would you have made an
24 objection?

25 A I would have, yes.

1 Q What do you think your grounds for the objection
2 would have been?

3 A Most likely relevancy. The nature of this trial was
4 the not guilty by reason of insanity defense. And it
5 really was what was her mental state at the time of the
6 murder and attempted murder. And that was what the
7 entire trial was focused on.

8 The defense had two paid experts and an independent
9 state expert saying that she was insane at the time of
10 the murder. The prosecution had in a rebuttal her
11 treating psychiatrist who wasn't even a forensic
12 psychiatrist. And so the State's theory going forward
13 was using our common sense in her actions before, during
14 and after the murders and attempted murders were using to
15 show the jury that she was not legally insane at the
16 time.

17 Q Hypothetically speaking, if you'd have raised that
18 objection and the Court had not agreed with you and
19 allowed that kind of testimony in, do you agree that that
20 would have opened the door for you to admit bad character
21 evidence in response?

22 A It would have. And we did have bad character
23 evidence available to us that we could have
24 cross-examined those character witnesses with. We had
25 some Facebook messages, I believe, on how she raised her

1 children and things that give us instances or actions of
2 Anna Simpson prior to the murders.

3 Q Okay. So you would have had some evidence that
4 addressed how she was as a mother?

5 A Yes.

6 Q You would have had some bad character evidence as to
7 how she was as a wife to her husband?

8 A Yes.

9 Q Anything specific you recall from your files?

10 A Yes. If I can remember. It's been a while.

11 I know there were some Facebook messages about, you
12 know, how she punished her children, giving them hot
13 sauce. But even more importantly, while her character of
14 how she raised her children, how she was as a mother, the
15 evidence that we most likely would have tried to get in
16 was the sort of beginning of the dissolution of her
17 marriage which would have given her motive to engage in
18 the actions that she was, therefore showing that she was
19 not insane at the time, that she had a reason.

20 She was angry. Because it was believed by us, based
21 on circumstantial evidence through email or through web
22 site searches by Mr. Simpson, the victim, before the
23 murders and attempted murders that he was planning on
24 leaving her, and therefore, she would be left abandoned
25 as a spouse, she would have problems, you know, keeping

1 her kids and going through a divorce and all that kind of
2 stuff.

3 So we would have tried to engage in that line of
4 questioning as well which would have been very important
5 or very helpful to the State in showing that she was not
6 insane at the time. But, of course, we never introduced
7 any of that.

8 Q But if the character evidence had been brought in,
9 that would have been your intentions and your efforts?

10 A We absolutely would have.

11 Q Do you have an open file policy?

12 A I do.

13 Q So is it reasonable to think that the defense would
14 have had access or would have actively known about some
15 of these things?

16 A They would have had all the information I would have
17 had.

18 Q If the defense -- or excuse me -- yeah, the defense
19 had presented a witness who essentially testified to
20 having approximately a yearlong friendship with
21 Ms. Simpson in the year leading up to the crime and the
22 description of the testimony was essentially that she was
23 extremely helpful in the classroom, you know, one of the
24 best parents in terms of being helpful, and would you
25 have cross-examined her on whether she had witnessed or

1 perceived any delusions or psychoses or paranoias? Would
2 you have used that as cross?

3 A We absolutely would have.

4 And that would have been a nice gift to the
5 prosecution from my perspective. Had they brought that
6 out, we certainly would have done. What we did in many
7 other witnesses during the time of the murder is focus on
8 her actions that appeared absolutely reasonable and sane,
9 nondelusional and normal in her actions.

10 Q In allowing the trial to go in that direction and
11 your opportunity to get into that type of evidence, would
12 it have changed the nature of the case in your favor, do
13 you think?

14 A Absolutely, yeah.

15 Q Would you have considered it a risky decision on the
16 part of the defense to go in that route knowing what you
17 had available?

18 A I would have. And I think that's the reason that
19 they didn't pursue that route because it would have
20 opened the door to that line of questioning and those
21 kind of potential motives of her and showing that she was
22 of sound mind during the time of the murder and attempted
23 murders. And so yeah. It would have been very risky for
24 the defense, and we were prepared, hoping, almost, that
25 they would open those doors for us. But they certainly

1 Did not.

2 Q But otherwise, the defense had three expert
3 witnesses. Would you characterize them as very strong
4 witnesses at trial?

5 A They were extremely strong. And we did our best to
6 cross-examine them as hard as we possibly could. We felt
7 that this trial for the prosecution was a tough trial,
8 very hard-fought trial. Our position was that she was
9 sane at the time, and they had three experts that said
10 opposite. So we had to overcome that with the jury.

11 Q And in speaking to all this, could this have
12 distracted the jury or confused the jury away from the
13 medicine and the expertise as to criminal responsibility?

14 A Absolutely.

15 MR. MAYE: That's all I have, Your Honor.

16 THE COURT: Cross?

17 MR. BANNISTER: Thank you, Your Honor.

18 CROSS EXAMINATION

19 BY MR. BANNISTER:

20 Q Solicitor Wilkins.

21 A Mr. Bannister.

22 Q How are you?

23 All right. So let me talk to you just briefly about
24 character evidence. You would agree with me that there
25 was no character evidence introduced by the State -- I'm

1 sorry -- by the defense during the trial of this case.

2 A Not pursuant to Rule 404(a). None admitted by the
3 judge under that rule. There were conversations about
4 with her mother I remember -- again, it's been a while --
5 about how Ms. Simpson was with her mom. And there were
6 sort of personal conversations, I think, that they were
7 having.

8 Q You would agree with me that Mr. Mauldin did not ask
9 for or receive a good character charge from the judge.

10 A That's correct.

11 Q Would you agree with me that had good character been
12 introduced regardless of what the State put in in
13 opposition to that, that the jury would ultimately have
14 been the arbiter of which set of good character or bad
15 character they chose to believe or disregard?

16 A Absolutely, yeah. That's exactly what a jury's
17 supposed to do. They're supposed to weigh both sides of
18 the coin and make their conclusions.

19 Q And during the trial of the case and the State's
20 case in chief, would you agree with me that to prove
21 beyond a reasonable doubt her sanity, that you did not
22 call any expert witnesses during your case in chief?

23 A We did not.

24 Q And so the proof of sanity that got you past the
25 directed verdict then had to have been the lay witnesses

1 that you called during the case in chief, correct?

2 A There was some testimony, I believe, by some ER
3 doctors, so I don't know -- I can't remember if we
4 qualified them as an expert or not. So there could have
5 been that. But sure. It was many lay witnesses and
6 focusing on her actions up to -- before, up to and then
7 after the event.

8 Q So let me say that a different way. There were no
9 psychiatric expert witnesses called by the State to opine
10 on her sanity.

11 A That's correct.

12 Q And so while there were experts in other fields like
13 maybe ballistics and ER nurses and EMS techs, it was, in
14 essence, a lay-witness driven presentation in the case in
15 chief.

16 A Absolutely. Because it was a defense's -- the
17 defense's defense was -- was insanity. And so in our
18 case in chief, we were going forward with our normal
19 prosecution on a normal case. So that defense wasn't
20 presented until after we rested and then we rebutted with
21 our one witness.

22 Q And when did you determine that Dr. Smith was going
23 to be a witness that you were going to call?

24 A It was a couple of weeks before the trial when we
25 first met with him. And I can't remember the reasons we

1 either didn't pursue him for some reason with a
2 conversation, didn't -- wasn't aware of him. I know that
3 we had a HIPAA medical record issue so we dealt with that
4 for a long time. And then in trial -- it was during
5 trial preparation where we were meeting with every
6 witness, and Dr. Smith was on the list. And so we met
7 with him, and that's when the conversations began.

8 Q Is there any disagreement that the first time you
9 notified the defense that you intended to offer Dr. Smith
10 as an expert witness on criminal responsibility was when
11 trial had begun?

12 A He was on our witness list before trial started.

13 Q Don't disagree with that.

14 A Yeah.

15 Q But the first time that it was made known that he
16 was going to be a witness relevant to criminal
17 responsibility.

18 A Well, it's hard to say that. They had the same
19 medical records that we had. We actually got the medical
20 records from them, so they knew that she was -- he was
21 there, her treating physician. So they're aware of the
22 medical records that he had made up until the incident.
23 They knew the last time that he had met with her and
24 counseled her. So, you know, they knew everything that I
25 knew. They just hadn't talked to him.

1 MR. MAYE: Your Honor, I'd like to make a -- just
2 renew my continuing objection because we're getting into
3 the notice requirements that we discussed.

4 THE COURT: So noted.

5 BY MR. BANNISTER:

6 Q I only have a couple more questions.

7 I appreciate that answer, but I don't think it got
8 to my question so let me try my question one more time.
9 So I'm asking you when did the State put them on notice
10 that Dr. Smith was going to testify about criminal
11 responsibility?

12 THE COURT: And I think he answered.

13 THE WITNESS: I don't know the answer to that other
14 than we made them aware of him being a potential witness
15 just like we always do on our witness list. We tried the
16 case and then when we decided to call him as a rebuttal
17 witness, we called him. But I didn't walk over and say,
18 hey, we're going to call an expert witness and whatnot,
19 because, one, I didn't have to, and two, he was on the
20 witness list.

21 BY MR. BANNISTER:

22 Q And the didn't have to part of that is based on
23 Rule 5.

24 A Sure.

25 MR. BANNISTER: No further questions, Judge. Thank

1 you.

2 THE COURT: Anything else in redirect?

3 MR. MAYE: Nothing further, Your Honor.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: Can we release this witness?

6 MR. MAYE: Yes, Your Honor.

7 MR. BANNISTER: Yes.

8 THE COURT: Anything else from the State?

9 MR. MAYE: Respondent rests.

10 MR. BANNISTER: And the petitioner rests.

11 THE COURT: Okay. It's my understanding, based on
12 discussion with counsel, that we are not going to have
13 any type of closing arguments. If you want to say
14 something briefly, you can. Just based under the
15 circumstances, problems with Internet and also just after
16 discussing all this with counsel, I have encouraged and
17 we've discussed the fact that you are going to do
18 post-trial briefs on all issues. We're going to allow
19 you to receive the transcript, and then after that y'all
20 can just let me know. I think you were talking, Counsel,
21 about 45 days after receiving it. But just, please,
22 reach out to me and let me know if you need any
23 additional time.

24 Is there anything else that y'all need to discuss
25 with the Court?

1 MR. BANNISTER: Yes, Your Honor. I have -- this is
2 about funding, so it really doesn't have to do with the
3 ins and outs of the postconviction relief.

4 So just to put on the record, when I was hired by
5 the family to represent Ms. Simpson, we had to confirm
6 that she still had indigent status. That was actually a
7 hearing that we had. And then I subsequently sought for
8 funding for Dr. Ballenger because of his particular
9 expertise. I felt like we needed him and that was
10 approved.

11 And then, Judge, we got -- I can't remember if we
12 were into COVID by that time or -- anyway, I filed a --
13 we went through our initial funding, and then I filed for
14 additional funding in August of last year. That just
15 never made it on a PCR docket because I think we were
16 just so far behind and it was an issue.

17 So what I'd like to do, Judge, is I'd like to get
18 with Dr. Ballenger so I can know what the total bill is
19 at this point, and then I would -- if you're inclined to
20 grant the continued and sort of final bills from
21 Dr. Ballenger, I'd like to submit that to you with an
22 updated amount after his testimony today which I should
23 have. And then I ask that you then direct OID to pay his
24 fee.

25 Thank you.

1 THE COURT: Okay. So I will grant your motion. And
2 then if you will just file with the Court amended costs
3 and expenses. And it's my understanding you have filed
4 this motion.

5 MR. BANNISTER: I have. It should be August maybe
6 23rd of 2023, something like that. I know it was August
7 of '23.

8 THE COURT: Yes. August 31, '23.

9 Okay. Anything else?

10 MR. BANNISTER: So I'll submit the order to the AG
11 and I'll copy them on the order for you, Your Honor.
12 Does that work?

13 THE COURT: Okay. Anything else?

14 MR. BANNISTER: No, sir.

15 MR. MAYE: Nothing further.

16 THE COURT: Y'all both did excellent jobs
17 representing your respective parties. Thank you.

18 (WHEREUPON, proceedings concluded at 11:55 AM.)
19
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER
2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF PICKENS)
5
6

7 I, CHERYL A. SMITH, Official Court Reporter for the
8 Thirteenth Judicial Circuit of the State of South
9 Carolina, do hereby certify that the foregoing is a true,
10 accurate and complete Transcript of Record of the
11 proceedings had and evidence introduced in the trial of
12 the captioned case, relative to appeal, in the Court of
13 Common Pleas for Pickens County, South Carolina, on the
14 7th and 8th day of October, 2024.

15 I do further certify that I am neither of kin,
16 counsel, nor interest to any party hereto.

17

18 December 4, 2024
19
20

21 *Cheryl A. Smith*

22 Cheryl A. Smith, CVR-M

23 Court Reporter
24
25

Clerk of Court Pickens County, SC
APR 8 25 AM 9:03

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Suzanna Brown Simpson #368727,)
Petitioner,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

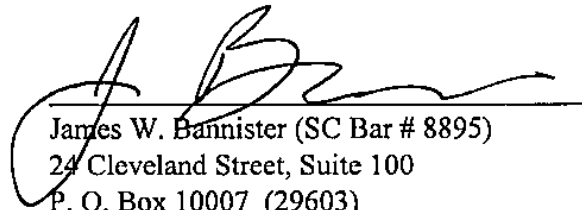
CASE NO.: 2020-CP-39-00617

**POST-TRIAL BRIEF
AND
PETITIONER'S PROPOSED ORDER**

Petitioner, Suzanna Brown Simpson, hereby files this Post-Trial Brief and proposed Order, pursuant to the Court's directions. At the conclusion of the Post Conviction Relief Hearing which was held on 10/07/24-10/08/24, the Court requested proposed orders that reflect arguments which would have been set forth in a brief format. Undersigned Counsel incorporates Petitioner's proposed Order as if set forth verbatim herein, attached as Ex. 1. Counsel has prepared this proposed order with an effort to be meticulous in addressing the merits of each and every issue raised by the Petitioner as directed in *Fishburne v. State*, 427 S.C. 505, 513, 832 S.E.2d 584, 588 (2019).

Respectfully submitted,

BANNISTER, WYATT & STALVEY, LLC



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Attorney for the Petitioner

April 7, 2025
Greenville, South Carolina

Ex. 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF PICKENS	)	
	)	CASE NO.: 2020-CP-39-00617
Suzanna Brown Simpson #368727,	)	
	)	
Petitioner,	)	
	)	
v.	)	PETITIONER'S PROPOSED ORDER
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Clerk of Court Pickens County, SC
APR 8 '25 AM 9:03

PROCEDURAL HISTORY

In February 2014, Petitioner 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.

At the conclusion of trial, the jury returned a verdict of guilty on all charges and the court sentenced Petitioner 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.

An appeal followed. An opinion was filed on January 23, 2019, affirming the convictions. *State v. Simpson*, 425 S.C. 522, 823 S.E.2d 522 (Ct. App. 2019). Certiorari was granted on August 6, 2019, and later dismissed as improvidently granted on January 22, 2020.

A timely application for Post Conviction Relief ("PCR") was filed and subsequently amended twice. The final PCR application contains five allegations of ineffective assistance of counsel. Petitioner asserted trial counsel was ineffective for the following reasons: (1) failure to assert Due Process rights pre-trial to force the State to reveal its expert and to reveal information about the expert's opinion sufficient to prepare; (2) failure to use Rule 613(b) to counter the State's expert witness; (3) failure to call favorable lay witnesses to counter the State's malice theme or to offer "good character evidence"; (4) failure to interview, to prepare, or to prepare for Petitioner's treating physician as a witness; and (5) failure to bring out the mismanagement of Petitioner's medical treatment and, specifically, the contribution Petitioner's prescription Adderall had in her psychosis.

The PCR trial took place on October 7th and 8th, 2024. Petitioner called her treating physician, both of her trial counsels, two (2) of the experts from the original trial, four (4) lay witnesses, and an additional expert. The State called the Solicitor as its only witness. At the conclusion of the trial, the Court directed the parties to obtain the PCR trial transcript and to subsequently submit proposed Orders and/or briefs. Specifically, the Court requested submissions from the parties sufficient to state their positions as to the allegations of ineffective

assistance of trial counsel. The Court requested that any references to the trial record, citations to the PCR record, and any pertinent legal issues and case law be included. Each of the parties submitted proposed orders which were filed with the Clerk and are, by this Order, made a part of this record as a summation of the parties' positions.

This matter is now before the Court for a final order on the Petitioner's PCR application.

