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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
The Honorable Patrick C. Fant, III, Circuit Court Judge
Appellate Case No. 2025-001244

SUZANNA BROWN SIMPSON, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT,

RETURN TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF ISSUES ON CERTIORARI

I. Did the PCR Court err in holding that trial counsel was not deficient for failing to investigate, interview, and prepare for Petitioner's treating physician as a witness, where the physician prescribed the medication at the center of the defense theory and counsel had actual notice the State would likely call him as a witness?

II. Did the PCR Court err in holding that trial counsel was not deficient for failing to raise the issue of mismanagement of Petitioner's medical treatment, and specifically, the contribution Petitioner's prescription Adderall had in her psychosis, where all experts agreed Adderall was contraindicated for patients with psychotic symptoms?

III. Did the PCR court err in holding that trial counsel was not ineffective for failing to present good character evidence and lay witness testimony to counter the State's malice theme, particularly where the defense presented a "clinical, cold" case through expert testimony?

RESPONDENT'S COUNTERSTATEMENT OF ISSUES PRESENTED

I. Did the PCR Court correctly deny relief under *Strickland* for allegedly failing to investigate, interview, and prepare for Petitioner's treating physician as a witness, where the record shows conclusively that counsel hired two different forensic mental health experts to prepare and present its case, where one of those experts spoke with Petitioner's treating physician in advance of trial *and reported back* that he was not in disagreement with the defense team's mental health opinion, and where counsel did prepare for cross-examination when he learned the treating physician would be called by the State in rebuttal?

II. Did the PCR Court correctly deny relief under *Strickland* for allegedly failing to raise the defense of Adderall induced psychosis, where none of the retained experts identified such as an available theory for the attorneys to pursue, where the trial record does not establish the underlying and necessary facts to support the theory, and Dr. Ballenger's PCR testimony conceded that he had never once evaluated or even met Petitioner, and that he had no case specific facts that could demonstrate that she *actually* suffered from Adderall Induced Psychosis?

III. Did the PCR Court correctly deny relief under *Strickland* for allegedly failing to present good character evidence where evidence of Petitioner's good character was obtained via cross-examination of Petitioner's mother during the State's case-in-chief, where the

introduction of good character evidence and lay witness testimony would not have demonstrated an inability to distinguish between right and wrong, and where such a strategy would have opened the door to bad character evidence against her?

STATEMENT OF THE CASE

During its February 2014 term, the Pickens County Grand Jury indicted Ms. Suzanna Brown Simpson (hereinafter "Petitioner") for two counts of murder (2014-GS-39-0396 & 0397), one count of attempted murder (2014-GS-39-0398), and possession of a weapon during the commission of a violent crime (2014-GS-39-0397). The Thirteenth Circuit Solicitor, William Walter Wilkins, III, and Assistant Solicitor Betty C. Strom prosecuted the case. Attorneys John I. Mauldin, Esq., Teal Johnson, Esq., and Jacob Goldstein, Esq. represented Petitioner. Petitioner pled "not guilty for reason of insanity" (NGRI), but was found guilty by the jury at the conclusion of his June 20-23, 2016, trial. Judge Brian M. Gibbons sentenced Petitioner to two life sentences, thirty years' imprisonment, and five years' imprisonment, all to be served consecutively.

Petitioner pursued a direct appeal, first via the representation of Chief Appellate Defender Robert M. Dudek of the SCCID. However, attorney J. Faulkner Wilkes was substituted as counsel prior to briefing. Assistant Attorney General Susannah R. Cole represented the State. 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). Petitioner sought a grant of certiorari from the South Carolina Supreme Court, which was granted for Issue IV, arguing trial court error for excluding commentary of the defense's expert that the treating physician concurred in his analysis. The Court then later dismissed the writ of certiorari as improvidently granted. *State v. Simpson*, 429 S.C. 126, 838 S.E.2d 500 (2020) (per curiam).

Petitioner next sought post-conviction relief by filing her *pro se* application on April 4, 2024. Petitioner's application was twice amended, with the second amended application setting

forth the following claims:

a) "Ineffective Assistance of Trial Counsel – Failure to adequately request pre-trial notice of State's expert on Due Process grounds. . .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) "Ineffective Assistance of Trial 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 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. . . 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 Trial Counsel – Failure to provide a Sur-Reply to 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 Trial Counsel – Failure to call mitigating witnesses including family and friends;"
f) "Ineffective Assistance of Trial Counsel – Failure to meet with/investigate/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."

