STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Lexington County
Honorable Howard P. King, Circuit Court Judge
Appellate Case No. 2012-213370

THE STATE,

Respondent,

vs.

WAYNE STEWART CURRY,

Appellant.

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I.

The trial court properly found that Appellant was competent to stand trial because the State presented evidence that he understood the proceedings against him and had the ability to assist in his defense.

II.

The trial court properly denied Appellant's request to charge guilty but mentally ill because there was no evidence that Appellant lacked the ability to conform his conduct to the requirements of the law at the time of the commission of the offense.

III.

The trial court properly denied Appellant's request to charge not guilty by reason of insanity because there was no evidence that Appellant lacked the ability to distinguish right from wrong or to recognize the particular act was wrong due to his mental illness.

STATEMENT OF THE CASE

In November of 2011, a Lexington County Grand Jury indicted Appellant for throwing bodily fluids on a corrections officer. On November 5, 2012, Appellant proceeded to trial. Robert M. Madsen represented Appellant, and Assistant Solicitors Rhonda Patterson and Shannon Davis represented the State. The jury found Appellant guilty as charged. On November 6, 2012, the Honorable Howard P. King sentenced Appellant to eight and a half years of imprisonment with a recommendation for mental health treatment within the Department of Corrections.

Appellant filed a timely notice of appeal. This appeal follows.

STATEMENT OF FACTS

Competency Hearing

Before the trial began, Judge King presided over a hearing to determine whether Appellant was competent to stand trial.

Dr. Marla Domino's Testimony

At the hearing, Dr. Marla Domino, a psychologist with the South Carolina Department of Mental Health ("DMH") and expert in clinical psychology, testified for the State. (Tr. p. 30; Tr. p. 33.) On November 2, 2010, Dr. Domino interviewed Appellant pursuant to a court order for a competency evaluation. (Tr. pp. 33-34.) In addition, Dr. Domino attempted to speak with Appellant on the day of the hearing, but Appellant refused to speak with her. (Tr. p. 35.) Based on her interview of Appellant on November 2, 2010, Dr. Domino opined that Appellant "did not lack the capacity to understand the proceedings against him or to assist in his own defense as a result of the lack of mental capacity." (Tr. p. 35.)

According to Dr. Domino, Appellant understood the charge against him and the potential penalties associated with the charge. (Tr. p. 36.) Further, Appellant understood the seriousness of the charge, the difference between pleas of guilty and not guilty, and the importance of controlling his behavior in the courtroom. (Tr. p. 36.) Moreover, Appellant seemed to be able to assist in his own defense. (Tr. p. 37.) Although Appellant gave a number of incorrect responses regarding the responsibilities of the court personnel, Dr. Domino opined that his responses appeared to be "feigned." (Tr. p. 37.) Dr. Domino did not believe that Appellant was confused about the role of his attorney. (Tr. p. 37.) At the time she interviewed Appellant, Dr. Domino did not see any evidence that Appellant suffered from a mental illness. (Tr. p. 37.)

Appellant told Dr. Domino that he attended special education classes from an early age. (Tr. p. 39.) Further, Appellant suffered a head injury when he was approximately eleven years old. (Tr. p. 39.) Since 1995, Appellant received disability payments based upon his diagnosis of paranoid schizophrenia. (Tr. p. 39.) Additionally, prior to his incarceration, Appellant slept under a bed, complained of seeing a bald man, and believed his family members had been cloned. (Tr. p. 40.)

Appellant was admitted to Gilliam Psychiatric Hospital multiple times between 1992 and 1999. (Tr. p. 40.) During his multiple admissions, Appellant was diagnosed with different mental illnesses, including the following: 1) post-traumatic stress disorder; 2) anxiety mania disorder; 3) antisocial personality disorder; 4) paranoid schizophrenia; and 5) delusional disorder. (Tr. p. 41.)

Additionally, DMH evaluated Appellant numerous times from 1997 until 2010. (Tr. p. 43.) In 2007, one doctor found Appellant incompetent and not likely to restore. (Tr. p. 43.) In 2008, Appellant received treatment at the Aiken-Barnwell Mental Health Center, where he was diagnosed with schizophrenia. (Tr. p. 43.) But he was also diagnosed to be malingering, which means to either fabricate psychiatric symptoms or exaggerate current symptoms for a secondary gain, at the same center in 2008 by Dr. Smith. (Tr. p. 43; Tr. p. 50.) In March 2010, Appellant was admitted to Just Care on an emergency inpatient commitment due to his erratic behavior. (Tr. p. 44.) According to Dr. Domino, Appellant would normally refuse to cooperate with her. (Tr. p. 46.)