STANDARD OF PROOF / APPLICABLE LAW

"A criminal defendant is guaranteed the right to effective assistance of counsel under the Sixth Amendment to the United States Constitution." *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). "In order to establish a claim for ineffective assistance of counsel, the applicant must show that: (1) counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) counsel's deficient performance prejudiced the applicant's case." *Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008). Deficiency "is measured by an objective standard of reasonableness." *Taylor*, 404 S.C. at 359, 745 S.E.2d at 102. To establish prejudice, an applicant must show that "but for counsel's error, there is a reasonable probability the result of the proceedings would have been different." *Id.* "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* (quoting *Strickland v. Washington*, 466 U.S. 668, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). "In other words, he must show that 'the factfinder would have had a reasonable doubt respecting guilt.'" *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011) (quoting *Strickland*, 466 U.S. at 695). "Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim." *Strickland*, 466 U.S. at 700.

"Counsel's performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (quoting *Strickland*, 466 U.S. at 690). "Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Id.* "A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689. "[W]here trial counsel admits the testimony of a certain witness may have made the difference in obtaining an acquittal, the Court may find ineffective assistance." *Pauling v. State*, 331 S.C. 606, 610, 503 S.E.2d 468, 471 (1998).

**ISSUE ONE (SECOND AMENDED COMPLAINT ¶10 (a) and (b))
(DUE PROCESS – EXPERT DISCLOSURES)**

The first issue Petitioner presented at trial was that trial counsel was ineffective for failing to file the necessary motions to force the State to give pre-trial notice of any experts it intended to call, the substance of the expert opinion, the expert's curriculum vitae, and the underlying basis for the proffered opinion. (PCR Tr. p. 5-13.) Petitioner relies on the trial record and her counsel's argument at the PCR trial. Specifically, Petitioner points to the lack of any pre-trial motion based in Due Process to require disclosure by the State related to expert testimony.

The significance of this issue as a basis for finding ineffective assistance of counsel is supported, in part, by the fact that five out of the six issues addressed by the Court of Appeals related to the State's use of Dr. Smith's testimony as an expert. *State v. Simpson*, 425 S.C. 522, 823 S.E.2d 229 (Ct. App. 2019).

Stated succinctly, Petitioner asserts that the constitutional mandates of Due Process required trial counsel to pursue disclosure of information relating to the State's potential expert testimony as previously described. On the one hand, Petitioner concedes that no specific case law currently requires a prosecutor in South Carolina to give defense counsel anything not compelled by Rule 5 of the S.C. Rules of Criminal Procedure, or compelled by *Brady* or *Kyles* and their progeny. Petitioner's counsel also concedes that, as presented, this issue is novel, but only in the sense that South Carolina courts have not specifically addressed the potential Due Process requirement that the State disclose an expert opinion, the expert's curriculum vitae, and the underlying basis for the proffered opinion prior to trial.

On the other hand, Petitioner's counsel correctly states that South Carolina's criminal courts appear to be unique, at least within South Carolina, as it relates to pre-trial disclosures of expert testimony. By way of example, Federal Courts within South Carolina require expert disclosures in criminal cases. *Fed. R. Crim. P. Rule 16(a)(1)(G)*. South Carolina's civil courts also require expert disclosures. *SCRCP Rule 26(b)(4)(A) and Rule 26(b)(4)(B)*.

The premise of Petitioner's issue is one of basic fairness. Federal Courts have explained that the federal criminal rule on expert disclosures "is intended to minimize surprise that often results from unexpected expert testimony ... and to provide the opponent with a fair opportunity to test the merit of the expert's testimony through focused cross-examination." *United States v. Smith*, 701 F.3d 1002, 1007 (4th Cir. 2012) (quoted in the *Advisory Comm. Note to Fed. R. Crim. P. Rule 16(a)(1)(G)*). Petitioner's reasoning tracks this language. In addition, Petitioner relies on the federal and state rules governing expert disclosures in federal criminal courts and South Carolina civil courts as a basis for notice of this issue to trial counsel. Statements from Trial Counsel make it clear that he was aware of the Due Process issues presented with the State's non-disclosure. "They [the State] don't have to tell us a thing, apparently." (Trial Tr. Vol. 2 p.398 ln. 15-16.) "That scenario [no notice], which is what is playing out before our very eyes, is [a] fundamental denial of due process under the state and federal constitution." (*Id.* at ln. 19-

21.) Petitioner's position is that it was ineffective assistance for trial counsel to have allowed the defense to be put in this position after trial commenced. At the point trial counsel became aware the State intended to call Dr. Smith as an expert witness, it was simply too late.

Petitioner asserts that proper Due Process pre-trial motions requesting information on the State's proposed experts was a necessity. As further support for this position, the Court takes note that Petitioner's defense was based almost completely on the concurring opinions of three forensic psychiatrists. Anticipating the need to be prepared for the submission of a different expert opinion by the State was manifest.

Of further concern, the Court notes that, to some extent, it appears part of the State's trial strategy was not to disclose the anticipated expert opinion. *See, e.g.* (PCR Tr. p. 73 ln. 17-25) (discussing a pre-trial conference about experts between trial counsel and the State). At trial, the State noted that it "does not have to give notice of any expert witnesses." (Trial Tr. Vol I. p. 87 ln. 5-13.) Later in the same colloquy, the State went on to note that they intended to try to qualify Dr. Smith as an expert in psychiatry, possibly in the case in chief or possibly in rebuttal, but said: "I don't want to tell the defense, and I don't know myself." (Trial Tr. Vol I p. 108 ln. 2-10.) However, Dr. Smith had been "subpoenaed 13 days before the opening day of the trial" and met with the Solicitor and assistant solicitor "six days before the opening of the trial." (PCR Tr. p. 29 ln. 13-19.)

In the Trial transcript, trial counsel forecast the situation non-disclosure of the State's expert witness would create. Trial counsel stated: "They [the State] have given to the defendant in this case, until this very moment, zero notice of the intention to provide a forensic expert witness either in the State's case-in-chief or potentially in reply." (Trial Tr. Vol. 2 p.397 ln. 19-22). Trial counsel also stated:

We're going to object to the calling of a witness that we've gotten no notice of. And you're talking about a case of hiding the ball. That is about as bad of hide the ball as I have ever even imagined. We were told at the beginning of this trial that Jeff Smith was a potential State's witness. Jeff Smith is the treating psychiatrist at Piedmont Psychiatric in Greenville. He is this woman's doctor who's not a forensic psychiatrist.

(Trial Tr. Vol. 2 p.398 ln. 2-10.) In response, the State made it clear that there was "a significant chance [they] intend[ed] to call rebuttal witnesses." (Trial Tr. Vol. 2 p.403 ln.12-13.) In addition, the State made it clear that the rebuttal witness would be the Petitioner's treating physician, Dr. Jeff Smith. (Trial Tr. Vol. 2 p.403 ln.20-21.) This exchange occurred after the jury was struck and the case had begun. This treating physician ultimately did testify in the State's reply. Dr. Smith was qualified as an expert in the field of psychiatry. (Trial Tr. Vol. 4 p.3-11.) Dr. Smith was permitted to give a forensic opinion on the Petitioner's state of mind at the time of the incident, the primary issue in the case. (Trial Tr. Vol. 4 p.656 ln.11-17.) Specifically, Dr. Smith testified that, as to "criminal responsibility", Petitioner "knew right from wrong but was unable to conform her conduct to the behavior of the law." *Id.*

Trial counsel feared that a “hide the ball” move was afoot. Given the insanity defense that trial counsel presented, it was incumbent to be prepared for contradicting expert testimony. Forcing the issue with regard to the State’s intent to call an expert witness before the trial of the case would have exposed the “hide the ball” strategy, exposed the proposed expert, and given trial counsel a “fair opportunity to test the merit of the expert’s testimony through focused cross-examination.” Proof of the assertion that the State would have been forced to reveal its intended expert pre-trial is supported by the exchange between the State and trial counsel that is referenced above. Trial counsel simply forced the issue of naming the State’s expert too late in the game. Even after the State’s expert was named, Petitioner’s trial counsel still had little information about what Dr. Smith’s specific opinion would be and, more importantly for cross-examination, the limited nature of the basis for this opinion.

The State asserts that the issue of expert disclosure was addressed by the Court of Appeals. *Simpson*, 425 S.C. at 538-539; 823 S.E.2d at 237-238. The Court’s review of the Appellate decision indicates that the issue before the Court of Appeals related specifically to disclosure required by Rule 5, SCR Crim. P. and to exculpatory evidence under *Brady*. *Id.* The Court of Appeals addressed disclosure of experts under Rule 5 and concluded, as conceded by Petitioner, that no disclosure is required other than written reports if they exist. *Id.* at 539, at 238 (holding “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.”) The *Brady* issue related to the medical records Petitioner’s trial counsel argued should have been turned over to him. *Id.* at 539, at 238. These records, however, were already in trial counsel’s possession. *Id.* (stating that Petitioner’s medical “records were then disclosed to the defense experts and the court appointed psychiatrist “ pursuant to Petitioner’s “signed HIPPA release.”)

While the appellate issues may obliquely touch on the issue Petitioner is now presenting in her PCR application, they are different. The issue Petitioner is now raising is that Due Process, in the context of expert witnesses, requires disclosure beyond Rule 5 and *Brady*, and her trial counsel was ineffective for not recognizing this argument. *See, e.g., Advisory Comm. Note to Fed. R. Crim. P. Rule 16(a)(1)(G)*.

In addition to its argument that this issue was addressed on direct appeal, the State points to the appellate holding regarding the lack of any prejudice from the admission of Dr. Smith’s testimony.

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

Simpson, at 540, at 238.

The prejudice asserted in the PCR application is different. Petitioner's PCR position, as the Court understands it, is that the starting point for trial counsel to effectively use Dr. Smith, either in direct or on cross, was to force the State to reveal him as an expert witness. Trial counsel simply did not get to that point until it was too late.

The ineffectiveness of having to deal with Dr. Smith as a witness during trial, as opposed to prior to trial, is compounded by the fact that Dr. Smith potentially had helpful things to say about Petitioner, agreed that Adderall was a significant contributor to Petitioner's psychosis, and could have offered a more helpful opinion. The particulars of Dr. Smith's potential helpful testimony are described more fully below in the discussion of Issue Four (Failure to prepare Dr. Smith) and supported in Issue 5 (Adderall Induced Psychosis).

As a result, the Court finds that trial counsel was ineffective for failing to file the necessary Due Process pre-trial motions to force the State to disclose not only the name of its expert, but also the substance of the expert testimony, and the basis for the expert testimony.

**ISSUE TWO (SECOND AMENDED COMPLAINT ¶ 10(c) and (d))
(INEFFECTIVE ASSISTANCE – PRIOR INCONSISTENT STATEMENT)**

Petitioner asserts that trial counsel was ineffective for failing to impeach the State's expert witness, Dr. Smith, with a prior inconsistent statement made to the Petitioner's expert, Dr. David Price. Petitioner relied on the trial transcript, the Court of Appeals decision on direct appeal, and Dr. Price's PCR testimony.

In Petitioner's original trial, Dr. Price was qualified as an expert in forensic psychiatry. He offered his opinion that Petitioner did not know right from wrong at the time of the crime, and that Dr. Smith, Petitioner's treating physician, agreed with his opinion. This statement: "Dr. Smith agreed with my opinion", received a hearsay objection which was sustained by the Court. (Trial Tr. Vol.3 p.500 ln.10- p.501 ln. 2.).

During the State's rebuttal case, Dr. Smith stated the following about this conversation with Dr. Price:

I met in person with Dr. Price in early March of this year. He allowed me to briefly look over the report that Dr. Frierson, the forensic psychiatrist, had prepared, and he also told me what his findings were. I don't think he had dictated his report at that time. He asked my opinion. I said, "Well, based upon what you were seeing at that time, I can see how you arrived at your decision," but I was very pointed in telling Dr. Price that this is an entirely different individual than the one I saw for 34 visits. There is nothing about this that is similar in clinical presentation. I was so struck by that, that within a few days I actually telephoned Dr. Frierson in Columbia. I know Dr. Frierson, have utmost respect for him. I saw him when he was a medical student and I was a resident. And, again, he -- I had only perused his report. I had not had time to look at it in great detail, but he told me how he arrived at the report, and I reiterated to him that I had never seen

anything like this in 26 years of practice. It was like we were talking about two different individuals.

(Trial Tr. Vol 4 p. 649 ln. 17 – 650 ln.12.).

Rule 613(b), SCRE, governs prior inconsistent statements. This rule requires the witness to be given notice of the substance of the statement, the time and place it was made, and the person to whom it was made. If the witness denies the statement, then extrinsic evidence may be presented. In this case, Petitioner asserts that trial counsel failed to follow the dictates of Rule 613(b) during Dr. Smith's cross-examination. Trial counsel did not pursue a line of inquiry consistent with the dictates of Rule 613(b). (Trial Tr. Vol. 4 p.657- 688). Thereafter, trial counsel compounded the error by failing to re-call Dr. Price to enter Dr. Smith's prior inconsistent statement. *State v. Simpson*, 425 S.C. 522, 541 n.4, 823 S.E.2d 229, 239 n.4 (Ct. App. 2019). The Court of Appeals pointed out this failure in their discussion of Dr. Smith's testimony and the exclusion of Dr. Price's statement about Dr. Smith. *Id.*

At the PCR trial, Petitioner called Dr. Price and presented a fulsome recital of the testimony that would have been available to trial counsel had he followed the dictates of Rule 613(b). Dr. Price reiterated his trial testimony that Dr. Smith had agreed with Dr. Price's opinion. (PCR Tr. p. 120 ln. 6-8.) Dr. Price testified at the PCR trial that Dr. Smith was unequivocal in his concurrence with Dr. Price's opinion. (PCR Tr. p.120 ln.24 -- p. 121 ln.7). In addition, Dr. Price testified that Dr. Smith did not convey any contrary opinion to him. *Id.* at p.120 ln. 6-8.

Dr. Smith's testimony was the subject of heated debate during the trial, and made up 5 of the 6 issues presented on Petitioner's direct appeal. In addition, the Court of Appeals took note of trial counsel's failure in this regard. *See, e.g. Simpson*, 425 S.C. at 541 n.4, at 239 n.4. The record is void of any strategy trial counsel exercised for this decision. As a result, the Court finds that trial counsel was ineffective for failing to follow through with a Rule 613(b) line of inquiry. Even if the questions trial counsel asked were sufficient pursuant to Rule 613(b), trial counsel failed to call Dr. Price back to the stand to enter testimony pursuant to this rule. And, Dr. Price was available to be re-called, but was never asked. (PCR Tr. p. 122 ln. 1.)

Once again, this issue ties directly into Issue One and Issue Four and compounds the prejudice to Petitioner's original trial.

**ISSUE THREE (SECOND AMENDED COMPLAINT ¶ 10(e))
(INEFFECTIVE ASSISTANCE – GOOD CHARACTER / MITIGATION WITNESSES)**

The Petitioner asserts that it was ineffective assistance of counsel not to interview, prepare, and call friends and family as witnesses during the defense case for several reasons. First, friends and family were available to offset the “malice all over the case” theme of the State. Second, friends and family were available to testify about the dramatic contrast between Petitioner’s loving, caring, and otherwise normal behavior to her behavior days prior to both of her delusional psychotic breaks which included the incident date. Finally, friends and family were available to provide good character evidence for Petitioner pursuant to Rule 404(a)(1).

At the original trial, the State presented its witnesses in a manner that painted the Defendant as a cold and calculating person who, with pre-meditation, decided to kill her husband and two children and then blame it on mental illness. This malice oriented theme permeated the State’s case from opening statement to closing argument. Opening statement for the State was that: “Anna Simpson knew right from wrong when she woke up one morning, got some guns, shot her husband, shot her two children and left the house in a car and was found by EMS later.” (Trial Tr. Vol. I p. 171 ln. 19-22). Closing argument for the State included statements like: “There is malice all over this case.” (Trial Tr. Vol. IV p. 730 ln. 9-10). “She was acting like an angry wife and fussing at the kids.” (Trial Tr. Vol. IV p. 738 ln. 18-19). “[T]he facts of this case tell you she knew what she was doing was wrong, she did everything she could not to be detected.” (Trial Tr. Vol. IV p. 747 ln. 8-11).

As a threshold matter, the Court finds that Petitioner’s proposed lay witnesses were available during the original trial. The Court also finds that at least one of the two Petitioner’s trial counsels was aware of these witnesses. (PCR Tr. p. 182 – 184.)

Using these lay witnesses in the manner Petitioner describes as part of her defense was simply never considered by trial counsel. (PCR Tr. p. 186 ln. 22- 187 ln. 1). “The criminal responsibility was front and center in this case from the very day one.” (PCR Tr. p. 62 ln. 1-2.) From that point forward, trial counsel had “pretty much a laser-focused mental health defense” to the exclusion of any other defense opportunities. (PCR Tr. p. 181 ln.24 – p. 182 ln. 4.). Trial counsel “did not consider” bringing witnesses that could have testified to Petitioner’s good character. (PCR Tr. p. 87 ln. 11-16.)