(App., p. 1115-1116). The State made its Amended Return to the Second Amended Application. (App., p. 1122). On October 7-8, 2024, Petitioner proceeded to an evidentiary hearing before the Honorable Patrick Cleburne Fant, III, and at the conclusion of the hearing the Court took the matter under advisement. On June 2, 2025, the PCR Court issued an Order of Dismissal denying relief on Petitioner's asserted grounds. (App., p. 1494).

Petitioner has now sought to appeal the denial of relief. Petitioner filed her Petition for Writ of Certiorari to the South Carolina Court of Appeals, and this Return now follows.

STATEMENT OF FACTS

The South Carolina Court of Appeals established the following facts in its review of Petitioner's direct appeal: [1]

> 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

[1] Additional facts, pertinent to the issues addressed in the post-conviction relief action will be set forth in the argument section, where necessary.

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.

THE PCR EVIDENTIARY HEARING

Dr. Jeffrey Smith

Doctor Jeffrey Smith testified first at the PCR evidentiary hearing. He noted that in March of 2010 he diagnosed Petitioner with Bipolar Disorder and Anxiety Disorder, and confirmed her previous diagnosis of ADHD. He then began treating her for these conditions. (App., p. 1155). He testified that he prescribed her a mood-stabilizer as a critical medication for treating Bipolar Disorder, and that at one point in February of 2011, he was prescribing her a mood stabilizer known as Nuvigil. However, Petitioner soon reported having some vague paranoid ideations. Dr. Smith testified that this was the first mention of any form of psychosis and in response he immediately

stopped her use of that particular drug. He agreed that her mood stabilized once the medication was replaced. (App., p. 1166-1167). He also prescribed Ms. Simpson Adderall during his time of care.[2] He noted that the Adderall was prescribed for the treatment of her ADHD, and that when a bipolar patient is receiving such a medication "you have to be very careful" and that it is "essential" that the patient be taking a mood-stabilizing medication. Had Petitioner reported any psychotic symptoms at the outset of his treatment, beginning in 2010, he would not have continued her use of Adderall. (App., p. 1169). Dr. Smith testified that over the course of his treatment he did not observe any bizarre or unusual delusional beliefs. (App., p. 1173).

In response to whether Adderall is the component that can provoke psychosis without a mood-stabilizer, Dr. Smith testified that it can be just the Adderall, it can be the absence of the mood-stabilizer, or a combination of the two. He noted that an episode could arise in the absence of a mood-stabilizer, but that it would take days or weeks to manifest. (App., p. 1170). Regardless, it is not appropriate for a bipolar patient to take Adderall without a mood-stabilizer. Petitioner was made aware of the necessity of her mood-stabilizer many times. (App., p. 1167-1168). Despite the warnings, Dr. Smith testified that on two occasions Petitioner had self-reported that she was not strictly complying with his instructions to take her mood-stabilizer. On a third occasion, he learned of her noncompliance through a report of admittance at St. Francis Hospital ER and subsequent treatment at the Carolina Center for Behavioral Health in 2012. (App., p. 1168-1169). Petitioner was uncharacteristically stabilized after just two doses of proper medication; Dr. Smith characterized this reconstitution as "a very rare occurrence." (App., p. 1171).

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[2] Later testimony from Dr. Price would demonstrate that Ms. Simpson had been prescribed Adderall since at least her time in college.

Dr. Smith testified that the August 2012 hospitalization episode was the first indication of any psychotic episode *and it resulted from a failure to take her mood-stabilizer medication.* (App., p. 1169). He reviewed her Carolina Center for Behavioral Health records, consulted with the treating psychiatrist, Dr. Carol Rentz Mitchell, and recommended to Petitioner that she seek psychotherapy in addition to pharmacotherapy. Petitioner ultimately did not adhere to his advice as she went to only one session. (App., p. 1156-1157). He also noted that Petitioner's reports to Dr. Mitchell during treatment were contradictory to the information Petitioner had provided him during her visits before and after her hospitalization. (App., p. 1165-1166). Dr. Smith continued to treat Petitioner through February 26, 2013, the date of her last appointment.

Following the crime in May of 2013, Dr. Smith testified that he expected to be contacted by Petitioner's attorneys for purposes of interviewing Petitioner, reviewing records, and aiding the litigation. However, he was instead contacted by one of the defense team's retained expert psychologist, Dr. David Price. (App., p. 1158-1162). Dr. Smith met with Dr. Price to discuss the case. (App., p. 1162). He told Dr. Price, as well as 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." (App., p. 1182-1183). Dr. Smith's ultimate disagreement with Dr. Price and Dr. Frierson was a result of their having received starkly different observations of Petitioner and differing discussions with Petitioner. (App., p. 1183-1184).