In Dr. Domino's report dated December 12, 2010, she noted that Appellant's "thought processes and speech were logical, coherent, and organized, indicating he should have no difficulties communicating rationally with his attorney. He demonstrated

the ability to reason logically about options related to his case . . . and should be able to do so with counsel, if he so choses." (Court's Exh. 1.)

Appellant's Testimony

Appellant also testified during the competency hearing. (Tr. p. 55.) When asked why he refused to speak with Dr. Domino on the day of the hearing, Appellant stated that he "[did not] want to talk to her." (Tr. p. 57.) Appellant stated that he understood he was in court to "stand trial." (Tr. p. 58.) In addition, he stated that the jury's role was to find him guilty or innocent. (Tr. p. 59.) He wanted to testify at trial. (Tr. p. 59.) However, Appellant wanted to tell the jury about how he was hit in the head with a sledge hammer when he was in jail. (Tr. p. 59.) Notably, Appellant stated he was charged with throwing bodily fluids, and he was not concerned with the seriousness of the offense because he was innocent. (Tr. p. 59.) Appellant stated he did not want to talk to his lawyer. (Tr. p. 59.)

Trial Judge's Competency Ruling

After hearing testimony, reviewing the reports, and observing Appellant, the trial judge found Appellant competent to stand trial. (Tr. p. 67.) The trial judge found that Appellant understood the charges against him and understood the role of the jury. (Tr. p. 67.) "In fact, [Appellant] very clearly state[d] that he want[ed] to tell his story to the jury and it's the jury's role to either find him guilty or not guilty." (Tr. p. 67.) Additionally, the trial judge found that Appellant was malingering in answering the questions regarding the "functions of the [c]ourt in order to convince everyone that he does not know what the [c]ourt proceeding is about[.]" (Tr. p. 67.) Ultimately, the trial judge found that Appellant failed to meet his burden of proof. (Tr. p. 68.)

Trial

Officer Frederick Hopkins' Testimony

At trial, Officer Frederick Hopkins, a correctional officer with the Lexington County Sherriff's Department, testified for the State. (Tr. p. 81.) According to Officer Hopkins, on August 18, 2010, Appellant requested a conjugal visit. (Tr. pp. 82-83.) Officer Hopkins denied Appellant's request due to policy reasons. (Tr. p. 83.) When Officer Hopkins denied Appellant's request for a conjugal visit, Appellant appeared to be calm and made no comment. (Tr. p. 83.) Thereafter, Officer Hopkins learned that an odor was emanating from Appellant's cell. (Tr. p. 84.) When Officer Hopkins looked through the flap of Appellant's cell door, Appellant did not appear to be violent. (Tr. p. 84.) But when Officer Hopkins opened Appellant's cell door, Appellant lobbed his fecal matter at Officer Hopkins, which hit Officer Hopkins abdomen and dribbled down his leg. (Tr. pp. 84-85.) Immediately thereafter, Officer Hopkins sealed the door and called for assistance. (Tr. p. 86.) After the incident, Officer Hopkins discovered that Appellant was hoarding feces under the sink in his cell. (Tr. p. 99.) According to Officer Hopkins, he and Appellant had no cross words before or after the incident, and the incident occurred out of the blue. (Tr. p. 105.)

Lt. James Clawson's Testimony

According to Lt. James Clawson, an officer with the detention center, after the incident, Appellant complied with all of his orders. (Tr. pp. 109-110.) Appellant had feces all over his face, hands, and clothing. (Tr. p. 119.) But Appellant was calm. (Tr. p. 110.)

Questioning of Appellant by the Trial Court

After the State rested, the trial court questioned Appellant regarding his constitutional rights. (Tr. p. 128.) When asked whether or not he understood his 5th Amendment rights, Appellant responded, "Yes." (Tr. p. 130.) Appellant stated that he talked to his attorney and wanted to testify. (Tr. pp. 136-137.)