In addition, both trial counsels testified at the PCR trial that there was no strategic reason for not calling family and friends as witnesses for the Petitioner. (PCR Tr. p. 82 ln. 24- 83 ln. 17.) (lead trial counsel); (PCR Tr. p. 186 ln. 4-14, p. 187 ln. 8-9)(second chair trial counsel). Trial counsel did not interview or otherwise prepare these potential witnesses. (PCR Tr. p. 183 ln. 15-22). In addition, the lead trial counsel didn’t appear to clearly understand the potential for a jury instruction on good character had he chosen to offer good character pursuant to Rule 404(a)(1), SCRE. *See, e.g.*, (PCR Tr. p. 87 ln. 2-16).

Petitioner presented each of the proposed defense lay witnesses at the PCR trial. The Court had the opportunity to observe first-hand the sincerity and credibility of each.

Susan Brown, Petitioner's Mother

The Court was particularly interested in Petitioner's mother, Susan Brown. Susan Brown was the only lay witness proposed by Petitioner that testified in the original trial. She was called by the State. As a result, trial counsel cross-examined Petitioner's mother. Mrs. Brown was the twelfth (12th) witness of the State's fifteen (15) witnesses in its case in chief. By this point, the State's malice theme was clearly in the record. Petitioner asserts that being in a position to ask leading questions afforded trial counsel a unique moment to offset malice and to put forward good character evidence.

The State's presentation of Mrs. Brown's testimony was solely focused on the conversations Mrs. Brown had with Petitioner on May 13, 2013 (the day that led up to the incident). (Trial Tr. Vol. II p. 364-367.). In particular, the State used Petitioner's statement to her mother that Petitioner couldn't "take care of the children anymore", (Trial Tr. Vol. II p. 366 ln. 24-25), to show a malice-motive. *See, e.g.* (Trial Tr. Vol. IV p. 740 ln. 9-11) (citation is to the State's closing argument referencing this portion of the conversation as motive). The State's questions to Mrs. Brown opened the door to a host of possibilities for the defense when Mrs. Brown stated that she told Petitioner: "You're a good mother." (Trial Tr. Vol. II ln. 1.).

Trial counsel's cross focused exclusively on Petitioner's mental health episodes during the days leading up to the incident date. Trial counsel's cross related to the unusual nature of Petitioner calling her mother five (5) times in less than 12 hours just before the incident. (Trial Tr. Vol. II p. 367 ln 18-22.) Trial counsel's cross elicited that these five (5) calls were like talking to a different person each time. (Trial Tr. Vol. II p. 368 ln.1-8.) In summary form, trial counsel had Mrs. Brown agree that some of these calls were with a happy high-on-life person and some were with a sad-and-low person. (Trial Tr. Vol. II at p. 369 ln. 2-10). Trial counsel went through Petitioner's developing difficulties which Mrs. Brown had observed just prior to a psychotic episode Petitioner had approximately nine (9) months prior to the incident. (Tr. Tr. Vol. II p. 369). Trial counsel went into detail about Mrs. Brown's decision to hospitalize Petitioner during this psychotic episode on July 29, 2012. (Tr. Tr. Vol. II p. 370-374.) Trial counsel brought out the fact that a security guard was posted at the Petitioner's hospital room. (Trial Tr. Vol. II p. 373 ln. 9-16.) Trial counsel then asked questions about prior paranoid moments Mrs. Brown remembered. These included a moment when Petitioner expressed a belief that the ceiling fan was taking photos of Petitioner and her family in their home. (Trial Tr. Vol. II p. 374). Another moment included a period of time when Petitioner said that drug dealers were living across the street from her home. (Trial Tr. Vol. II p. 375). Finally, trial counsel introduced photographs from Mother's day, May 12th, 2013, less than 48 hours before the incident. (Trial Tr. Vol. II p. 376.) Trial counsel got Mrs. Brown to describe how "Anna was just staring and staring." (Trial Tr. Vol. II p. 378.) At this point, Trial counsel ended his cross-exam.

At the PCR trial, Mrs. Brown offered testimony that would have been available to trial counsel in conjunction with or in addition to trial counsel's cross-exam.

Mrs. Brown testified about her observations of Petitioner's mental health. Specifically, Mrs. Brown stated that she had not gotten really concerned about Petitioner's mental health until a day or two before the hospitalization in late July of 2012. (PCR Tr. p. 244 ln 14.-16.) Mrs.

Brown described the rapid and severe onset that had occurred in July of 2012 as being the same thing that she experienced “two or three” days before the incident date, May 14, 2013. (PCR Tr. p. 246 ln.11-16.) Petitioner offered this testimony to contrast her normal functioning as a loving and caring mother and wife with these two relatively brief episodes of paranoid delusional breaks, i.e. the one in July/August 2012 and the one that occurred around the incident on May 12-13, 2013.

To put these two paranoid delusional breaks into context, Mrs. Brown testified to Petitioner’s general background information from childhood to the incident date. Specifically, Petitioner asserts that this background information was necessary to offset the State’s position that Petitioner was acting out of malice against her husband and children. Petitioner asserts that the jury should have been made aware of how out of character taking the life of her two children and shooting her husband really was.

Mrs. Brown testified at the PCR trial that Petitioner, Anna, was adopted at 31 days old. (PCR Tr. p. 235 ln. 2-7.) Anna was an only child to Mr. and Mrs. Brown and was an “outgoing, precocious” child. (PCR Tr. p. 235 ln. 16-17.) Anna met all the normal benchmarks for development and growth. (PCR Tr. p. 236 ln.8-13.) “Anna did well in school, made friends easily, had lots of friends, a lot of play dates.” *Id.* Anna was raised in the family church. (PCR TR. p. 236 ln.14-19.) In middle-school, Anna did well academically, was a cheerleader, had friends and participated in school activities. (PCR Tr. p. 236 ln. 20-p. 237 ln.1.) High school was also the norm for a child heading to a successful future. (PCR Tr. p. 237-238). Anna attended Winthrop college. (PCR Tr. p. 238.) It was just after high school that Anna started dating her future husband. (PCR Tr. p. 238-239).

At the PCR trial, Mrs. Brown also testified to Petitioner’s close connection to, and love and affection for, both Mrs. Brown and her husband. (PCR Tr. p. 238 ln. 22- p. 239 ln. 2,). Mrs. Brown described Anna’s normal college career, her marriage after college and the birth of Petitioner’s first child, Carly. (PCR p. 239 ln. 6-12.) Mrs. Brown described in detail what a good mother Anna had been to Carly, the first born and daughter, for seven (7) years, and to Sawyer, her son, for five (5) years. (PCR p. 239-241). Mrs. Brown testified that Anna was a stay-at-home mother who enjoyed being a mother. (PCR p. 241.)

Mrs. Brown was asked specific questions related to Petitioner’s character. Mrs. Brown described Anna as loving, caring, patient, empathetic, supportive, reliable, affectionate, and committed as it related to both her children. (PCR Tr. p. 242-243.) Mrs. Brown described pertinent character traits of Anna as a wife to include: loving, supportive, self-sacrificing, reliable, committed, determined, and loyal. (PCR Tr. p. 243.)

In short, Mrs. Brown had testimony to offer that offset the State’s malice theme and was potentially admissible as good character evidence pursuant to Rule 404(a)(1), SCRE.

Nancy Zeigler

Nancy Zeigler testified at the PCR trial. (PCR Tr. 255-266.) Prior to Petitioner’s original trial, Ms. Zeigler had given an interview to a local newspaper in the area, the Seneca Journal. (PCR Tr. p. 255 ln. 6-13.) This interview was known to trial counsel. (PCR Tr. p. 182 ln. 20-

25). Trial counsel perceived Ms. Zeigler to be a positive witness for Petitioner. (PCR p. 183 ln. 3-5).

Ms. Zeigler was the first-grade schoolteacher who taught Petitioner's daughter, Carly, the year of the incident. (PCR Tr. p. 255 ln.19-20.) Ms. Zeigler had significant ongoing interaction with the Petitioner during Carly's first-grade year at school between August 2012 and May 2013. (PCR Tr. p. 255 ln. 23 – p. 256 ln.1). Petitioner had asked Ms. Zeigler about volunteering when Carly started first grade. (PCR Tr. p. 256 ln. 13-15.) After passing her SLED background check, Petitioner became a "room parent." (PCR Tr. p. 256 ln. 15-18). As a "room parent", Petitioner was permitted to remain in Carly's classroom during class hours, she went on field trips, and she helped Ms. Zeigler get ready for class, holidays, and in-school special days. (PCR Tr. p. 256 ln.23- 257 ln 4.) Ms. Zeigler testified that Petitioner went above and beyond the call of duty. Ms. Zeigler stated that Petitioner came to the classroom once a week, spent the day organizing files, worked with children that needed some extra help and became a beloved fixture in the classroom. (PCR Tr. p. 257 ln. 6-13). Petitioner loved the kids in Ms. Zeigler's class, and they loved her. (PCR Tr. p. 257 ln.12-13).

Ms. Zeigler described how Petitioner had a special gift for helping the children "come to an understanding rather than just giving them all the words." (PCR Tr. p. 260 ln. 16-25). This was one of the reasons Ms. Zeigler felt that the other children were so attached to Petitioner. (PCR Tr. p. 261 ln.1-5.)

Ms. Zeigler had a personal relationship with Petitioner and considered her a friend. (PCR Tr. p. 258.) She "had never had a room mother as attentive as [Petitioner] was." (PCR Tr. p. 259 ln.14-15.) In addition, Ms. Zeigler's observations included that Petitioner was "very conscientious" about Carly's education. (PCR Tr. 259-260). As a result, "Carly was a top student in [Ms. Zeigler's] class." (PCR Tr. p. 260 ln. 10.)

Like Mrs. Brown, Ms. Zeigler did not see anything about Petitioner's behavior that gave her pause for concern "up until about four or five days before the incident." (PCR Tr. p. 261 ln. 6-17.) In particular, Ms. Zeigler testified that Petitioner's lack of engagement during Teacher Appreciation week was very strange.

By way of background, Ms. Zeigler referenced how Petitioner was always doing little things to say thank you to her for teaching Carly. (PCR Tr. p. 261-262). Ms. Zeigler referenced a small jar filled with candy corn and an appreciative note that Petitioner gave her near Halloween. (PCR Tr. 261-262.) She stated that she still has the jar and that it was very special to her. (PCR Tr. p. 262 ln. 1-2.)

Teacher appreciation week is the week before Mother's Day which is the week leading up to the incident on May 13-14, 2013. (PCR Tr. p. 262 ln. 8-15). Ms. Zeigler testified to the following:

There was absolutely no communication from her at all. None. And this is -- I hate to say "expect," but because of what I'd seen all year, all school year, I would have thought that I would hear from her at least once and not just, not at all, you

know. There was something special that the school would, you know, talk about each day, and she's the kind of mom who I thought would have had a little something each day even if it was just a little note. But instead, there was absolutely no communication from her. . . . the entire week. And no -- we made Mother's Day things, the kids did. I had thought she was going to be there to help with that, and she was not. And I did not hear from her. And I didn't hear from her with regard to Mother's Day either. . . . Very, very unusual. Carly was there every day. She had -- Carly had school every day.

(PCR Tr. p. 262 ln.18 – 263 ln.12.).

Ms. Zeigler was never contacted by trial counsel. (PCR Tr. 263 ln.19 – 264 ln. 6.) When asked at the PCR trial if she believed she had testimony that was pertinent to Petitioner's original trial, Ms. Zeigler responded: "Absolutely." (PCR. Tr. p. 263 ln.10.) She then went on to say that her testimony at the PCR trial needed to include the following:

The only -- the only thing I would add, I think, is that this is a woman who loved her children, and it was obvious. She was very caring.

* * *

And I think what I would have liked to have said then is, the person that I knew would never have done that to her children because she loved them and she cared for them.

(PCR Tr. p. 264 ln. 15-17 and p. 265 ln. 2-5).

Ms. Zeigler also testified as to Petitioner's good character traits listing them as caring, patient, empathetic, supportive, reliable, affectionate, committed. (PCR Tr. p. 265 ln. 10- p. 266 ln.8.). As a lay witness, Ms. Zeigler asserted that the only way Petitioner would have been capable of harming her own children would have been the result of a psychotic delusion. (PCR Tr. p. 266 ln. 9-13.)

Jessica Cummings

Jessica Cummings spoke with one of the trial counsel at court during the original trial. (PCR Tr. p. 269 ln. 22.) Like Ms. Zeigler, Mrs. Cummings was never interviewed by anyone on Petitioner's legal team. (PCR Tr. p. 270 ln. 4-6). Like Ms. Zeigler, Mrs. Cummings wished she had been asked to give testimony at the trial. (PCR Tr. p. 270 ln.7-11.)

Jessica Cummings and Petitioner were friends almost their entire lives. (PCR Tr. p. 270-272). They grew up together as toddlers, were friends through grade school, attended the same local church, and went to Winthrop college together. *Id.* Ms. Cummings was also around when Petitioner was dating the man who eventually became her husband, Mike Simpson. (PCR Tr. 272 ln. 22 – 273 ln. 3.)

Ms. Cummings interacted with Petitioner and her husband through the birth of their first child (Carly), a subsequent miscarriage, and the birth of Petitioner's second child (Sawyer). (PCR Tr. p. 273). Based on her personal observations of Petitioner as a mother, Ms. Cummings

described Petitioner as a “great mom” who was “loving” and “would do anything” for her children. (PCR Tr. p. 273 ln.16-22.) Petitioner enjoyed being a “stay-at-home” mom. (PCR Tr. p. 273 ln. 20-22.)

Ms. Cummings was speaking regularly with Petitioner on the phone during the months and weeks that lead up to Petitioner’s first hospitalization in late July 2012. (PCR Tr. p. 276-277). A few days prior to her hospitalization, Ms. Cummings began having bizarre conversations with Petitioner. (PCR Tr. p. 277 ln. 4-17). This was the moment wherein Petitioner thought that people were following her and that someone had bugged her ceiling fan to listen in on her. (PCR Tr. p. 277 ln 16-17). Ms. Cummings saw Petitioner return to normal after the hospitalization, and, her perception that Petitioner was back to normal did not change until a few days before the incident date, May 13, 2013. Ms. Cummings spoke to Petitioner “on the phone that Friday before [the day of the incident].” (PCR Tr. p. 278 ln.9.) She “could tell the paranoia was back and that she was questioning . . . people following her again.” (PCR Tr. p. 278 ln. 13-15.)

Ms. Cummings testified to good character traits Petitioner exhibited as a mother: loving, caring, patient, empathetic supportive, affectionate, reliable, and committed. Ms. Cummings also testified to good character traits Petitioner exhibited as a wife to Mike: loving, supportive selfless, reliable, committed, determined, and loyal.

Ms. Cummings also offered testimony that Anna was not capable of harming her children or her husband absent a psychotic delusion. (PCR Tr. p. 280 ln. 25 - 281 ln. 2.)

Beth Simmons

Beth Simmons was present for the first day of Petitioner’s original trial. (PCR. Tr. 282 ln. 22-23.) Simmons considered both Petitioner and Petitioner’s husband, Mike Simpson, as friends. (PCR Tr. 282 ln. 24-25.) Simmons first met Petitioner at Winthrop during a fraternity party that they both attended. (PCR Tr. p. 283 ln. 3-6). From the moment that Simmons and Petitioner first met, they became “fast friends” and felt more like they were sisters. (PCR Tr. p. 283 ln. 4-6). Simmons described Petitioner as being “just fun.” (PCR Tr. p. 283 ln. 23.) Petitioner’s interactions with Simmons made it clear to Simmons that Petitioner cared about her. (PCR Tr. p. 283 ln. 24.)

Because Mike Simpson and Petitioner were dating at this point in time, Simmons also got to know Mike Simpson well. (PCR Tr. p. 283 ln. 7-8). Simmons and Petitioner went through the typical life stages together at roughly the same time. (PCR Tr. p. 283 ln. 14-17.) Simmons was with Petitioner through college and was in Petitioner’s wedding. (PCR T. p. 284 ln.8-13). Although Simmons and Petitioner were “off and on geographically” in terms of living near each other, they always managed to get together and talk on the phone. (PCR Tr. p. 285 ln. 14-16). Throughout this time, they remained like sisters. (PCR Tr. p. 285 ln.16-17.)

Simmons interacted consistently with Petitioner over time including when Petitioner had her children. (PCR Tr. p. 18-19). Simmons’s two oldest children were pretty close in age to Petitioner’s two children. (PCR Tr. p. 286 ln. 2-16.) Simmons got “mom wisdoms” from

Petitioner relating to raising children. (PCR Tr. p. 286 ln.17-22). Simmons testified that Petitioner was a “wonderful mom.” (PCR Tr. p. 286 ln. 25.)

Like Jessica Cummings and Nancy Zeigler, Simmons’s interactions with Petitioner became concerning in the week leading up to Petitioner’s initial hospitalization in late July/August 2012. (PCR Tr. p. 288). Simmons “could tell that there was something off.” (PCR Tr. p. 289 ln. 1-2.) She could tell “it was not my Anna at that point.” (PCR Tr. p. 288 ln. 24-25.) Simmons recalled a specific moment in late July 2012, just days before the first hospitalization. Petitioner unexpectedly drove approximately 40 minutes to Simmons’s house to let Simmons know that Simmons’s father-in-law might be doing something inappropriate with Simmons’s children. (PCR Tr. 289 ln. 5-17). Simmons knew that something was wrong with Petitioner when she just showed up to talk about such a bizarre ideation. (PCR Tr. p. 289 ln. 14-17.) It was clear to Simmons that something was wrong. (PCR Tr. p. 290 ln. 14-15.)