Dr. Smith testified that he was contacted and subpoenaed by the State approximately thirteen days prior to Petitioner's trial. He agreed that he is not a forensic psychiatrist, and that his voir dire focused heavily on that distinction as a basis for preventing his testimony. However, he testified that he was asked at trial if he believed himself qualified to offer an opinion as to criminal

responsibility, and he testified that he was. He testified at the PCR evidentiary hearing, that while he believed himself qualified, he conceded that he would not be best suited for that purpose and would not expect to be hired for that purpose over a prospective forensic psychiatrist. (App., p. 1175-1179). He testified that he kept thorough and reliable records of his appointments with Petitioner, and in doing so he documented Petitioner's condition (both subjectively from their voiced opinion and by objective observation), the consistency of her diagnosis, her medication dosages, changes to prescriptions, and their anticipated next appointment. With this information Dr. Smith believed that any reviewing doctor would be able to gain a good understanding of his assessments and treatment at each interval of her care. (App., p. 1181). He further testified that his records were provided to the defense team's experts. (App., p. 1177).

Dr. Smith testified that in his review of Dr. Frierson's report, he noted that Petitioner had reported *not taking her Adderall* or her mood-stabilizer on the day prior to the shooting. He agreed that an Adderall induced psychosis is not going to result from the failure to take Adderall. (App., p. 1185-1188). He further testified that there was no evidence suggesting Petitioner was abusing her Adderall and he stands by the treatment he provided.

Dr. Smith agreed that he, along with the other expert witnesses, all testified that Petitioner was mentally ill at trial. The distinction that existed between them was that they believed she could not distinguish legal and moral right from wrong (NGRI), while he concluded that she simply could not conform her conduct (guilty, but mentally ill). He did concede his error in failing to recognize Petitioner's degree of mental illness when he agreed with counsel that: "it would appear that [he was] not aware or did not realize how sick Anna Simpson was." (App., p. 1190-1192).

Attorney John Mauldin

Mr. Mauldin testified that at the outset of his representation he believed that the State could potentially seek the death penalty against Petitioner and he believed this case would require expert witnesses in the fields of psychiatry and psychology who could testify to Petitioner's criminal responsibility. He reached out to Teal Johnson to serve as his second chair co-counsel and proceeded to begin their investigations and preparations of the case. (App., p. 1193-1196).

He first retained Dr. Mulbry as a forensic psychiatrist to evaluate Petitioner and review her records. In an effort to assist in this process, he also met with Petitioner's parents and was provided materials that could potentially aid in her evaluation and defense. Dr. Mulbry provided Mr. Mauldin with an opinion that Petitioner was not able to distinguish right from wrong, and as a result Mr. Mauldin informed the State of his intent to argue an NGRI defense. (App., p. 1196-1201). As the case further developed, Mr. Mauldin learned that the Dr. Frierson had been ordered to provide an independent evaluation of Petitioner through the South Carolina Department of Mental Health. His findings also supported their NGRI defense. However, while Mr. Mauldin had his own forensic psychiatrist and the independent forensic psychiatrist agreeing as to the finding of criminal responsibility, he endeavored to retain a forensic psychologist, Dr. Price, in the case so as to avoid any surprises at trial. After completing his evaluation, Dr. Price's findings also supported their NGRI defense. (App., p. 1203).

Mr. Mauldin further investigated the case by ensuring he sought and received Rule 5 discovery materials from the State, and by speaking with friends and family whom Petitioner was close to and who shared concern for her welfare. He wanted to ensure that the facts were "examined, reexamined" and "clear," while also attempting to anticipate how the State might try to counter their NGRI defense. He noted that the State presented witnesses who spoke about

Petitioner's behavior around the time of the crime and in the day or so prior to the crime, (outside of the EMS responder, Michael Weight) the defense did not call lay witnesses to testify. (App., p. 1203-1205). In response to whether it was a failure on his part not to present more such testimony, Mr. Mauldin called it a matter of "Monday morning quarterbacking" and that they were focused of their strategy of presenting forensic experts and proving NGRI. In doing so he had both his retained experts and the court's expert readily supporting their NGRI defense. He further ensured that the experts had all that they needed to properly and thoroughly evaluate Petitioner and opine as to her mental health. (App., p. 1218). He acknowledged that he did not consider calling witnesses to present evidence of good character. (App., p. 1215).