Appellant's Testimony

According to Appellant, he never graduated from high school. (Tr. p. 143.) Appellant received disability benefits for his mental illness. (Tr. p. 144.) Although Appellant wanted to discuss the infringement of his constitutional rights, he admitted he was in court "[f]or throwing bodily fluids on Officer Hopkins." (Tr. pp. 145-148; Tr. p. 155.) In fact, when asked if he remembered throwing bodily fluids on the officer, Appellant responded, "I ain't saying I remember nothing. I ain't saying I did nothing. I take the fifth. I ain't going to answer no question like that." (Tr. p. 155.) When advised by the trial court that he had to answer the question, Appellant stated, "Maybe I did, maybe I didn't." (Tr. p. 155.)

Dr. Casandra Means' Testimony

At trial, Dr. Casandra Means, a counselor with the DMH, testified for the defense. (Tr. pp. 169-170.) Dr. Means testified that Appellant used to interact with her, but his level of interaction decreased over time. (Tr. p. 174.) Further, Appellant always had a flat affect. (Tr. p. 175.) Dr. Means was unable to recall when she examined Appellant. (Tr. p. 182.) Dr. Means did not know if she saw Appellant in August of 2010. (Tr. p. 182.) However, Dr. Means testified that at the time of the incident, Appellant had symptoms consistent with mania. (Tr. p. 183.)

Dr. Merrie Cherry

Additionally, Dr. Merrie Cherry, a psychiatrist with DMH, testified for the defense at trial. (Tr. p. 187.) In the past, Appellant would answer questions but would not elaborate. (Tr. p. 192.) But recently, Appellant refused to answer questions altogether. (Tr. p. 192.) According to Dr. Cherry, Appellant suffered from bipolar affective disorder one, which meant he experienced episodes of severe mania. (Tr. p. 193.) Dr. Cherry acknowledged that Appellant had been diagnosed with paranoid schizophrenia in the past. (Tr. p. 194.) When asked by defense counsel whether or not a person suffering from mania would understand if his or her actions are wrong, Dr. Means stated that "I can't really attest to whether he was . . . I don't know. I think you're getting a little into forensics. I didn't evaluate him for forensic purposes at that time." (Tr. p. 201.)

Dr. William Miles' Testimony

In reply, Dr. Miles, a doctor at the detention center, testified he treated Appellant right after the incident. (Tr. pp. 214-216.) Appellant was calm. (Tr. p. 217.)

Hope Frick's Testimony

At trial, Hope Frick, the deputy clerk for general sessions at the Lexington County Clerk of Court's office, testified she received a letter on May 20, 2010 at the clerk's office signed by Appellant requesting appointment of counsel to his criminal case. (Tr. p. 222; Tr. p. 226.) Additionally, she received a motion on November 17, 2010 signed by Appellant requesting relief of counsel. (Tr. p. 224.)

Dr. Domino's Testimony

In reply, Dr. Domino testified that in her opinion, Appellant did not lack the capacity to distinguish right from wrong at the time of the crime. (Tr. pp. 239-240.) Also, in her expert opinion, Appellant was not experiencing symptoms of mental illness at the

time he committed the act. (Tr. p. 239.) Moreover, in Dr. Domino's professional opinion, Appellant had the ability to conform his conduct to the requirements of law at the time of the crime. (Tr. p. 240.) She noted that the witnesses indicated to her that Appellant was calm and cooperative after the incident occurred. (Tr. p. 240.) Notably, Dr. Domino pointed out that just because someone has a mental illness that does not mean he or she lacks the ability to conform his or her conduct accordingly. (Tr. pp. 240-241.)

ARGUMENT

I.

The trial court properly found that Appellant was competent to stand trial because the State presented evidence that he understood the proceedings against him and had the ability to assist in his defense.

The State presented evidence that Appellant understood the proceedings against him and had the ability to assist in his defense. Accordingly, the trial judge properly found that Appellant was competent to stand trial.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). "[T]he trial court's ruling will not be disturbed absent a prejudicial abuse of discretion amounting to an error of law." State v. Sheldon, 344 S.C. 340, 342, 543 S.E.2d 585, 585-586 (Ct. App. 2001). An abuse of discretion occurs where the trial court's conclusions lack evidentiary support or are controlled by an error of law. State v. Elders, 386 S.C. 474, 480, 688 S.E.2d 857, 861 (Ct. App. 2010); see also Reed v. Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999) ("In appeals of pretrial rulings, this Court is 'bound by fact findings in response to motions preliminary to trial when the findings are supported by the evidence and not clearly wrong or controlled by error of law.' " (quoting State v. Amerson, 311 S.C. 316, 320, 428 S.E.2d 871, 873 (1993))).