Simmons testified to Petitioner’s good character traits as a mother. These included: loving, caring, patient, empathetic, supportive, reliable, affectionate, and committed to their well-being. (PCR Tr. p. 291 ln. 5-16.)

Simmons also testified to Petitioner’s good character traits as a wife. These included: loving, supportive, reliable, committed, loyal, and determined to make the marriage work. (PCR p. 291 ln. 17 – p.292 ln. 5.)

And, just like Nancy Zeigler and Jessical Cummings, Simmons opined that Petitioner would never have been capable of harming her children or her husband absent a psychotic delusion. (PCR Tr. p. 292 ln. 6-10.)

The lay witnesses all offered testimony that contrasted Petitioner’s normal functioning over the majority of her lifetime with the few days of paranoid and psychotic behavior leading up to the hospitalization in late July through early August in 2012 and the few days of paranoid psychotic behavior leading up to the incident date. In summary, Petitioner’s lay witnesses offered compelling and sympathetic testimony that contradicted the State’s malice theme of an angry woman seeking to destroy her family due to marital difficulties. In addition, all of the lay witnesses offered testimony pursuant to Rule 404(a)(1) as to Petitioner’s good character.

The State took the position through its cross-examination that the lay witnesses were not in a position to offer testimony on the Petitioner’s state of mind. However, this position ignores the fact that during the trial, the State relied on the testimony of lay witnesses during its case in chief to defeat trial counsel’s motion for a directed verdict. (Trial Tr. Vol. II p. 400 – p. 401 ln. 19). This issue was addressed on appeal with the Court of Appeals concluding that “several lay witnesses testified as to [Petitioner’s] behavior around the time of the shootings.” *Simpson*, 425 S.C. at 543, 823 S.E.2d at 239. And, a jury could give this testimony as much significance as they chose to over any expert opinions. *Id.* (citing *State v. Douglas*, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009)). The point here is that Petitioner is simply seeking the same opportunity afforded the State. If the State can introduce a malice themed prosecution, then the Petitioner seeks to introduce a contrary backdrop to her actions consistent with her position that she did not know right from wrong due to a psychotic break from reality.

Good Character, Rule 404(a)(1), SCRE.

Turning to the law governing good character, Rule 404(a)(1) of the South Carolina Rules of Evidence provides that in a criminal case: "Evidence of a person's character" is admissible when "offered by the accused." This evidence is competent to "establish a general character inconsistent with guilt of the crime with which [the defendant stands] charged." *Edgington v. United States*, 164 U.S. 361, 364 (1896); *see also*, *State v. Lee-Grigg*, 387 S.C. 310, 692 S.E.2d 895 (2010); *State v. Green*, 278 S.C. 239, 240, 294 S.E.2d 335, 335 (1982); *State v. Stuckey*, 56 S.C. 576, 35 S.E. 263 (1900). Under the general rule, a defendant may introduce affirmative testimony that the general estimate of her character is so favorable that the jury may infer that she would not be likely to commit the alleged offense. *Michelson v. United States*, 335 U.S. 469 (1948); *State v. Lee-Grigg*, 387 S.C. 310, 692 S.E.2d 895 (2010).

While Petitioner does not deny that it was her actions that caused the death of her two children and the injury to her husband, Petitioner asserts good character evidence applies to her case to refute malice, intent, and to support a "not guilty by reason of insanity". Legal support for this proposition can be found in the South Carolina Supreme Court's holding that "evidence of good character and good reputation may in and of itself create a doubt as to guilt and should be considered by the jury, along with all the other evidence, in determining the guilt or innocence of the defendant." *Lee-Grigg*, 387 S.C. at 317, at 898. In this case, Petitioner asserts that the reasonable doubt created by good character evidence supports the position that she did not know right from wrong on May 13-14, 2013. In other words, a loving, caring mother and spouse with a long history of good character would not kill her two children and attempt to kill her husband but for a delusional psychotic episode.

13th Circuit Solicitor

In response to Petitioner's position on the introduction of lay witness testimony and good character evidence, the State offered the testimony of the 13th Circuit Solicitor. The Solicitor was one of the two attorneys that tried the State's case. The Solicitor offered testimony on the good character issues before the Court. First, the Solicitor asserted his legal opinion that good character evidence would not have been relevant. (PCR Tr. p. 296 ln. 21- p. 297 ln.16.) As a result, it could not have been introduced at trial. Second, the Solicitor asserted that, assuming the door to character evidence was opened by the defense, the State had evidence of bad character. (PCR Tr. p. 297 ln. 22- 23.) It was the Solicitor's opinion that it was Petitioner's trial strategy to avoid opening the door to character evidence. Even if it wasn't Petitioner's strategy, the bad character evidence the Solicitor had available would have offset anything Petitioner could have introduced. Thus, the Solicitor's logic is that under any scenario where Petitioner's good character came into play, the trial outcome would have been the same. (PCR Tr. p. 300 ln. 18 - 25).

Addressing these two assertions in order, this Court finds that good character evidence is relevant. "[R]elevance typically presents a low barrier to admissibility." *United States v. Leftenant*, 341 F.3d 338, 346 (4th Cir. 2003). Thus, to be relevant, "evidence need only be 'worth consideration by the jury,' or have a 'plus value.'" *Id.* (quoting *United States v. Queen*, 132 F.3d 991, 998 (4th Cir. 1997)). In a case where the defendant's actions were largely

uncontested, but her state of mind was “highly controverted,” the Tenth Circuit held that “in such situations the character of the defendant is an important element.” *United States v. Yarbrough*, 527 F.3d 1092, 1102 (10th Cir. 2008) (internal quotation omitted). In the case sub judice, the only real issue in controversy was the Petitioner’s state of mind.

In conjunction with the low threshold necessary for relevance, the Court also considers the Rules of Evidence. Rule 404(a)(1), SCRE, specifically provides that character evidence can be introduced by a defendant in a criminal case. The cases cited above make it clear that a jury is entitled to hear this evidence and could potentially base a not guilty verdict on this evidence alone. This rule has come to our jurisprudence through English common law and was historically called the “mercy rule”. *McCormick On Evidence* § 191 (8th ed.) (“[T]he common law and the federal rules provide a ‘mercy rule’ that permits the defendant, but not the government, to open the door to character evidence.”). Therefore, the Court finds that the State’s position that relevance objections would have precluded good character evidence under any scenario is without merit.

Second, the Solicitor testified that there was bad character evidence available to the State. (PCR Tr. p. 297 ln.22-23.) Based on the Solicitor’s testimony, this evidence consisted of some Facebook messages that indicated Petitioner had punished her children once by giving them hot sauce. (PCR Tr. p. 298 ln.11-13.). In addition, the Solicitor testified that evidence was available to indicate that Petitioner’s marriage was “sort of beginning of the dissolution”, “which would have given her motive”. (PCR Tr. p. 298 ln.15 – 19.) “She was angry.” (PCR Tr. p. 298 ln.20.). In essence, the bad character evidence would have included that Petitioner’s spouse was planning on leaving her and that “she would have problems, . . . keeping her kids and going through a divorce.” (PCR Tr. p. 298 ln. 23 – p. 299 ln. 1.) The Solicitor went on to say:

[t]hat line of questioning . . . which would have been very important or very helpful to the State in showing that she was not insane at the time. But, of course, we never introduced any of that.

(PCR Tr. p. 299 ln. 3 – 7.)

The State’s position that this specific “bad character” evidence didn’t come in is contradicted by the trial transcript.

At the close of the State’s case-in-chief, a motion for directed verdict was made by Petitioner. (Trial Tr. Vol. II p. 395-399). The Court asked the Solicitor to summarize the evidence that the State had submitted on malice. (Trial Tr. Vol II p. 400 ln. 23. (“THE COURT: What is the evidence of malice?”)). The Solicitor’s response was as follows:

Well, couple of pieces. She was having issues with her husband. She says to her mother-in-law the night before -- her mother the night before, "He's done with me," or, "He is through with me." Nate Stegall testified that she was an angry wife. They had words about things that day before.

(Trial Tr. Vol. II p.400 ln. 24 – p. 401 ln. 4.) The trial court concurred with this summary. (Trial Tr. Vol. II p. 401 ln. 12)(“THE COURT: Sure.”).

Following up with the other “pieces”, the Solicitor stated:

“But right now we have evidence of a couple who was going through a tough time. ‘Mike says I can’t take care of the kids. He’s through with me,’ was part of the statement as well. That’s -- that’s actually motive, Your Honor, not necessarily but also evidence of malice in [sic] forethought. Malice in [sic] forethought doesn’t have to be premeditated.

(Trial Tr. Vol. II p.401 ln. 13-19.)

This summary is supported by the trial transcript as described above. In addition, two lay witnesses offered by the State, Scott Hart (Trial Tr. Vol. I p. 181-196) and Amber Hart (Trial Tr. Vol. I p. 196-200), provided little color other than Defendant was coldhearted and remorseless after shooting her children and husband. John Conway was the next lay witness. (Trial Tr. Vol. I p. 208-218.) As the treating ER nurse for the Defendant, he questioned the Defendant about why she was in the hospital. After Defendant admitted that she had shot her children, Conway questioned her about why she wouldn’t just shoot herself instead. (Trial Tr. Vol. I p. 212.) This testimony conveyed that the Defendant was less than human to shoot her own children. Nathan Stegall was a friend of the family. (Trial Tr. Vol. II p. 327). He had known Anna and her husband since 1998-99. He let his daughter play with Carly at Anna’s house. (Trial Tr. Vol. II p. 327 ln. 18-21). Stegall described Anna as an “angry wife” on May 13th. (Trial Tr. Vol. II p. 329 ln. 22-23). While Trial Counsel clarified that Stegall was describing what could be a normal disagreement between husband and wife, nothing was elicited about the fact that he thought enough of her mothering skills to let his daughter stay with her. (Trial Tr. Vol. II p. 334-338.) Allison Simpson is Anna’s mother-in-law and was also called by the State. (Trial Tr. Vol. II p. 348-349.) The State focused only on the months leading up to the incident, basically from the moment of the Defendant’s first psychotic break in August 2012 up until the incident 9 months later. (Trial Tr. Vol. II p. 349-355.)

While there certainly may be more of this type of evidence available to the State, it simply is not factually accurate to state that this theme of evidence was not already a part of the State’s presentation at trial. And, other than the Facebook post about using hot sauce for punishment, the Solicitor did not testify to any other specific evidence of bad character that doesn’t appear in the trial transcript.

In addition, the Solicitor testified that trial counsel had access to all of the evidence in the State’s possession and that defense counsel would have been aware of any bad character evidence that did not come in as motive or as evidence of malice. (PCR Tr. p. 298 ln.13-17.) The Solicitor offered this testimony to support the idea that trial counsel made a strategic decision not to introduce good character evidence. However, lead trial counsel and second-chair trial counsel both testified that they did not have any reason not to introduce good character evidence and that they simply never considered it. (PCR Tr. p. 87 ln. 11-16) (lead counsel); (PCR Tr. p. 186 ln. 8-14)(second chair counsel).

Finally, lead trial counsel did not appear to be aware that Petitioner was potentially entitled to a jury instruction specific to good character evidence. (PCR Tr. p. 87 ln. 9-10) ("I'm sure I'm not really kind of on the same page with you."), *see also* (PCR Tr. p. 111 ln. 17- p. 112 ln. 12.) Second-chair trial counsel stated that a jury instruction on good character would have been helpful to Petitioner's case. (PCR Tr. p. 187 ln. 19.) Failing to do so was "detrimental to [Petitioner's] defense." (PCR Tr. p. 186 ln.13-14.) When asked specifically about not considering good character evidence, second-chair counsel conceded it was ineffective.

Q Do you feel like you were ineffective for not doing that?

A I do. Because [Petitioner] came across as a monster, and, you know, looking back at it, you know, looking back between the pages, you know, that's what she came across. And we should have at least tried to humanize her and to show what a good mother she was, what a good daughter she was, and how, you know, this -- there was, I guess, another -- that she was a person.

Q Right. And so the idea that it got presented at the trial from both sides that she was ultimately some kind of monster who just finally snapped, that was not true.

A Right. That was not true, but I believe that's what it came across as.

(PCR Tr. p. 196 ln. 14-197 ln.3).

Q And do you think the lay witnesses, had they testified in[sic] the positive things about Anna, would have further bolstered that this was more a medical issue than somebody who just decided all of a sudden they were going to kill their children?

A Absolutely.

(PCR Tr. p. 198 ln. 1-7.)

Based on the record as discussed above, the Court finds that trial counsel was ineffective for failing to call lay witnesses to counteract the State's malice theme and to offer good character evidence.

**ISSUE FOUR (SECOND AMENDED COMPLAINT ¶ 10(f))
(INEFFECTIVE ASSISTANCE – PREP FOR TREATING PHYSICIAN)**

Petitioner asserts that trial counsel should have been prepared for Dr. Jeffrey Smith as a potential witness. At a minimum, trial counsel should have interviewed Dr. Smith. But, Petitioner's claim goes beyond just being prepared for Dr. Smith as the State's witness. Petitioner further asserts that, with the proper preparation, Dr. Smith had testimony that would have supported her position that her prescription Adderall was a causative factor in the psychotic delusion she experienced on the date of the incident.

Trial counsel was aware of Dr. Smith's involvement as a treating physician with Petitioner. (PCR Tr. p. 72 ln. 1-5.) Trial counsel mistakenly assumed that Dr. Smith "would not have welcomed our . . . meeting with him." (PCR Tr. 11-12). In reality, the first moment that Dr. Smith became aware of Petitioner's crime, Dr. Smith was anticipating contact from Petitioner's defense team. (PCR Tr. p. 24 ln. 1- 6.) Dr. Smith was surprised that he was not contacted, because he believed as her treating physician, he could help explain how this may have happened. (PCR Tr. p.24 ln. 2-6.) This contact did not happen.

As a result, other than the one interaction between Dr. Smith and Dr. Price discussed above, the defense team never contacted Dr. Smith. (PCR Tr. p. 74 ln. 21- p. 75 ln. 4.) Trial counsel concluded that Dr. Smith "was not going to end up being [the State's] expert." (PCR Tr. p. 75 ln.13-15.) Obviously, this assumption also turned out to be incorrect. Trial counsel further assumed that Dr. Smith, as the treating physician, could not ethically testify to a forensic opinion about Petitioner's state of mind at the time of the incident. (PCR Tr. p. 72 ln. 12-20.) This assumption was based on the belief that Dr. Smith was "unlikely" to get called and that the law would "prohibit him from offering testimony." (PCR Tr. p. 72 ln. 24 – p. 73 ln. 2.) Once again, this assumption also turned out to be incorrect. *State v. Simpson*, 425 SC 522 (Ct. App.).

Trial counsel was not aware Dr. Smith was going to be the State's expert rebuttal witness "until they submitted his name in the rebuttal." (PCR Tr. p. 75 ln.19-21.) There was "no time" to get prepared to try to cross-examine Dr. Smith. (PCR Tr. p.75 ln. 16-24.) Lead counsel and second chair counsel both admitted that they should have, at a minimum, interviewed Dr. Smith prior to the original trial. (PCR Tr. p. 77 ln. 5-9)(lead counsel); (PCR Tr. p. 188 ln 10) (second chair counsel).

Petitioner called Dr. Smith during the PCR trial. During the PCR trial, Dr. Smith offered factual testimony and opinion testimony that supports Petitioner's claims of ineffective assistance of counsel.

Dr. Smith Helpful Opinions:

Dr. Smith recorded some paranoid ideations as far back as February of 2011. (PCR Tr. p. 32 ln.22-24.) Dr. Smith surmised that these paranoid ideations were connected to a change in Petitioner's medication at that time. (PCR Tr. p. 32 ln. 22 – 33 ln. 10.) Specifically, Petitioner's previous medication had contained an anti-psychotic component. (PCR Tr. p. 32 ln. 10 – 21.) The new medication worked in a different way than the previous and contributed to these

paranoid ideations. (PCR Tr. p. 33 ln.4 – 10.) These facts would have been helpful at trial, but also support Petitioner’s position on Issue Five (Adderall Induced Psychosis) discussed below.

Dr. Smith also agreed that treating someone with a diagnosis of bipolar disorder required a mood-stabilizing medicine. (PCR Tr. p. 33 ln. 15-17.) This is particularly true if the patient is also being prescribed a stimulant, like Adderall, for ADHD. (PCR Tr. p. 33 ln. 16-19.) His opinion was that Adderall provokes psychosis. He opined that without a mood stabilizer, stimulants like Adderall “will likely provoke severe mood swings and can provoke psychosis.” (PCR Tr. p. 33 ln. 19-20.) In addition, Dr. Smith believed that Petitioner was “positive for stimulants” “on the day of the crime” based on a “urine drug screen drawn at the emergency room.” (PCR Tr. p. 54 ln. 11-13.) These opinions not only would have been helpful at trial, but also support Petitioner’s position on Issue Five (Adderall Induced Psychosis) discussed below.