Mr. Mauldin testified to multiple reasons why Dr. Smith's assistance was not sought in defending Petitioner. First, he expressed that there was dissatisfaction as to his treatment of Petitioner, given her psychotic break. He also noted that it was his legal opinion that having served as Petitioner's treating psychiatrist (and in light of his lack of a forensic specialty), it would be inappropriate for him to testify as to criminal responsibility. (App., p. 1206-1207). Given that Mr. Mauldin required forensic experts to present opinions of criminal responsibility, he did not seek Dr. Smith's assistance. (App., p. 1205-1208). Instead, he obtained Dr. Smith's records and had Dr. Price, whom Mr. Mauldin identified as *a member of the defense team*, speak with Dr. Smith about the case and the defense's position. Mr. Mauldin testified that Dr. Price reported back to him that Dr. Smith was in agreement with his opinion of the case, and therefore Mr. Mauldin did not have any concern for Dr. Smith testifying on behalf of the State. Mr. Mauldin's testimony in this regard was in response to questions concerning his preparation and strategy for the case. (App., p. 1209-1210).

In comparison to his retained experts, Mr. Mauldin did not possess any medical education or expertise and agreed that he relied upon the information provided by his experts. (App., p. 1209-1212). He was aware that Dr. Price had conferred with Dr. Smith, and his experts did not indicate to him that further discussion was needed (App., p. 1235), nor did they indicate an impropriety in her dosages or that Petitioner was abusing medications. Mr. Mauldin testified that the team was aware of Petitioner's medications and that there was evidence demonstrating that she was not taking her medications as instructed. However, her medications were not a focus for the defense, and their retained experts did not alert him to the possibility that Adderall as a contraindicated drug could serve as a defensive strategy for demonstrating the cause of Petitioner's psychotic episode. (App., p. 1212-1213; 1249). While consideration was also given as to whether Dr. Smith's treatment was appropriate under psychiatric standards, such an argument did not rise to a level of focus in comparison to the strength of their NGRI defense and the witnesses they had retained to testify. (App., p. 1214-1215).

Mr. Mauldin testified that upon learning that the State was going to call Dr. Smith to testify, he stayed up all night in order to prepare his cross-examination.[3] (App., p. 1237). These efforts were in addition to his challenge against the state calling an expert without noticing the expert first, and his efforts to exclude Dr. Smith from offering an opinion as to criminal liability for lack of forensic specialization. During cross-examination he demonstrated the shorter duration of Dr. Smith's appointments with Petitioner and his lack of forensic specialization as a basis for limiting the weight the jury should attribute to his opinion. Mr. Mauldin's testimony was that he was attempting to establish reasons for the jurors to question the credibility and weight of Dr. Smith's

[3] While certain legal arguments about the propriety of Dr. Smith testifying continued at the end of the Defense's case-in-chief, the State made its intentions on rebuttal clear but did not begin its rebuttal until the following morning.

opinion. (App., p. 1237-1238). He also was able to get Dr. Smith to admit on the stand that Petitioner was much sicker than he realized. (App., p. 1244).

Regarding character evidence, Mr. Mauldin agreed that generally character evidence is not admissible to demonstrate conformity therewith, and he further agreed that people of both good and bad character experience mental illness. Mr. Mauldin was not confident as to the admissibility or efficacy of good character evidence for purposes of supporting the medical finding of an NGRI defense. He also noted that the State used lay witness testimony to demonstrate Petitioner's competency at or near the time of the crime, but that Petitioner's friends and family were not present at the time of the crime. (App., p. 1246-1248; 1248-1249).

Dr. David Price

Dr. Price was retained by the defense and evaluated Petitioner over a total of nine visits. He diagnosed her with Schizoaffective Disorder Bipolar Type, that presented with mania, hallucinations, and delusions. He confirmed that he did confer with Dr. Smith and Dr. Wayne Hanna, Petitioner's family physician. Dr. Price testified that after meeting with Dr. Smith, he was under the impression that Dr. Smith agreed with his evaluation and findings regarding Petitioner's diagnosis and criminal responsibility, and that such agreement was unequivocal. He confirmed that he relayed the information and his understanding of these discussions to Mr. Mauldin. (App., p. 1252-1255).