Analysis

In order to stand trial or plead guilty, a criminal defendant must be competent. State v. Finklea, 388 S.C. 379, 383, 697 S.E.2d 543, 546 (2010). Due process rights prohibit the conviction of an incompetent defendant. Matthews v. State, 358 S.C. 456, 458, 596 S.E.2d 49, 50 (2004).

Section 44-23-410 of the South Carolina Code states the following:

> Whenever a judge of the circuit court or family court has reason to believe that a person on trial before him, charged

> with the commission of a criminal offense or civil contempt, is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity, the judge shall:
>
> (1) order examination of the person by two examiners designated by the Department of Mental Health . . . .

S.C. Code Ann. § 44-23-410 (A).

"The established test in South Carolina for determining a defendant's competency to stand trial is whether the defendant has the present ability to consult with his attorney with a reasonable degree of rational understanding." Sims v. State, 313 S.C. 420, 422, 438 S.E.2d 253, 254 (1993). "The purpose of requiring a defendant to be competent is 'to ensure that he has the capacity to understand the proceedings and to assist counsel.' " State v. Kelly, 331 S.C. 132, 148, 502 S.E.2d 99, 108 (1998) (quoting Godinez v. Moran, 509 U.S. 389, 402 (1993)). When determining whether a defendant is competent to stand trial, the defendant's competency relates to the time of trial, not the time of the offense. See Monahan v. State, 365 S.C. 130, 132, 616 S.E.2d 422, 423 (2005).

Notably, the defendant bears the burden of proving his incompetence by a preponderance of the evidence. State v. Nance, 320 S.C. 501, 504, 466 S.E.2d 349, 351 (1996). The trial judge's competency determination should be upheld if it has evidentiary support and is not against the preponderance of the evidence. State v. Reed, 332 S.C. 35, 40, 503 S.E.2d 747, 749 (1998). "[G]reat deference is given to [the] trial judge who sits in a better position to ascertain the defendant's faculties." State v. Colden, 372 S.C. 428, 441, 641 S.E.2d 912, 920 (Ct. App. 2007).

In this case, the trial judge properly considered the evidence and testimony presented to him and concluded Appellant was competent to stand trial. The testimony

established Appellant had a factual and rational understanding of the proceedings against him and had a sufficient ability to assist defense counsel during trial.

According to Dr. Domino, Appellant understood the charges against him and the penalties. (Tr. p. 36.) Further, Appellant understood the seriousness of the charges, the difference between pleas of guilty and not guilty, and the importance of controlling his behavior in the courtroom. (Tr. p. 36.) Moreover, Appellant seemed to be able to assist in his own defense. (Tr. p. 37.) Although Appellant gave a number of incorrect responses regarding the responsibilities of the court personnel, Dr. Domino opined that his responses appeared to be "feigned." (Tr. p. 37.) Dr. Domino did not believe that Appellant was confused about the role of his attorney. (Tr. p. 37.) When asked why he refused to speak with Dr. Domino on the day of the hearing, Appellant stated that he "[did not] want to talk to her." (Tr. p. 57.) Appellant stated that he understood he was in court to "stand trial." (Tr. p. 58.) In addition, he stated that the jury's role was to find him guilty or innocent. (Tr. p. 59.) He wanted to testify at trial. (Tr. p. 59.)

Notably, when asked if he remembered throwing bodily fluids on the officer, Appellant responded, "I ain't saying I remember nothing. I ain't saying I did nothing. I take the fifth. I ain't going to answer no question like that." (Tr. p. 155.) When advised by the trial court that he had to answer the question, Appellant stated, "Maybe I did, maybe I didn't." (Tr. p. 155.) Appellant's invocation of his 5th Amendment rights demonstrates Appellant's ability to understand the proceedings against him. Thus, the trial judge's ruling was supported by the evidence and should be affirmed on appeal. See State v. Lee, 274 S.C. 372, 375, 264 S.E.2d 418, 419 (1980) ("We cannot say that [the trial judge's] finding that the defendant was capable of standing trial was without

evidentiary support or against the preponderance of the evidence and, accordingly, we find no error on the part of the judge in ordering the defendant to trial.").