Dr. Smith testified that it would never be appropriate for a patient to take just the Adderall and fail to take the stabilizer. (PCR Tr. p. 34 ln. 3-6.) And, if Petitioner had reported psychotic symptoms when Dr. Smith first started treating her, Adderall would not have been a drug Dr. Smith would ever have prescribed to Petitioner. (PCR Tr. p. 35 ln. 13-17.) These opinions are consistent with Petitioner’s position on Issue Five (Adderall Induced Psychosis) discussed below.

Dr. Smith testified that psychotic symptoms could develop within days to weeks in a scenario where the mood stabilizer was absent and Adderall was present. (PCR Tr. p. 36 ln. 12-17.) This scenario involving Adderall could result in a severe psychosis. (PCR Tr. p. 36 ln. 19-22.) These opinions would have been helpful at trial, and support Petitioner’s position on Issue Five (Adderall Induced Psychosis) discussed below.

Dr. Smith also noted that Petitioner’s stabilization, (i.e. from psychosis to stable), after mood stabilizers were administered during the hospitalization in August 2012 “was a very rapid reconstitution.” (PCR Tr. p. 37 ln. 2- 8.) The stabilization from psychosis after the May 14th incident was rapid and in “response to just two doses of medication” in the emergency room. (PCR Tr. p. 37 ln. 8-10.) These opinions would have been helpful at trial, but also support Petitioner’s position on Issue Five (Adderall Induced Psychosis) discussed below.

As it related to the effects Adderall could have on a patient experiencing psychosis and its potential role in Petitioner’s psychosis, the trial defense team never asked Dr. Smith questions relating to this subject. (PCR Tr. p. 36 ln.4 – 11 and p. 36 ln. 24 – p. 37 ln. 1.) Trial counsel never got to these issues, in part, because they didn’t meet with Dr. Smith.

Dr. Smith opined that Petitioner’s first hospitalization in August 2012 was a psychotic event. (PCR Tr. p. 21 ln.18-20); (PCR Tr. p. 31 ln.3- 15.) Dr. Smith opined that Petitioner was also experiencing psychotic and severe depressive symptoms on the date of the incident, May 13-14, 2013. (PCR Tr. p. 32 ln. 2 – 9.) These opinions would have been helpful at trial.

Dr. Smith was only informed he would be a witness for the State in Petitioner’s trial “less than two weeks” before he was called to the stand. (PCR Tr. p.40 ln.15 -17). When asked about trying to prepare for testimony in Petitioner’s case, Dr. Smith testified at the PCR that “the time

element was absolutely negating.” (PCR Tr. p. 30 ln. 14-15.) Without a significant amount of time, it was impossible “to assimilate all of that information.” (PCR Tr. 30 ln.13-14.) In comparison to the three experts presented at trial by the Petitioner, Dr. Smith agreed that “they would be in a better position because they were given an extensive period of time to evaluate a tremendous amount of data.” (PCR Tr. p. 42 ln.23-25). These opinions were critical to giving the jury a full understanding of the limitations Dr. Smith placed on his own conclusions.

Items Dr. Smith did not have:

Petitioner asserts that proper preparation by trial counsel with Dr. Smith would have revealed that Dr. Smith needed various medical records to complete his file. In addition, Dr. Smith would have liked to have had more complete information to assist him with his psychological autopsy of [Petitioner]. (PCR Tr. p. 24 ln. 7-11.) Trial counsel was ineffective for not going through those requests with Dr. Smith.

Dr. Smith was not aware of Petitioner’s initial ER visit to St. Francis on July 29, 2012. (PCR Tr. p. 22 ln. 2-15.) He did not receive that information until he was subpoenaed for the PCR trial. (PCR Tr. p. 45 ln.23-25.) He wanted to have those ER notes as they would have been helpful, but he didn’t. (PCR Tr. p. 21 ln. 18 – 20.)

Dr. Smith did not have the follow-up notes shortly after the August 2012 hospitalization created by Carol Rentz Mitchell, a therapist in his office. (PCR Tr. p. 22 ln.21 – p. 23 ln. 15.) These notes indicated Petitioner was still experiencing some psychotic issues post-hospitalization. (PCR Tr. p. 31 ln. 21-24.) Dr. Smith found these notes “confusing” because they “contradicted” what Petitioner had described to him in the visit before her hospitalization and his next visit with Petitioner after the hospitalization. (PCR Tr. p. 21 ln. 23- p. 22 ln. 1.) He first saw these notes during his cross-examination at trial. (PCR Tr. p. 31 ln.16-20). Any confusion could have been explored pre-testimony. At that point, Dr. Smith would have realized he didn’t have the therapeutic note which would explain why he didn’t go through a discussion with the Petitioner when he saw her.

Dr. Smith did not have an opportunity to interview Petitioner’s family members or close friends at or near the time of the incident, which would have also aided in his psychological autopsy. (PCR Tr. p. 24 ln. 16-18.) Partly, his opinion at Petitioner’s trial was based on the fact that he had not received communications from friends and family about Petitioner’s declining mental state. (PCR Tr. p. 37 ln. 18 – 24.) The various reasons that friends and family had for not contacting Dr. Smith would potentially have been beneficial to the Petitioner, and, at a minimum would have given Dr. Smith a more fulsome understanding of Petitioner’s condition. (PCR Tr. p. 38 ln. 19 – 23.)

Dr. Smith did not have the opportunity to review Petitioner’s complete psychiatric medical records and this would have greatly aided him in his psychological autopsy. (PCR Tr. p. 24 – ln. 24- p. 25 ln. 8.)

Dr. Smith did not have an opportunity to review the law enforcement file, the forensic reports, the 9-1-1 calls and the other witness statements gathered by law enforcement to assist

with his psychological autopsy. (PCR Tr. p. 27 ln. 22- p. 28 ln. 2.) Dr. Smith did not have the opportunity to review any defense team interviews, documents, or tapes which would have been helpful. (PCR Tr. p. 28 ln. 14-p. 29 ln. 8.)

Dr. Smith did not have an opportunity to interview the Petitioner at or near the time of the incident date which would have aided him in his psychological autopsy. (PCR Tr. p. 24 ln. 12-15.)

Dr. Smith did not have the opportunity to speak with Petitioner's other treating psychiatrists after the incident. (PCR Tr. p. 27 ln. 16-21.)

Whether trial counsel chose to make these items available or not, knowing Dr. Smith wanted these things for any potential testimony was significantly important. At a minimum, the absence of these items was basic cross-examination material.

Trial Counsel's Response

Trial counsel was asked about the failure to interview Dr. Smith. "Criminal responsibility was front and center in this case from the very day one." (PCR Tr. p. 62 ln. 1-2). However, trial counsel agreed that some of Dr. Smith's PCR testimony would have been potentially helpful to Petitioner's case. (PCR Tr. p. 76 ln. 22- p. 77 ln. 4.)

Specifically, trial counsel agreed that having Dr. Smith testify that he felt like the other three forensic psychiatrists were in a better position to render an opinion than he would have been helpful to Petitioner's case. (PCR Tr. p. 78 ln. 6-7). "If I had known that [Dr. Smith] would have answered that question, that way, at Anna Simpson's trial, then I would have asked it." (PCR Tr. p. 78 ln. 1-6). But, trial counsel did not know, because he had never interviewed Dr. Smith (PCR Tr. p. 78 ln. 7-8).

Trial counsel was also unaware that Dr. Smith was very concerned with understanding why Petitioner's friends and family had not contacted him when Petitioner began manifesting severe psychotic and paranoid ideations. (PCR Tr. p. 78 ln. 9-13.)

Finally, trial counsel was unaware that Adderall was contraindicated for somebody who has psychotic symptoms. (PCR Tr. p. 79 ln. 5-11).

The simple fact is, when trial counsel was asked during the PCR trial if he believed he should have interviewed Dr. Smith as a potential witness, he responded that he should have and that he regretted that he did not. (PCR Tr. p. 77 ln.5-9).

**ISSUE FIVE (SECOND AMENDED COMPLAINT ¶ 10(g))
(INEFFECTIVE ASSISTANCE – ADDERALL INDUCED PSYCHOSIS)**

Petitioner asserts that the failure to adequately address the role Adderall played in the psychosis that Petitioner experienced in August of 2012 and on the date of the incident in May 2013 was ineffective assistance of counsel. Adderall was contraindicated for Petitioner's illness. At a minimum, treatment with Adderall was improper once here psychosis became evident in August 2012. Any alleged non-compliance in taking mood stabilizers should have been addressed as part of her managed care and treatment. The treating physician had information available in the records to put him on notice that Adderall was psychosis inducing for Petitioner. And, but for the failure to properly manage Petitioner's illness, Petitioner would never have been in a psychotic state on May 13-14, 2013.

Petitioner offered two witnesses specific to this issue: Dr. Frierson and Dr. James Ballenger. As alluded to above by references to Issue Five (Adderall Induced Psychosis), the Court views testimony already addressed above, particularly Dr. Smith, in conjunction with Dr. Frierson and Dr. Ballenger.

Dr. Frierson

Dr. Frierson testified at the PCR hearing that he is on a contract with the South Carolina Department of Mental Health. (PCR Tr. p. 133 ln. 11-15.) Relevant to criminal responsibility, Dr. Frierson was the forensic psychiatrist appointed by the Court as part of the original trial to render an opinion on Petitioner's state of mind at the time of the crime. (PCR Tr. p. 15-16.) In his career, Dr. Frierson has found less than 1% of the defendants he has evaluated for criminal responsibility to be not guilty by reason of insanity. (PCR Tr. p. 133 ln.17-21.) Petitioner is one of the few criminal defendants that make up this 1%. (PCR Tr. p. 133 ln. 23-25.)

Despite the fact that the PCR hearing occurred approximately 8 years after the original trial, it still stuck in Dr. Frierson's mind because this is only one of two or three cases in his career "where the opinion that I offered was not the final outcome." (PCR Tr. p. 134 ln. 19-22).

Dr. Frierson testified his direct on Petitioner's mental health and the basis for his opinion was deficient. (PCR Tr. p. 135 ln. 15-20). Specifically, Dr. Frierson was frustrated that he was interrupted on several occasions by trial counsel during his attempts to answer trial counsel's questions. (PCR Tr. p. 135 ln. 24 – p. 136 ln. 2). After reviewing the transcript of his testimony, Dr. Frierson noted that many times trial counsel interrupted his train of thought as he attempted to paint a robust picture of Petitioner's mental health and why that rendered her not guilty by reason of insanity. (PCR Tr. p. 136 ln.7-12.)

Dr. Frierson wanted to be able to expound on the relatively normal, loving and caring person that Petitioner had been until she developed psychotic symptoms. (PCR Tr. p. 137) On this point, Dr. Frierson went through what he had to offer in detail. (PCR Tr. p. 137). His testimony was similar to the testimony discussed above from the lay witnesses. Dr. Frierson also discussed some of the issues he saw with Dr. Smith's treatment of Petitioner. (PCR Tr. p. 138 ln. 3 – 139 ln. 20). On the topic of Adderall, Dr. Frierson noted that Petitioner "should not have

been prescribed Adderall because she had psychotic symptoms.” (PCR Tr. p. 139 ln.7-8). He explained why:

Stimulates [sic] cause the release of a chemical on the brain called dopamine. Excess dopamine is what causes psychosis, so it [sic] will lose touch with reality. So if someone is delusional or hallucinating, they should not be receiving the stimulant medication such as Adderall.

When we train doctors, psychiatrists, residents in our program in Columbia, if they have a patient they’re prescribing Adderall and they develop any sort of psychotic symptoms or manic symptoms, that’s an absolute no more. I mean, that’s much more risky than simply having ADHD or having difficulty concentrating.

(PCR Tr. p. 139 ln. 10-20.) At a minimum, Dr. Frierson pointed out that Dr. Smith was on notice of Petitioner’s psychotic episode when he became aware of her hospitalization in August 2012. (PCR Tr. p. 141 on.1-11.) Dr. Frierson was not given the opportunity in his testimony at Petitioner’s trial to explain how Adderall was interacting with Petitioner’s mental illness. (PCR Tr. p. 141 ln. 12-17 and P. 149 ln. 10-19.) More specifically, Dr. Frierson wanted to discuss the follow-up therapy session Petitioner had after her August hospitalization.

And once again, paranoid, suspicious thoughts about her mother-in-law being a bad influence on her children. So that’s recorded in Carol Rentz Mitchell’s note. And I would have expected Dr. Smith to have access to that note, to have read that note, and then to explore that with Ms. Simpson.

(PCR Tr. p. 151 ln. 3-8). Dr. Frierson testified that this record of psychotic thoughts indicated “something’s still not working correctly. And it’s either she needs more antipsychotic or, less or no Adderall, or both.” (PCR Tr. p. 151 ln. 15-17.) Dr. Frierson was not given the opportunity by trial counsel to bring this information to the jury. (PCR Tr. p. 151 ln. 18 -20.)

Dr. Frierson made it clear that the cause of Petitioner’s psychosis was due to her underlying mental illness, but it was the illness, in conjunction with the Adderall, that made the symptoms so severe on the incident date. (PCR Tr. p. 141 ln. 23 – 142 ln. 2.).

The medicines we use to treat psychotic symptoms are what we call dopamine blockers. They block the receptors or neurons that dopamine attaches to. Giving a stimulant causes cells to release dopamine. So there’s a lot more dopamine that could go to a receptor. So with the stimulant, you’re increasing dopamine transmission, with an antipsychotic medication, you’re blocking dopamine. It makes no sense to – it would be like icing something that you’re also using a hairdryer on. I mean, it’s cross purposes.

Q So the regimen of prescription that Ms. Simpson was on after coming out of her hospitalization at Carolina Behavior Health, to your way of thinking, did not make sense from a treatment standpoint.

A Correct.

(PCR Tr. p. 144 ln. 11-25.) Not only was the Adderall counteracting the mood stabilizer, but Dr. Smith also actually increased Petitioner's dose of Adderall after her hospitalization in August 2012. (PCR Tr. p. 145 ln.7-9.) Adderall and the increased dose of Adderall were both contraindicated. Dr. Frierson testified that Petitioner's complaints regarding concentration and focus to Dr. Smith was another symptom she was still psychotic.

The problem with concentration is when you're psychotic, you can't concentrate because you're having all these intrusive thoughts about this paranoid stuff. And it's not ADHD that's making you have a concentration problem.

(PCR Tr. p. 145 ln. 13-17.)

Dr. Frierson also provided insight into one of the prevailing questions that Dr. Smith had regarding Petitioner's friends and family, an issue discussed above regarding trial counsel's failure to engage with Dr. Smith pre-trial.

It appears to me that Dr. Smith had no idea, was not aware of the severity of her psychotic symptoms. Her family certainly was, but there was no communication with him. Now, he should have known because she went to Piedmont -- I mean she went to . . . Behavior Health and before that St. Francis. And she expressed these delusions about her child and her in-laws and that they were potentially grooming -- I think her name was Carly, was the daughter -- grooming her for something which was not based in reality. Dr. Smith should have gotten those records and should have looked at those records. And if he had, he certainly should have known that this is more than just bipolar disorder. She's, you know, really psychotic.

Q So I think -- let me be clear here. Is it the Carolina for Behavioral Health was the ---

A Psych hospital.

* * *

Q And you keep saying Palmetto. I think it's Carolina.

A I'm sorry. Carolina Center for Behavioral Health in Greer.

(PCR Tr. p. 142 ln. 3-20 and p. 143 ln. 8-11).

Dr. Smith was asked during the State's direct about Petitioner's potential non-compliance with her mood stabilizer. (Trial Tr. Vol. IV p. 646 ln. 11-17.) Dr. Smith testified that "she had stopped taking her mood stabilizer which could have indeed explained those symptoms [the August 2012 hospitalization]." (Trial Tr. Vol. IV p. 647 Ln. 24-25). The State did a good job of presenting this issue in a manner designed to assign culpability to Petitioner. Dr. Frierson's PCR testimony addressed this issue and put non-compliance in the context of the standard of care typical for psychiatric patients.

You could offer someone, you know, that's chronically noncompliant or not adherent to medication, you could offer a long-acting injectable medication is one option where you don't have to remember to take a pill every day. You just get a

monthly injection. You could [enlist] their family members to be more vigilant and assisting to make sure that the defendant is on medication and taking them appropriately. You can meet with a patient and find out why you're missing doses. And if it's for some side effect or something like that, you could maybe offer alternative medications. So there are a lot of things that could be done to try to increase compliance.

(PCR Tr. p. 146 ln. 20– p. 147 ln. 8). The ER records that implicated non-compliance were not in Dr. Smith's file. Dr. Frierson went on to agree with the proposition that, in legal cases involving non-compliant patients, testimony about a treating physician's options is something he wants the factfinder to know about. (PCR Tr. p. 148 ln.4 -10.)