Further, whether or not Appellant actually assisted in his defense is irrelevant. A defendant does not have to actually assist his defense counsel in order to be found competent; he or she only has to have the **ability** to assist. See Reed, 332 S.C. at 39-40, 503 S.E.2d at 749 ("The test is not whether the defendant is actually cooperating with his lawyer, but rather if he has the mental capacity to do so.")

As the trial judge's ruling was supported by the evidence, there is no basis to reverse his ruling on appeal. See State v. Davis, 309 S.C. 326, 338, 422 S.E.2d 133, 141 (1992) ("We find that the trial judge's determination that Davis was competent to stand trial has evidentiary support. Accordingly, we find that the trial judge did not err in finding that Davis was competent to stand trial." (citations omitted)), overruled on other grounds by Brightman v. State, 336 S.C. 348, 520 S.E.2d 614 (1999). Thus, Appellant's conviction and sentence should be affirmed.

II.

The trial court properly denied Appellant's request to charge guilty but mentally ill because there was no evidence that Appellant lacked the ability to conform his conduct to the requirements of the law at the time of the commission of the offense.

Appellant presented no evidence that Appellant lacked the ability to conform his conduct to the requirements of the law at the time of the commission of the offense. Accordingly, the trial judge properly denied Appellant's request to charge guilty but mentally ill.

Analysis

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). The trial judge is required to charge only the current and correct law of South Carolina. State v. Buckner, 341 S.C. 241, 246, 534 S.E.2d 15, 18 (Ct. App. 2000). "It is not error to refuse to charge the lesser-included offense unless there is evidence tending to show the defendant was guilty *only* of the lesser offense." State v. Coleman, 342 S.C. 172, 175, 536 S.E.2d 387, 388 (Ct. App. 2000) (emphasis in the original).

In South Carolina, a jury can consider a verdict of guilty but mentally ill. S.C. Code Ann. § 17-24-30. Our Legislature defined guilty but mentally ill as the following:

> A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong . . . but because of mental disease or defect he lack sufficient capacity to conform his conduct to the requirements of the law.

S.C. Code Ann. § 17-24-20 (A).

In order to receive a guilty but mentally ill verdict, the defendant must prove by a preponderance of the evidence that he was mentally ill, as defined by subsection A of

section 17-24-20 of the South Carolina Code, at the time he committed the crime. S.C. Code Ann. § 17-24-20 (B). If the defendant is found to be guilty but mentally ill, the judge must sentence the defendant as if he were found guilty. S.C. Code Ann. § 17-24-70. But if the defendant's sentence includes incarceration, "the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until . . . the defendant may safely be moved to the general population of the Department of Corrections . . . ." S.C. Code Ann. § 17-24-70 (A).

Notably, a defendant does not have to present expert testimony in order to prove insanity. See State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997). The defendant may rely only on lay testimony. Id.

In State v. Hartfield, our Supreme Court held that the defendant "was entitled to present the defense of insanity or to attempt to obtain a verdict of guilty but mentally ill." State v. Hartfield, 300 S.C. 469, 473, 388 S.E.2d 802, 804 (1990). During the competency hearing, the defendant presented testimony that he suffered from paranoid psychosis. Id. at 471, 388 S.E.2d at 803. The defendant also suffered from organic brain syndrome caused by chronic substance abuse, which caused permanent and irreversible brain damage. Id. Additionally, the defendant's expert testified that the defendant's mental illness rendered the defendant unable to distinguish right from wrong or to recognize his acts as wrong. Id. The expert opined that the defendant was insane at all times. Id. Prior to trial beginning, the trial court ruled that the defendant could not present an insanity defense because voluntary intoxication was not a defense to a crime. Id. at 472, 388 S.E.2d at 803.

Our Supreme Court pointed out that although voluntary intoxication is normally not a defense to a crime, "insanity caused by the use of drugs or intoxication may be a

defense where the insanity is permanent and destroys the defendant's ability to know right from wrong." Id. at 473, 388 S.E.2d at 804. Because the defendant presented evidence that he had permanent insanity and lacked the ability to distinguish right from wrong, he was entitled to present an insanity defense and attempt to obtain a verdict of guilty but mentally ill. Id.