Ultimately, Dr Frierson wanted to express his opinion at the original trial about Dr. Smith's treatment of Petitioner.

It is my opinion that she should have been seen more frequently than once every three months by the psychiatrist, that she should not have been prescribed Adderall, and if there were compliance issues, that he try to address those.

Q And you did not see that in his medical records?

A No.

(PCR Tr. p. 154 ln. 3-9). Nor was this information in the trial transcript.

Finally, Dr. Frierson did not get to testify at Petitioner's trial about Petitioner's "lack of knowledge of wrongfulness, which is the core issue in this trial, and specifically, her behaviors immediately after the alleged offense." (PCR Tr. p. 163 ln 15-20.)

There are a lot of behaviors that she engaged in that was to indicate that not only did she not know it was wrong, she wasn't totally aware of the consequences of what she had done. And I don't recall any of that being brought out at trial, specifically that she told the coroner that her family was not dead, that they're in the next room in the hospital when the coroner confronted her your two children are dead. She didn't even, you know, accept that as fact. And that never came out, to my knowledge, in my testimony.

(PCR Tr. 163 ln. 21- 164 ln. 5).

And there were a lot of behaviors that she exhibited after the fact that would point to the fact that she didn't understand the wrongfulness of what she had done. I mean, you know, in fact, I think the day of my testimony, it was -- it was revealed that someone who was the first person on the scene who saw her said that she said, "I've done nothing wrong." And that was revealed to me, you know. I didn't have time to put that in my report. I didn't have time -- I was never asked about that on the witness stand. I mean, I think that's pretty powerful evidence.

(PCR Tr. p. 165 ln. 3-13.)

And so when it comes to proving knowledge of wrongfulness, looking at certain behaviors, not what she said or what she tells me she thinks, but her actual actions are also very important to bring forward. And that's what I'm saying was never brought forward.

(PCR Tr. p. 166 ln. 16-21.) The list of things Dr. Frierson wanted to go into in his testimony in the original trial included the following:

She told the consulting psychiatrist in the emergency room that she did what she did to set her children free. And he recorded that. So that's him recording something from her into the medical record which corroborates that she told him what she was thinking. And that's, once again, another sort of collateral source. She also told the deputy coroner Kandy Kelley that she was trying to help her children. When the neighbor first approached her, she said, "Why am I here," which is consistent with not believing she could be dead. She told the nurse that she wanted her children to leave this awful -- did not want her children to live in this awful world. When the neighbor asked where is your husband, she said she didn't know. Once again, she thought by killing him, he had gone somewhere, they were going to be all together. That corroborates what she says she was thinking at the time. None of this came out. And there is something in the record that -- the Greenville medical record that she didn't think her kids were dead. They're in the next room. All of those would indicate statements that she made to others that were recorded of her mental state at the time of the crime that would indicate not only didn't she not realize the wrongfulness of what she'd done, I don't think she realized the nature and quality of the act, that her kids were dead, her two children.

(PCR Tr. p. 177 ln. 18- 178 ln. 21).

In addition to Dr. Frierson's testimony, the Petitioner offered Dr. James Ballenger.

Dr. James Ballenger

Petitioner presented Dr. James Ballenger as an expert in the field of forensic psychiatry with a subspecialty in the treatment of bipolar and schizophrenic mental health disorders. (PCR Tr. p. 206-209). Dr. Ballenger concurred with the other forensic psychiatric opinions that Petitioner suffered from "schizoaffective disorder, bipolar manic type" which he explained "really means it's two illnesses, Schizophrenia and bipolar disorder, both woven together, sometimes one more prominent than the other." (PCR Tr. p. 210 ln.16-20).

As a diagnosis, these disorders represent two of the "most complicated disorders to treat in psychiatry." (PCR Tr. p. 210 ln. 23-24.) Bipolar illness "goes from little reactions to little things causing bigger and bigger and bigger reactions." (PCR Tr. p. 212 ln.20-22.) In animal experiments, this response is called "kindling." (PCR Tr. p. 211 ln. 9-20.) Stated another way, even though the stimulus stays relatively mild over time, the subject's reaction to the stimulus dramatically increases. *Id.* "Kindling" is this hyper-response, and, in people it's called "sensitization". (PCR Tr. p. 211 ln. 20-23.)

Dr. Ballenger pioneered treatment for “kindling” / “sensitization” in bipolar patients with the use of an anticonvulsant called “Tegretol”. (PCR Tr. p. 213 ln. 1-9.) Dr. Ballenger wrote one of the first papers on the use of Tegretol that was published in the American Journal of Psychiatry called: “Carbamzepine, Tegretol, a new treatment for manic-depressive illness?”. (PCR Tr. p. 208 ln. 4-9.) After his paper, using anticonvulsants like Tegretol became widely accepted, particularly in [a] rapid cycling bipolar illness” like Petitioner’s. (PCR Tr. p. 208 ln. 10-14.)

Pertinent to this case, static doses of amphetamine over time can also trigger a “response” that “gets bigger and bigger and bigger and bigger.” (PCR Tr. p. 211 ln. 22- p. 212 ln. 1.) Patients with schizophrenia and bipolar “are especially prone to sensitization with methamphetamines.” (PCR Tr. p. 212 ln. 2-4.) So much so that amphetamines, in this case Adderall, are “contraindicated.” (PCR Tr. p. 213 ln. 22-24.) Adderall is “forbidden for use in bipolar disorder and schizophrenia because they make those two disorder worse, typically.” (PCR Tr. p. 213 ln. 24- p. 214 ln. 1.).

There's a lot of evidence that, in fact, the amount of dopamine that the amphetamines like Adderall kick out and make -- produce -- the brain to produce, the amount is greater in people in the schizophrenic bipolar spectrum. And clearly, she was in that spectrum. And so it causes more to be released. The evidence goes further, though, that they develop psychosis much more frequently than people who are not in the spectrum. So yes. It very frequently makes them worse. And even though sometimes I have used amphetamines, rarely in bipolar people, but you have to watch like a hawk to see if there's any evidence that it makes them worse. Because if it is, then you really have to throw it away. You can't use it again. And, in fact, that's one of the problems in Ms. Simpson's management is that that never happened. And so she was on high doses of Adderall, 20 milligrams three times a day. The pharmacist won't fill a prescription any higher than that.

Q And so if I'm hearing you correctly, that dosage over a period of time, the sensitivity or at least the probability exists that the sensitivity in a patient overreacts to the same dose, produces more dopamine over time even though the dose may even remain the same and -- well, let me stop there. Have I got that correct?

A That is correct. And from the get-go, it also, in these people, spectrum people, it produces a greater release of dopamine and therefore more destructiveness, more symptoms than it does in the person who takes it just for ADHD. Although, people with ADHD, 1 in 600 of them will develop an amphetamine-induced psychosis.

(PCR Tr. p. ln. 15 – 215 ln. 22). “[A]ntipsychotic medicines all block the release of dopamine. And so by inference, we think that that's one of the strongest pieces of evidence that dopamine is central to schizophrenia and, to a lesser extent, bipolar disorder.” (PCR Tr. p. 21 ln. 12-16.) Adderall stimulates and increases the amount of dopamine. (PCR Tr. p. 216 ln. 22 -24.) As a

result, “amphetamine destabilizes people with these two disorders and causes schizophrenia.” (PCR Tr. p. 217 ln. 1-2).

Dr. Ballenger outlined the proper treatment protocol for a patient with schizophrenia and bipolar disorders. “[T]he bipolar patient should be, in my professional opinion and everybody else's, on three or four medicines. (PCR Tr. p. 218 ln. 19-21.) For “rapid cycling”, Tegretol is best, but Depakote, Lamictal and Kepra “have also been demonstrated to be effective. (PCR Tr. p. 218 ln. 11-14.) Second, this type of patient needs an antipsychotic medicine. “In the old days, it started with Thorazine and Haldol, but now we have a second generation of much more tolerable antipsychotics like Zyprexa and Risperdal. (PCR Tr. p. 218 ln.24 – p. 219 ln.3). Third, this type of patient needs something to treat depression. (PCR Tr. p. 219 ln. 4.) Lamictal and Seroquel are available to treat depression. (PCR Tr. p. 219 ln. 6- 8.) “So an anticycling, an antipsychotic and antidepressant at the very least in sufficient doses.” (PCR Tr. p. 219 ln. 9-11.)

Dr. Ballenger testified that the records revealed Petitioner had been on Adderall since her early 20s. (PCR Tr. p. 219 ln. 12-13.) Dr. Ballenger noted red flags in Dr. Smith's records that should have indicated Adderall was no longer an option for the Petitioner. (PCR Tr. p. 210 ln. 12- p. 222 ln. 3.) These moments dated as far back in Petitioner's records as 2010, '11 and '12. (PCR Tr. p. 220 ln. 1-6.) At a minimum, the August 2012 hospitalization was a red flag in a sea of red flags. (PCR Tr. p. 221 ln. 22 – p. 222 ln. 3.)

Dr. Ballenger addressed non-compliant patients in the context of mental health disorders. Specifically, Dr. Ballenger pointed out that non-compliance is a fact of life, and that “the most noncompliant patients in the world are bipolar patients.” (PCR Tr. p. 222 ln. 12-13.) Dr. Ballenger offered the same opinion, although stronger, that a treating physician has to get the patient's family involved if possible. (PCR Tr. p. 223-224). In addition, “injectable medicines” are an alternative. (PCR Tr. p. 224 ln.12-14.) “[I]n many counties, the best place to get injectable medications is not with a private doctor but with the mental health center.” (PCR Tr. p. 224 ln. 18-20.)

Petitioner's illness, while perhaps “complex”, can be properly managed. (PCR Tr. p. 225 ln. 19- p. 226 ln. 1.) As support for this proposition, Dr. Ballenger referenced Petitioner's medical records from her incarceration. Specifically, Dr. Ballenger pointed out that Petitioner is “finally on the right amount of antipsychotics, which she had needed all along.” (PCR Tr. p. 225 ln. 24 – p. 226 ln. 1.) In addition, Petitioner is completely off of Adderall. (PCR Tr. p. 226 ln. 2-3.) These two prescription regimen changes have eliminated Petitioner's psychotic events. (PCR Tr. p. 226 ln. 4- 7.)

In probably the most poignant moment in the PCR trial, Dr. Ballenger reached the inevitable conclusion that Dr. Frierson's testimony built up to. “[T]his tragedy could probably almost certainly have been prevented had that delusion been treated.” PCR Tr. p. 226 ln. 19-21.) If Petitioner had been treated correctly, “I don't think we would be here today.” (PCR Tr. p. 226 ln. 18-19.) Treated properly, particularly after the August 2012 hospitalization, Petitioner “would have been quickly back on her feet, being a good mother and wife and just being somebody who needed to go see the doctor every two to four weeks.” (PCR Tr. p. 227 ln. 5-8.)

At the PCR, trial counsel conceded that there was not much focus on the role that the prescription Adderall had played as a root cause of Petitioner's psychosis. (PCR Tr. p. 78 ln. 19- p. 79 ln. 4.) To the extent Adderall was mentioned in the records or by trial counsel's experts, he never took that direction with the original trial. (PCR Tr. p. 79 ln.5-11.) Trial counsel stated he was unaware that Adderall was contraindicated for Petitioner's illness once psychotic symptoms manifested. (PCR Tr. p. 79 ln. 5-11). Regardless of his awareness, trial counsel did not consider a strategy that included attacking Petitioner's prescription regimen as a basic mismanagement of her illness. (PCR Tr. p. 79 ln. 12-18). Nor did trial counsel give any consideration to the potential defense of asserting that Adderall, prescribed to a patient with a history of psychosis, was a primary factor in the severe psychosis that led to the incident on May 13-14, 2013. (PCR Tr. p. 80 ln. 22 – p. 81 ln. 3.)

During the PCR, the State brought out in cross examination that there was expert testimony in the trial record about Adderall. This is true in the strictest sense. A word search for Adderall in the trial transcript produces the following results: Trial Transcript Vol. I = 0; Trial Transcript Vol. II = 0; Trial Transcript Vol. III = 24; and Trial Transcript Vol. IV = 1. Dr. Mulberry referenced Adderall 14 times. Dr. Frierson referenced Adderall 10 times. Dr. Smith referenced Adderall once.

A word search for amphetamine in the trial transcript produces the following results: Trial Transcript Vol. I = 0; Trial Transcript Vol. II = 0; Trial Transcript Vol. III = 10; and Trial Transcript Vol. IV = 0. Dr. Mulberry referenced Adderall 14 times. Dr. Frierson referenced Adderall 9 times. Dr. Smith referenced Adderall once.

In contrast, a word search for these two words in the PCR transcript results in the following: Adderall appears 136 times and the word amphetamine appears 33 times.

The backdrop to the testimony on Adderall and amphetamine in the trial transcript is instructive. At the original trial, Dr. Mulberry's testimony regarding Adderall was primarily in the context of the list of Petitioner's prescriptions and was brought out through the State's cross-examination. (Trial Tr. Vol. III p. 471-472). Dr. Mulberry described Adderall as a long-acting mixture of "amphetamine salts." (Trial Tr. Vol. III p. 472 ln. 17-18.) Pouncing on the word "amphetamine" the State's cross-examination appeared to be for the primary purpose of suggesting Petitioner had chosen to abuse her Adderall prescription for its amphetamine properties. (Trial Tr. Vol. III p. 482 ln. 25 – 483 ln. 3.) Thus, the subject of whether Adderall was appropriate as a prescription was not addressed through Dr. Mulberry.

Dr. Frierson's original trial testimony regarding Adderall also supports Petitioner's position on this issue. His testimony regarding Adderall was also during the State's cross-examination with a focus on the fact that Petitioner tested positive for "amphetamines" in the ER shortly after the incident on May 14, 2013. (Trial Tr. Vol. III p. 553 ln. 7-21.) Pointedly, Dr. Frierson was cut off by the Solicitor when he referenced their pre-trial discussion on the topic of Adderall: "[C]ould amphetamines in some way be responsible for some of this and . . . [cut off by Solicitor]." (Trial Tr. Vol. III p. 553 ln 17-23.) Like the cross-examination of Dr. Mulberry, the purpose of the questions regarding Adderall by the State was to infer that Petitioner was abusing Adderall/amphetamines just prior to her crime. (Trail Tr. Vol. III p. 554 ln. 14-15.) Eliminating

any doubt about the purpose of this line of cross, the State brought out that Petitioner had, on occasion, taken an extra Adderall when an important task was at hand. (Trial Tr. Vol III p. 555 ln. 10-18.) Once again, the Solicitor cut Dr. Frierson off when he tried to explain further, to wit: "There's no evidence from the pharmacy that she was trying to get[cut off by Solicitor]" (Trial Tr. Vol. III p. 555 ln. 16-19.)

Trial Counsel's response on the re-direct of Dr. Frierson was focused on making sure it was clear that any reference to "amphetamine" was a reference to prescription Adderall, and that there was no evidence of "overuse." (Trial Tr. Vol. III p. 560 ln.11 – 24.) Almost by accident, trial counsel asked a question that sparked Dr. Frierson to begin talking about his concerns with Adderall as a prescription. (Trial Tr. Vol. III p.560 ln. 23-24.) As soon as Dr. Frierson began talking about how "Adderall can make those psychotic symptoms worse and . . .", trial counsel cut him off. (Trial Tr. Vol. III p. 561 ln. 5 -7). Trial counsel ended Dr. Frierson's testimony here; at the very point where he was about to get into Adderall being contraindicated and all that entailed relevant to her psychosis and the inability to know right from wrong while in that psychosis. (Trial Tr. Vol. III p. 561 ln. 8.)

Finally, Dr. Smith's single reference to Adderall at the trial was in his description of his first treatment visit with Petitioner. (Trial Tr. Vol. IV p. 642 ln. 19.)

Relevant to Petitioner's position that Dr. Smith mismanaged her treatment, it is true that Dr. Smith's treatment of Petitioner did receive some scrutiny. Trial counsel attacked Dr. Smith's records to show that he spent very little time with Petitioner. (Trial Tr. Vol. IV p. 677-679). Trial counsel got Dr. Smith to admit that he was unaware of how sick Petitioner was leading up to the incident. (Trial Tr. Vol. IV p. 687 ln. 7-10). However, there was no cross-examination on Dr. Smith's knowledge regarding Adderall being contraindicated, Adderall as a contributing or causative factor in Petitioner's mental state on the date of the incident, the potential severity of an Adderall induced psychosis or the mismanagement of Petitioner's course of treatment.

Therefore, there is nothing in the trial record to conclude that trial counsel made the jury aware that: (1) Adderall was contraindicated; (2) treatment with Adderall can cause psychosis; (3) any non-compliance should have been addressed as a standard of care; (4) the treating physician had the information available in his incomplete records to reach these conclusions; (5) all the experts including Dr. Smith agreed that Adderall played a causative role in Petitioner's psychosis on the incident date, and, (6) but-for a failure to properly manage Petitioner's illness, Petitioner should never have been delusional on May 13-14, 2013.

APPLICATION OF LAW TO FINDINGS OF FACT

In *Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018), the South Carolina Supreme Court quoted with approval the following:

As the Supreme Court of the United States explained in *Strickland*, "the question is whether there is a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt." 466 U.S. at 695, 104 S. Ct. at 2068-69, 80 L. Ed. 2d at 698. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial."

Rutland v. State, 415 S.C. 570, 577, 785 S.E.2d 350, 353 (2016) (citing *Strickland*, 466 U.S. at 694, 104 S. Ct. at 2068, 80 L. Ed. 2d at 698).

Id. at 188, at 843.

Deficient Performance

“A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time.” *Strickland*, 466 U.S. at 689. “[W]here trial counsel admits the testimony of a certain witness may have made the difference in obtaining an acquittal, the Court may find ineffective assistance.” *Pauling v. State*, 331 S.C. 606, 610, 503 S.E.2d 468, 471 (1998).

In this case, the Court finds that a fair assessment of trial counsel's performance must include consideration of several significant admissions from trial counsel. First, both trial counsels admitted that they became hyper-focused on presenting concurring forensic opinions that Petitioner did not know right from wrong at the time of the crime. This hyper focus was to the exclusion of other defense strategies and contrary to some of the basics of trial preparation. For example, both trial counsels admitted that they did not interview lay witnesses. They were aware that the witnesses presented by Petitioner in this PCR existed and that their testimony was sympathetic to Petitioner. Particularly telling is the fact that both trial counsels admitted that there was no strategic reason not to call these witnesses at trial. Given the malice theme of the State's case, these witnesses did, in fact, offer a counter to the idea that the Petitioner was a cold calculating killer. Good character evidence was available. Lead trial counsel did not appear to fully understand good character evidence and the opportunity to use good character evidence as part of his defense and requests to charge. The “mercy rule” is not new law. Effective trial counsel should have, at the least, been aware of this opportunity and considered it. Upon being informed of the good character evidence, trial counsel conceded their performance was deficient in this context.

In addition, trial counsel admitted that he should have interviewed Petitioner's treating physician. Virtually every assumption that trial counsel made regarding Dr. Smith was incorrect. To the contrary of his assumptions, Dr. Smith wanted to talk to the defense team. Dr. Smith had opinions and facts that helped Petitioner. Dr. Smith could be qualified as an expert. And, Dr. Smith could testify as to Petitioner's state of mind. A cursory review with Dr. Smith of his file and the questions Dr. Smith had would have revealed a host of opportunities to get Dr. Smith engaged with the defense. Ultimately, even if Dr. Smith became an adverse witness, trial counsel needed to be prepared for that potential. When this potential became reality, trial counsel was not prepared.

Finally, Trial counsel has admitted that the defense strategy missed the Adderall angle entirely. On the one hand, trial counsel was unaware of the significance of Adderall, but should have been. On the other hand, even if trial counsel was on notice, the issue never got addressed. Every expert in this case had the same conclusion: no one can fully understand what was

happening with Petitioner's state of mind on the date of the incident without understanding the causative impact Adderall was having on Petitioner's psychosis.

When viewed separately, one or two of the issues raised by Petitioner might be insufficient to conclude trial counsels were deficient. However, the compounding effect of each of Petitioner's issues can't be under-stated. The end result was a malice oriented, lopsided presentation of the Petitioner and her mental condition. As second chair for the Petitioner stated, and the Court agrees, the Petitioner got presented to the jury as a "monster" who killed her children without any evidence from the defense to "humanize her." (PCR Tr. p. 186 ln. 20- p. 187 ln. 3.) As discussed above, trial counsel missed humanizing the Petitioner, defense issues, and legitimate explanations for Petitioner's condition with defense friendly witnesses. Trial counsel missed the opportunity for a jury instruction on good character.

The evidence available to the defense was there for trial counsel to find with basic trial preparation. An objective standard of reasonableness includes interviewing cooperative and known witnesses. An objective standard of reasonableness includes a minimal level of preparedness which would have revealed the fact that Adderall is contraindicated for Petitioner's mental illness, was potentially causative of her psychosis, and would have gone a long way to explaining how a person could become sufficiently delusional to shoot her family members. Case law exists on this topic and defense. *See, e.g. McMaster v. Dewitt*, 411 S.C. 138, 767 S.E.2d 451 (Ct. App. 2013)(malpractice suit for Adderall induced psychosis); *Ehlis v. Shire Richwood, Inc.*, 223 F. Supp. 2d 1189 (D.N.D. 2002)(product liability suit against Adderall for Adderall induced psychosis where father shot child and tried to kill himself).

Therefore, for all the reasons discussed above, the Court finds that trial counsel's performance was deficient.

Prejudice

Having concluded that counsel was deficient, the Court turns to the issue of prejudice. To establish prejudice, the Court must find that there is a reasonable probability, sufficient to undermine confidence in the outcome of the case, that the result of the proceedings would have been different. *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 102 (2013). "In other words, [Petitioner] must show that a reasonable probability exists that 'the factfinder would have had a reasonable doubt respecting guilt.'" *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011).

To this end, it is not lost on the Court that the jury found the Petitioner guilty on all counts. One could conclude that the jury gave no evidentiary weight to any of the expert opinions on Petitioner's state of mind. In a case where no evidentiary weight was given to any of the expert opinions on Petitioner's state of mind, logic would dictate that there is nothing Petitioner can present in her PCR that could reasonably change the outcome in a second trial. The Court disagrees.

The Court has reviewed the trial transcript. The Court has also reviewed the PCR transcript. In the trial, the jury sent a note to the trial judge. (Trial Tr. Vol IV p. 770 ln. 6-9).

Specifically, the jury's note stated: "We want a clarification between guilty and guilty but mentally ill." *Id.* At this point, the trial judge instructed the jury on all four of the potential verdicts. (Trial Tr. Vol. IV p. 777-772). This note is evidence that the jury was considering Petitioner's mental illness and its impact on her state of mind. This situation is similar in context to the jury's note to the trial judge in *State v. Lee-Grigg*, 387 S.C. 310, 692 S.E.2d 895 (2010). In that case, good character evidence was introduced and the trial judge refused to give a "good character" instruction. *Id.* at 317, at 897. Intent was at issue and the jury expressed a question about intent. *Id.* "The jurors' request for a recharge on the definition of 'intent' is evidence that they were struggling with this question." *Id.* The Supreme Court reached the conclusion that this note was sufficient to overcome harmless error, despite the verdict of guilty. *Id.* The same evidence is present here. (Trial Tr. Vol. IV p. 770 ln. 8-9).

What further troubles this Court and undermines confidence in the outcome of Petitioner's original trial, is that the jury did not get the evidence it needed to reach an informed verdict. Verdict comes from the Latin term "verdicto", which means to speak the truth. In this PCR, Petitioner has presented a cogent, factual, and medically based chronology that speaks to the underlying truth in this case.

The following is a factually based truth that trial counsel failed to present to the jury. Petitioner was a loving, caring, mother and spouse for all but the last 11 months prior to the incident. Petitioner experienced debilitating psychotic thoughts for the first time during the week leading up to her hospitalization in late July, early August 2012. Petitioner had been taking prescription Adderall since her college days. Over time, however, Petitioner's static prescription for Adderall began triggering a heightened response. This heightened response, i.e. kindling/sensitivity to the same dose of Adderall, resulted in the production of enough dopamine to overpower her prescription mood stabilizer. Psychosis inevitably followed. No abuse of Adderall was necessary to trigger this event. Non-compliance with the prescription mood stabilizer was not necessary to trigger psychosis. It is a fact that individuals in the bipolar/schizophrenic spectrum tend to overrespond to Adderall more so than the normal population. That is why it is contraindicated for people in this spectrum.

When Petitioner was hospitalized and rapidly responded to her mood stabilizers, this was a key moment. It was a key moment, because it meant that Adderall should have been terminated from Petitioner's prescription protocol. In case there was any question about this fact, Petitioner was still showing signs of psychosis during her first visit with the therapist in Dr. Smith's office. This office visit was post-hospitalization and after she was back on the Adderall prescription. Unfortunately, Dr. Smith was not aware of this therapeutic record, because it just didn't get into his files. Whether this therapeutic record would have changed the eventual course of Petitioner's treatment is unknown. What did happen, however, is that Dr. Smith increased the Petitioner's dose of Adderall to the maximum amount permitted by regulation. The resulting psychotic break that began manifesting about a week prior to the crime was almost inevitable. Tragically, the resulting psychotic break was completely avoidable with a properly managed treatment. Underpinning this last conclusion is the fact that Petitioner has been appropriately medicated, i.e. increased anti-psychotics and absolutely no Adderall, since the incident date. This medication regimen has kept Petitioner psychosis free since that time.

This chronological sequence of events presents a logical and understandable narrative of how a mother and wife could end up shooting her family members as the result of her mental illness and treatment mismanagement.

In conclusion, the evidence summarized above sufficiently undermines the Court's confidence in the outcome of this case. The Court concludes that Petitioner has made a sufficient showing that there is a reasonable probability that the factfinder would have had a reasonable doubt respecting guilt. In this case, there is a reasonable probability that, but for counsel's deficient conduct, the fact finder could find there was a reasonable doubt that Petitioner knew right from wrong at the time of the crime. Therefore, there is a reasonable probability that, but for counsel's deficient conduct, the factfinder could find that Petitioner was not guilty by reason of insanity.

WHEREFORE, for all the foregoing reasons, the Court finds that Petitioner has met her burden of proof and is granted a new trial.

IT IS SO ORDERED.

Patrick C. Fant, Circuit Court Judge
13th Judicial Circuit

Dated: _____

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

Suzanna Brown Simpson, #368727

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) IN THE THIRTEENTH JUDICIAL CIRCUIT

) C/A No.: 2020-CP-39-0617

) **RESPONDENT'S OBJECTIONS**
) **TO APPLICANT'S PROPOSED**
) **ORDER GRANTING RELIEF**

Clerk of Court Pickens County, SC
MAY 16 '25 AM 11:26

This matter is before the Court for consideration of the application for post-conviction relief (PCR) filed by Applicant, Suzanna Brown Simpson. Proposed Orders from both parties were submitted on April 8, 2025. Per the agreement of the parties and the Court, the parties may also submit objections to opposing counsel's proposed order. As an initial matter, Respondent would note that it opposes the arguments and conclusions reached in Applicant's proposed order, but that the State's proposed order of dismissal is in large part sufficient to convey the basis of such opposition. Respondent does not seek to reargue its positions set forth in the State's proposed Order. However, there are several matters that warrant objection that relate to inconsistencies with what is and is not present within the record, and to the nature of the pleadings and arguments presented by Applicant within her proposed order. Respondent herein submits its objections to such matters set forth with Applicant's proposed order granting relief.

1. Applicant asserts a "lack of any pre-trial motion based in Due Process to require disclosure by the State related to expert testimony." (Applicant's Proposed Order, p. 3). This is not an accurate assessment of the record, as trial counsel explicitly argues a violation of due process. (Tr., p. 86).

2. Applicant asserts that the State's "trial strategy" was not to disclose the anticipated expert opinion. Respondent would note that in the absence of an obligation to disclose such information, there is no impropriety to the State's actions and that "not disclosing" information that does not require disclosure is not a "trial strategy."
3. Applicant's proposed order appears to expand the nature of Ground 10(e). The claim itself refers to "mitigating witnesses including family and friends" and the nature of the questioning by counsel directed that allegation toward the matter of character evidence, seeking a jury charge regarding character evidence, and counsel's failure to consider character evidence in light of their focus upon the mental health argument.¹ (PCR Tr., p. 84, 85, 87, 183-187). In contrast, Applicant's proposed order appears to expand the nature of the claim to argue that friends and family should have been called to further develop the insanity defense itself. (See proposed order, p. 8; p. 14). To the extent that Applicant intends to expand 10(e) beyond the question of character evidence, Applicant has not pled such an allegation, Respondent was not put on notice of such an allegation, nor was such an allegation addressed via questioning of trial counsel so as to satisfy Rule 15(b), SCRPC. *Mangal v. State*, 421 S.C. 85, 92, 805 S.E.2d 568, 571 (2017); *Love v. State*, 428 S.C. 231, 240, 834 S.E.2d 196, 200 (2019).
4. Notwithstanding Applicant's failure to raise this claim with specificity, the record demonstrates that defense counsel used part of his cross-examination of Ms. Brown to demonstrate the bizarre behavior Ms. Simpson was displaying over multiple

¹ Correspondence prior to the hearing between opposing counsel also made clear that 10(e) was directed toward the topics of good character evidence and a good character defense charge.

phone calls and to then demonstrate the comparison of that behavior to her prior behavior resulting in hospitalization in 2012. Applicant's cross-examination of Ms. Brown made use of her testimony to further demonstrate NGRI. Applicant utilized the lay witness testimony of Michael Weight to the same effect. Trial counsel did not fail to present evidence of insanity via lay witnesses.

5. Applicant asserts that Ms. Zeigler "did not see anything about Petitioner's behavior that gave her pause for concern 'up until about four or five days before the incident.'" The quoted portion from the proposed order was in response to whether Applicant had been "consistent with her help in the classroom." (PCR Tr., p. 261). Ms. Zeigler never testified that she was concerned for Ms. Simpson, only that she simply did not hear from her during that week. Respondent would argue that record does not support Applicant's description of Ms. Zeigler's mindset.
6. Respondent objects to the order's citation to *United States v. Yarbrough*, 527 F.3d 1092, 1102 (10th Cir. 2008) as authority in support of the premise that character evidence can be relevant to the question of sanity. The 'highly controverted' "state of mind" referenced by Applicant addresses good character evidence of the defendant police officer as being a person of high integrity and a law-abiding citizen. Such testimony was admitted to combat the charges of corruption and purposefully impeding an investigation. *U.S. v. Yarbrough* has no relevant application to Applicant's case.
7. Applicant asserts that trial counsel were not aware of Dr. Smith serving as a rebuttal witness "until they submitted his name in the rebuttal." The record does not support this assertion. Counsel were on notice of Dr. Smith's coming testimony during

pretrial motions, three days passed before Dr. Smith took the stand, and Mr. Mauldin testified that he used the night prior to prepare his cross-examination.

8. Applicant suggests that a number of factual or testimonial matters were presented during the PCR hearing, but not heard by the jury. (Applicant's Proposed Order, p. 20-21). Applicant's summation of Dr. Smith's testimony and the arguments related thereto are objectionable in the following ways:

a. Applicant suggests that the jury did not hear Dr. Smith's findings regarding Applicant's paranoid ideation stemming from the use of a newly prescribed antipsychotic medication. While Respondent fails to see how this has any connection to Adderall, as argued by Applicant, the jury was nevertheless made aware of this finding during defense counsel's cross-examination. (Tr., p. 669-670).

b. Contrary to Applicant's assertions, Dr. Smith's testimony regarding Applicant's 2012 rapid reconstitution/resolution, and the rarity of such a speedy recovery, *was presented to the jury*. (Tr., p. 654-656). Also contrary to Applicant's assertions, this testimony was *not* favorable to the defense. The record demonstrates that Dr. Smith explained that given how fast her symptoms dissipated, Applicant had an atypical recovery to *a functional psychosis*. Dr. Smith testified that such speedy recovery might occur for a drug induced psychosis. However, Dr. Frierson's testimony revealed that Applicant did not have any amphetamines in her blood when she was admitted in 2012, thereby demonstrating to the jury that Applicant did not suffer from a drug induced psychosis in 2012, and further demonstrating the

contradictive challenge of presenting such testimony and *then* (as PCR counsel claims counsel should have pursued) attempting to argue a drug-induced psychosis to explain the crime when Applicant self-reported not taking her Adderall on the day of the crime. (See Tr., p. 648-649; 654-656; 553-554). Applicant appears to rely upon only the information she believes most useful for collateral litigation without regard for whether it is contradictory to existing facts, expert testimony, and defense theories.

- c. Dr. Frierson's testimony covered the discussion of Adderall, in contradiction to the assertion that the defense never addressed the issue. It was also covered by Dr. Mulbry. (See e.g. Tr., p. 482-483; 553-554; 560-561). Regarding her 2012 episode, Dr. Smith even testified explicitly during his direct examination that "I think that there was evidence of psychosis; however, in reviewing those records, there was mentioned by the treating clinicians at St. Francis that she had stopped taking her mood stabilizer which could have indeed explained those symptoms, particularly if – and we really have no way of knowing this², but if she continued to take the

² As referenced above, the blood test taken during her hospital admission in 2012 suggests that Appellant was not taking her stimulant medication. In any case, the only remaining theories for the 2012 psychosis were that she either 1) experienced a psychosis for failing to take the mood stabilizer's that keep her bipolar condition in check (which Applicant's self-reporting supports) or 2) she experienced psychosis stemming from another medical condition such as schizoaffective disorder (which her litigation experts ultimately diagnosed her with). However, neither theory can place the cause of her first psychosis on Adderall and the facts that follow make it contradictory to claim that a subsequent psychosis leading to the crime was *caused* by Adderall (which Dr. Frierson testified to during trial). And, none of this addresses the fact that someone can experience a psychosis but still distinguish right from wrong. (Tr., p. 649).

stimulant medications without the mood stabilizer, that would significantly contribute to the psychosis.” (Tr., p. 647-648; See also, 672-674).