The fact Appellant had a mental illness in of itself did not entitle Appellant to a guilty but mentally ill charge. See S.C. Code Ann. § 17-24-20 (A) (noting that a defendant is guilty but mentally ill if the defendant lacks the capacity to conform his conduct to the requirements of the law because of his or her mental illness); see e.g., Lewis, 328 S.C. at 278-79, 494 S.E.2d at 117 ("While it is uncontroverted appellant suffered from severe depression, the evidence does not suggest he was unable to distinguish between right and wrong or unable to recognize his actions as morally or legally wrong at the time of offense.") Although there was evidence in the record that Appellant suffered from a mental illness, Appellant failed to present any evidence that he lacked the sufficient capacity to conform his conduct to the requirements of the law due to his mental illness.

In fact, the only evidence regarding Appellant's ability to conform his conduct to the requirements of the law at the time of the commission of the crime came from Dr. Domino. In her professional opinion, Appellant had the ability to conform his conduct to the requirements of law at the time of the crime. (Tr. p. 240.) She noted that the witnesses indicated to her that Appellant was calm and cooperative after the incident occurred. (Tr. p. 240.) Notably, Dr. Domino pointed out that just because someone has a mental illness that does not mean he or she lacks the ability to conform his or her conduct to the requirements of the law. (Tr. pp. 240-241.)

Further, the testimony of Appellant's family members only supported Appellant's claim that he suffered from a mental illness. Appellant's mother, Ella Walker, admitted that she did not have any contact with Appellant in August of 2010; therefore, she did not know what his mental state was at the time of the crime. (Tr. p. 208.) Likewise, Appellant's daughter, Dominique Curry, admitted that she did not know her father's mental state in August of 2010 because she did not have any contact with him during that time. (Tr. p. 213.)

Additionally, this case is distinguishable from Hartfield. The issue in Hartfield revolved around voluntary intoxication in the context of insanity. See Hartfield, 300 S.C. 473, 388 S.E.2d at 804. Our Supreme Court pointed out that although voluntary intoxication is normally not a defense to a crime, "insanity caused by the use of drugs or intoxication may be a defense where the insanity is permanent and destroys the defendant's ability to know right from wrong." Id. The test used in voluntary intoxication/insanity cases is not the same test used in guilty but mentally ill cases.

In summary, because there was no evidence in the record to support a guilty but mentally ill charge, the trial judge properly denied Appellant's request to charge guilty but mentally ill.

III.

The trial court properly denied Appellant's request to charge not guilty by reason of insanity because there was no evidence that Appellant lacked the ability to distinguish right from wrong or to recognize the particular act was wrong due to his mental illness.

Appellant presented no evidence that Appellant lacked the ability to distinguish right from wrong or to recognize the particular act was wrong due to his mental illness. Thus, the trial judge properly refused to charge not guilty by reason of insanity.

Analysis

"A requested charge on insanity is properly refused where there is no evidence tending to show the defendant was insane at the time of the crime charge." Lewis, 328 S.C. at 278, 494 S.E.2d at 117.

Section 17-24-10 (A) of the South Carolina Code provides the following:

> It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong.

S.C. Code Ann. § 17-24-10 (A).

In South Carolina, "the key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself – to recognize the act complained of is either morally or legally wrong.' " State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992) (citations omitted). If a defendant has this ability when he commits a crime, he is legally responsible for his actions. Id. The defendant must prove by the preponderance of the evidence that he is insane. S.C. Code Ann. § 17-24-10 (B). In criminal cases, it is generally presumed that the defendant is sane. See State v. Smith, 298 S.C. 205, 208, 379

S.E.2d 287, 288 (1989). However, where a defendant offers evidence of insanity, the State must present evidence from which the jury could find the defendant sane. Id. The State is not required to present expert testimony supporting sanity even if the defendant presents expert testimony supporting insanity. Id. This is because a jury may properly disregard expert testimony presented by the defendant. See Lewis, 328 S.C. at 278, 494 S.E.2d at 117. Lay testimony may be sufficient to prove sanity, and a jury is free to rely on circumstantial evidence of sanity even where expert testimony favors a finding of insanity. State v. Poindexter, 314 S.C. 490, 494, 431 S.E.2d 254, 256 (1993). The existence of "any evidence" of sanity creates an issue for the jury to resolve. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985).