- d. Similarly, Applicant makes a number of assertions about the materials and/or opportunities that Dr. Smith did not have in preparation. However, Applicant appears to confuse or commingle testimony regarding what Dr. Smith did not have *in the years during which he was not involved in the criminal case*, in comparison to what he supposedly did not have for review once subpoenaed by the State. (*Compare* Tr., p. 22-24 and Tr. p. 29-30).
- e. Contrary to Applicant’s assertions, the record demonstrates that trial counsel did attempt to cross-examine Dr. Smith on the lack of preparation time. Dr. Smith responded by noting that his preparation was not limited to the week of time following his subpoena, but that due to the nature of the case and his conversations with the defense team’s experts, he had taken efforts to further review Applicant’s records before being contacted by the State. (Tr., p. 660-661). Similarly, in contradiction to Applicant’s assertions, trial counsel *did* cross-examine Dr. Smith on what documents he had available to review in preparation for trial and his lack of having subsequent meetings with Applicant or her family members after the crime. (Tr., p. 663-665).
- f. Contrary to Applicant’s assertions, Dr. Smith’s opinion that Applicant experienced psychosis when she was hospitalized at St. Francis was made known to the jury. (Tr., p., 648).

g. Dr. Smith acknowledged on cross-examination that in 40 years of practice he had never been qualified as an expert to perform a forensic evaluation and/or offer testimony as a forensic psychiatrist in a criminal case. Contrary to Applicant's assertions regarding the failure of counsel to ask if the other forensic experts were better suited to offer a forensic opinion, the conclusion is inherent to the cross-examination that he performed.

9. Applicant asserts that "but for the failure to properly manager Petitioner's illness, Petitioner would never have been in a psychotic state on May 13-14, 2013. The testimony and argument espousing such a conclusion is pure speculation, and as detailed above, it disregards the evidence to the contrary presented at trial.

10. Respondent objects to Applicant's assertion that her non-compliance with medication was relevant "in the context of the standard of care typical for psychiatric patients." (See Proposed Order, p. 25). Applicant's burden is to demonstrate ineffective assistance of counsel, and trial counsel's burden was to demonstrate insanity. The psychiatric standard of care is irrelevant to either burden of proof. To that end, the "desire" of Dr. Frierson to discuss standard of care topics is likewise irrelevant.

11. Applicant asserts that Dr. Frierson wished to expound on multiple topics and was not permitted to do so. The record demonstrates that such topics were either not relevant, discussed by Dr. Frierson, or discussed by other witnesses:

a. "Dr. Frierson wanted to be able to expound on the relatively normal, loving and caring person that Petitioner had been. . ." (Applicant's proposed order,

- p. 23). Such character testimony is irrelevant, but it was otherwise demonstrated in the testimony offered by Ms. Brown at trial.
- b. “Dr. Frierson was not given the opportunity in his testimony at Petitioner’s trial to explain how Adderall was interacting with Petitioner’s mental illness.” (Applicant references specifically the paranoia from her mother-in-law being a bad influence on her children). (Applicant’s proposed order, p. 24). The record demonstrates that Dr. Frierson testified *explicitly* to that issue (Tr., p. 561), and the medications impact on psychosis was discussed by other experts as well.
 - c. Applicant asserts that based on Dr. Frierson’s PCR testimony, Dr. Smith was not aware of the severity of Applicant’s psychotic symptoms and should have been. (Applicant’s proposed order, p. 25). Trial counsel’s cross-examination succeeded in getting Dr. Smith to admit to precisely this lack of awareness.

12. For many of the above assertions, Applicant reasserted the supposed absence of record testimony to these matters by asserting: “there is nothing in the trial record to conclude that trial counsel made the jury aware that:” (Applicant’s proposed order, p. 31).

- a. “Adderall was contraindicated.”³
 - i. This is not an accurate assessment of the record. Dr. Frierson testified as follows:

³ There are multiple instances within the proposed order where Applicant erroneously asserts that the jury did not hear such testimony.

Q. And in your review, . . . were you concerned about evidence or clear evidence of any overuse of the prescribed medications, and if so, what was the context?

A. If I understand your question, the answer is no, I was not concerned about that. **I was concerned in general that she was prescribed this medicine. . . . Because once you get psychotic and you think that your mother-in-law is training your daughter to be part of a sex something, when you lose contact with reality, that's a relative *contraindication* to prescribing Adderall because Adderall can make those symptoms worse. . . .** (Tr., p. 560-561)(emphasis added).

b. "Treatment with Adderall can cause psychosis."

i. This is not an accurate assessment of the record. As demonstrated, Dr. Frierson testified that Adderall can make psychosis *worse* (though distinguishable from "cause" it is evidence to the same purpose) and Dr. Smith testified that "treating bipolar disorder and ADHD, it's a very tricky thing to do because ADD medicines in the absence of a mood stabilizer will make bipolar disorder much worse" and "if she continued to take the stimulant medications without the mood stabilizer, that would significantly contribute to the psychosis." Lastly, Dr. Mauldin testified that gross overuse of Adderall can cause a psychotic episode. (Tr., p. 646; 648; 483)

c. "Any non-compliance should have been addressed as a standard of care."

i. A discussion of the standard of care is not relevant in post-conviction relief and would not have been relevant at trial. Discussions of the standard of care – i.e. what actions a doctor should have taken, as opposed to his actions or inactions – does not provide evidence tending to establish Applicant was unable to

distinguish right from wrong. Such discussions also do not establish deficiency of counsel or resulting prejudice either. While it is clear that Applicant's PCR theory is that her attorneys should have pursued a *different* theory of the "cause" of her psychosis⁴, neither the dispute over the "cause" of the psychosis nor testimony as to the standard of care in the context of allegedly preventing psychosis, addresses the fact that the jury did not find Applicant insane at trial. Applicant does not satisfy her burden of proof for relief by attempting to prove matters that are superfluous to the underlying burden.

- d. "The treating physician had the information available in his incomplete records to reach these conclusions."
 - i. Again, attempting to prove Dr. Smith should have handled Applicant's medications differently, does not establish that she was incapable of distinguishing right from wrong during the crime, nor does it establish deficient performance by counsel.
- e. "All the experts including Dr. Smith agreed that Adderall played a causative role in Petitioner's psychosis on the incident date."
 - i. As previously indicated, the trial record indicates that Dr. Mulbry, Dr. Frierson, and Dr. Smith all testified to Adderall's ability to play

⁴ Notwithstanding the fact that counsel were appropriately reliant upon their *three* forensic experts to explain the medicine of the case and articulate the facts and theories necessary to prove that Applicant was insane at the time of the crime (a conclusion for which Respondent does not believe the greater weight of the evidence supports), Applicant's supposed new theory of Adderall Induced Psychosis was simply (and rightly) not among the theories for which counsel were informed. And, by Dr. Frierson's account, relying on such a theory was not appropriate given than Ms. Simpson's prior psychosis, for which the defense used for comparison, was not the result of amphetamines because she had no amphetamines in her system when admitted to the hospital. (Tr., p. 554).

an exacerbating role in psychosis (in the absence of mood stabilizers). The jury was made aware of the potential issue. The problem is that the facts of the case, in both her prior hospitalization and the crime in question, tend to suggest that Applicant did not take her Adderall and there was notable evidence tending to establish Appellant understood right from wrong immediately after committing the crime. (Tr., p. 553-554).

f. “But-for a failure to properly manage Petitioner’s illness, Petitioner should never have been delusional on May 13-14, 2013”.

i. Respondent has already objected to the improper, speculative, and factually undermined nature of such a claim.

13. Applicant begins her “Application of Law and Findings of Fact” section with a recitation of the importance and necessity of eliminating the distorting effects of hindsight. She then immediately disregards the directive and applies hindsight to each of the conclusions reached, often in reliance upon irrelevant evidence or in omission of conflicting record facts. Respondent will forgo raising objection to each finding, as the State’s proposed order sets forth the improprieties of such.

14. Applicant asserts that “trial counsel has admitted that the defense strategy missed the Adderall angle entirely.” (Applicant’s proposed order, p. 32). The record demonstrates that, to the extent the ‘angle’ even exists, *counsel were not made aware of it* by their three different forensic experts.

15. Applicant asserts a “compounding effect” of what she perceives to be multiple deficiencies. South Carolina jurisprudence has not determined whether cumulative effect doctrine is an available claim for relief.
16. Applicant’s proposed order relies upon the jury note seeking clarification of “guilty” and “guilty but mentally ill” as evidence that they were considering her mental illness and that they were receptive to its impact upon her state of mind. Applicant’s assertion misses the mark. Neither of these verdicts demonstrate *a lack* of criminal responsibility in Applicant’s case. The jury’s question is indicative of it considering the expert testimony, *being confident that applicant was criminally responsible*, but needing further explanation on what legal distinction exists *between the two guilty verdicts*.
17. Applicant asserts in her proposed order that “[t]he following is a factually based truth that trial counsel failed to present to the jury.” (Applicant’s proposed order, p. 34).
- a. “Petitioner was a loving, caring, mother and spouse for all but the last 11 months prior to the incident.”
 - i. The record demonstrates that such evidence was presented to the jury, and such was not even limited to a specific time-period.
 - b. “Petitioner had been taking prescription Adderall since her college days. Over time, however, Petitioner’s static prescription for Adderall began triggering a heightened response” from “kindling.”
 - i. This is not a “factually based truth.” Appellant has done no more than present an expert witness who admitted he did not meet with,

evaluate, observe, or treat Applicant in any way.⁵ Appellant has merely presented a *supposed* medical phenomenon; she has not presented any evidence that she personally suffered from that medical phenomenon.

18. Applicant's proposed order asserts: "When Petitioner was hospitalized and rapidly responded to her mood stabilizers, this was a key moment. It was a key moment, because it meant that Adderall should have been terminated from Petitioner's prescription protocol." This assertion concedes that it was the absence of her mood stabilizers (not the presence of Adderall, for which the record demonstrates she was not taking) that caused her psychosis. Applicant disregards the importance of *the mood stabilizers* for the unsupported assertion that Adderall was the "cause" of her later psychosis, and she fails to recognize that neither of those matters actually addresses the critical issue of *criminal responsibility*. Applicant's argument here soundly demonstrates the irrelevance of a standard of care dispute. Applicant's argument also demonstrates the improbability that a patient with a prior psychosis *in the absence of Adderall* would find her most persuasive defense theory in "Adderall Induced Psychosis" when she self-reported not taking her Adderall on the day of the crime. Applicant has not shown ineffective assistance of counsel, she

⁵ The support for Dr. Ballenger's opinion is alarmingly limited. In addition to the absence of any interaction with Applicant, Dr. Ballenger also did not have an opportunity to observe Applicant while she was taking Adderall (before or after the crime), so as to determine whether she actually experienced a kindling reaction. Moreover, when asked "did you see any evidence of kindling in her medical records?" his response was "Well, I didn't specifically look there . . ." He then attempted to support his theory of kindling/sensitization by referencing a "buying spree" from "the first time she was given an amphetamine." (PCR Tr., p. 213). Such would run counter to his testimony that this is a phenomenon that occurs only after an uncertain but considerably long period of time and to an indeterminate percentage of patients. (PCR Tr., p. 229-231). Any conclusion reached by Dr. Ballenger relating specifically to Applicant is *entirely* speculative.

has merely devised *weaker* or unsubstantiated alternative arguments in hindsight of an undesirable verdict. She has failed her burden for relief.

CONCLUSION

WHEREFORE, having made these Objections to Applicant's Proposed Order, Respondent submits that Applicant's proposed order for relief is not factually sound or legally persuasive. Applicant has failed to satisfy her burden for relief and the action should be dismissed.

Respectfully submitted,

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May 1, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	IN THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Suzanna Brown Simpson, #368727	)	C/A No.: 2020-CP-39-0617
	)	
Applicant,	)	
	)	
v.	)	
	)	ORDER DENYING
State of South Carolina,	)	POST-CONVICTION RELIEF
	)	
Respondent.	)	
_____	)	

Clerk of Court Pickens County SC
JUN 9 25 PM 2:48

This matter is before the Court for consideration of the application for post-conviction relief (PCR) filed by Applicant, Suzanna Brown Simpson. Applicant challenges both murder convictions of which she was sentenced to life imprisonment for each, the attempted murder conviction of which she was sentenced to thirty (30) years imprisonment, and the weapons conviction of which she was sentenced to five years imprisonment.

Applicant is currently confined in Leath Correctional Institution. Applicant filed her initial *pro se* application on June 1, 2020, and amended her application, through counsel, on July 11, 2023, and on April 4, 2024. Respondent filed its Return to the application and Partial Motion to Dismiss on November 10, 2020, and amended the Return and motion on October 22, 2024.

This Court conducted an evidentiary hearing on October 7-8, 2024, at the Greenville County Courthouse. Applicant was present throughout the evidentiary hearing and represented by counsel James W. Bannister, Esq., and Respondent was represented by Assistant Attorney General, W. Joseph Maye of the South Carolina Attorney General's Office.

At the conclusion of the hearing, this Court allowed post-hearing briefing on the application of *Strickland v. Washington*, 466 U.S. 668 (1984), to the issues presented. By email on March 27, 2025, this Court, upon agreement by the parties, instructed that proposed orders be

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

PROCEDURAL HISTORY

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

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

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

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

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

CURRENT APPLICATION

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

- (a) Ineffective Assistance of Counsel: failure to adequately request pre-trial notice of state's expert on due process ground. "Trial counsel did not raise Due Process as a ground for forcing State to disclose their expert witness, the expert's opinions and the basis for those opinions pre-trial."
- (b) Ineffective Assistance of Counsel: failure to preserve Due Process grounds for state's failure to provide adequate notice of expert testimony. "Trial counsel failed to preserve Due Process grounds for requiring the State to disclose their expert witness, the expert witness's opinions and the basis for those opinions pre-trial."
- (c) Ineffective Assistance of Counsel: failure to follow 613(b), SCRE, as to state's expert testimony and the admission of a prior inconsistent statement made to Petitioner's expert. "Trial counsel failed to ask the State's expert witness all the factually specific questions necessary to trigger Rule 613(b), SCRE, in order to subsequently introduce a prior inconsistent statement made to Petitioner's expert witness."
- (d) Ineffective Assistance of Counsel: failure to provide a sur-reply to the State's expert witness called during State's Reply. "Trial counsel failed to offer any evidence in sur-reply to the State's introduction of mental capacity evidence in the State's Reply."

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

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

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

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

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

SUMMARY OF FACTS FROM TRIAL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

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

Jurisdiction

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

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

Standard of Review for Ineffective Assistance of Counsel Claims

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

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

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

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

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

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

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

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

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

This court will address the claims in detail below.

MOTION FOR SUMMARY DISMISSAL

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

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

...

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

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

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

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

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

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

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

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

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

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

Dr. Jeffrey Smith

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

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

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

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

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

Attorney John Mauldin

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dr. David Price

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

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

Dr. Richard Frierson

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

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

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

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

On redirect, when asked what information he would have added to his testimony he noted:

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

Attorney Teal Johnson

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

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

Dr. James Ballenger

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

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

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

Ms. Susan Brown

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

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

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

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

Nancy Zeigler

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

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

Jessica Cummings

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

Beth Simmons

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

Solicitor Walt Wilkins, III

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

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

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

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

Ineffective Assistance of Counsel Claims

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

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

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

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

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

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

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

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

Q Did Dr. Smith offer any contrary opinion of his own
about Ms. Smith -- I mean Ms. Simpson?
A No. I left his office thinking he agreed with me.

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

⁵ Which report Dr. Smith had is disputed, but not critically relevant.

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

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

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

A None at all.

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

A That's correct.

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

A That is correct.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dr. Smith began treating Ms. Simpson in March of 2010. He testified that he diagnosed Ms. Simpson with bipolar disorder and anxiety disorder, and confirmed her previous diagnosis of attention-deficit/hyper activity disorder. (PCR Tr., p. 21). He prescribed her Adderall for treatment of her ADHD which Ms. Simpson had already been using for years prior. He also prescribed a mood stabilizer for the treatment of her bipolar disorder and testified that the mood stabilizer is essential because the Adderall and/or the bipolar condition itself can result in psychosis. Ms. Simpson was warned of the necessity of her mood stabilizer to safely treat both of her conditions. (PCR Tr., p. 33-34). Nevertheless, Ms. Simpson reported that she failed to take her mood stabilizer in the time preceding her admission to St. Francis Hospital in 2012.¹⁰ (PCR Tr., p. 34-35). Dr.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

IT IS THEREFORE ORDERED:

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

IT IS SO ORDERED this 2nd day of June, 2025



Patrick C. Fant, III, Circuit Court Judge

Pickens, South Carolina.