In Lewis, the Supreme Court held that an insanity jury charge was not warranted, notwithstanding evidence that the defendant suffered from "severe depression," where his actions following the crime suggested that he recognized the gravity of the situation and that his conduct was wrong. Lewis, 328 S.C. at 279-80, 494 S.E.2d at 117-18. The Court pointed out that there was no evidence that the defendant was unable to distinguish between right and wrong at the time of the offense. Id. at 278-79, 494 S.E.2d at 117.

In State v. Senter, this Court held that the State presented sufficient evidence of the defendant's sanity; therefore, the trial judge properly denied the defendant's motion for a directed verdict. State v. Senter, 396 S.C. 547, 554, 722 S.E.2d 233, 237 (Ct. App. 2012). This Court pointed out that the defendant presented evidence of his insanity. Id. at 552, 722 S.E.2d at 236. One witness testified that the defendant suffered from delusional disorder, which caused the defendant to not know right from wrong at the time of the crime. Id. at 553, 722 S.E.2d at 236. Another witness testified that the defendant suffered

from delusional disorder, which affected the defendant's thinking on the day of the crime to the point where he could not appreciate right from wrong. Id.

In this case, the only evidence presented regarding Appellant's ability to distinguish between right and wrong came from Dr. Domino. In her professional opinion, Appellant did not lack the capacity to distinguish between right and wrong at the time of the crime. (Tr. pp. 239-240.) Also, in her opinion, Appellant was not experiencing symptoms of mental illness at the time he committed the act. (Tr. p. 239.) Appellant's own expert, Dr. Cherry, was unable to determine whether Appellant could distinguish between right and wrong at the time of the crime. (Tr. p. 201.) When asked by defense counsel whether or not a person suffering from mania would understand if his or her actions are wrong, Dr. Means stated that "I can't really attest to whether he was . . . I don't know. I think you're getting a little into forensics. I didn't evaluate him for forensic purposes at that time." (Tr. p. 201.)

As discussed above, the fact Appellant suffered from mental illness in of itself did not entitle him to a not guilty by reason of insanity charge. S.C. Code Ann. § 17-24-10 (A) (noting that in order for a defendant to establish insanity he or she must lack the capacity to distinguish right from right or recognize the particular act charged as morally or legally wrong due to his or her mental disease or defect); see Lewis, 328 S.C. at 278-79, 494 S.E.2d at 117 ("While it is uncontroverted appellant suffered from severe depression, the evidence does not suggest he was unable to distinguish between right and wrong or unable to recognize his actions as morally or legally wrong at the time of offense.")

Notably, Appellant through his feces at the officer right after the officer denied his request for a conjugal visit. The retaliatory nature of Appellant's actions demonstrate that he knew right from wrong but simply chose to do wrong.

Accordingly, the trial judge properly denied Appellant's request to charge not guilty by reason of insanity.

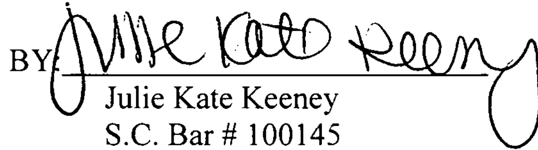
CONCLUSION

For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY 

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November 27, 2013

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Howard P. King, Circuit Court Judge
Appellate Case No. 2012-213370

THE STATE,

Respondent,

vs.

WAYNE STEWART CURRY,

Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

In addition to the matter designated by Appellant, Respondent proposes the following to be included in the Record on Appeal:

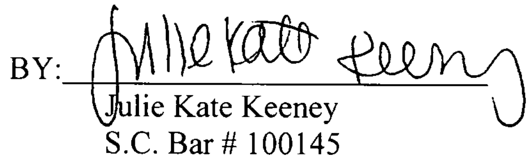
(1) Tr. pp. 128-132; Tr. pp. 136-138; Tr. p. 142; Tr. pp. 165-166; Tr. pp. 214-230

To facilitate the preparation of the Final Brief, Respondent requests that counsel for Appellant retain the page numbers of the trial transcript in the Record on Appeal, in addition to the new page numbers.

The undersigned hereby certifies this Designation contains no matter which is irrelevant to this appeal.

ALAN WILSON
Attorney General

JULIE KATE KEENEY
Assistant Attorney General

BY: 
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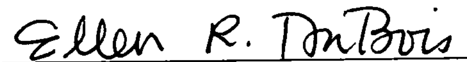
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Susan B. Hackett, Esquire
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211

I further certify that all parties required by Rule to be served have been served.
This 27th day of November, 2013.



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