Dr. Price testified that Adderall is contraindicated for patients with psychotic disorders, but he agreed that he did not present Adderall as having played a role in the cause of Petitioner's psychotic break to Mr. Mauldin, and that her medical records did not indicate any abuse of her medications. Had such evidence been available, he would have provided it in his report. (App., p. 1256-1257).

Dr. Richard Frierson

Dr. Frierson was appointed by the circuit court to conduct an independent evaluation of Petitioner. According to Dr. Frierson, he believed that Dr. Smith was only seeing Petitioner for 5-10 minutes per appointment for purposes of medication management and was unaware of her psychotic symptoms. He discussed those symptoms at length. (App., p. 1270-1273; 1276).

At trial, Dr. Frierson testified that he was not concerned about Petitioner overusing or abusing her medications, however he was "concerned in general that she was prescribed this medicine (Adderall). . . 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 and - -" (App., p. 576-577). Despite this testimony, at the PCR hearing Dr. Frierson lamented not being given an opportunity at trial to explain further as to how this happens. (App., p. 1275). Dr. Frierson's testified that he was not suggesting that Petitioner's Adderall *caused* her psychosis. Instead, he clearly asserted that Petitioner suffered from an underlying mental illness – the Adderall simply made the symptoms worse. (App., p. 1275). In cross-examination of this point, Dr. Frierson also had to acknowledge that Petitioner had reported not taking her Adderall the day before the crime, and that she had likewise not been taking her Adderall when she was admitted to St. Francis Hospital in 2012. (App., p. 1291-1292). Here, Dr. Frierson also read into the record his trial testimony that *again* articulated that Adderall was not the cause of the psychosis, but that overuse of amphetamines could worsen the symptoms. (App., p. 1292; See p. 570).

Attorney Teal Johnson

Ms. Johnson testified that the defense was focused on the NGRI strategy and the multiple expert reports that had confirmed a lack of criminal responsibility for the crime. She testified that

the family had the names of other witnesses who could have presented positive testimony, but regretted not presenting evidence of good character. (App., p. 1315-1320). She believed character evidence would have been relevant, and that it was "worth a shot" to present such evidence to bolster their case. (App., p. 1334).

Dr. James Ballenger

Dr. Ballenger testified as to a pharmacological theory known as "kindling." Under this theory, he explained that a patient who repeatedly uses a certain substance could over a long period of time develop a sudden hypersensitivity to the same drug, resulting in an extreme reaction. Dr. Ballenger asserts that Adderall is one particular medication where kindling can occur. He opined that Petitioner should not have been taking Adderall and that the crime would not have occurred if Petitioner had been properly medicated. (App., p. 1344-1348; 1355; 1360).

However, Dr. Ballenger also testified that he did not look at Petitioner's records to determine whether there was evidence of kindling. (App., p. 1347). He also conceded that he had not personally treated Petitioner, had not observed Petitioner while taking Adderall, and had not interviewed Petitioner. He also noted in response to questioning that he is only a forensic expert, and "never" treats patients. Dr. Ballenger also acknowledged the concept of drug tolerance but maintained that over a long enough time-period a patient can develop "reverse tolerance" under his kindling theory. (App., p. 1361-1363).

Proposed Character Witnesses

Petitioner presented four witnesses for whom she believed to be good character witnesses. The first was her mother, Susan Brown, who testified at trial during the State's case-in-chief. She testified that Mr. Mauldin's cross-examination did not demonstrate to the jury Petitioner's life as a whole. (App., p. 1368). She then testified as to Petitioner being a loving, caring, patient,

empathetic, supportive, reliable, and affectionate mother. (App., p. 1376). She then testified similarly to her traits as a wife. (App., p. 1377).

Ms. Brown testified that she grew concerned for Petitioner in the few days prior to the crime. She conceded that her trial testimony included discussion of the five phone calls that she had with Petitioner during the 24 hours prior to the crime. (App., p. 1378-1380). She conceded that this testimony tended to show Petitioner's bizarre behavior and mood swings, similar to those exhibited during her hospitalization. She further conceded that her testimony ultimately informed the jury as to Petitioner's Christian faith, good character, and devotion to her family. (App., p. 1382-1387).

Ms. Nancy Zeigler testified next and informed the court that she was a first-grade teacher for Carly, Petitioner's daughter. She noted the frequent help that Petitioner would provide to her and the class as a "room parent," and would have been willing to testify to Petitioner's good qualities as a mother. (App., p. 1389-1392). However, she also agreed that she had not witnessed any bizarre behaviors, paranoias, or delusions from Petitioner over the course of the year and up to one week before the crime, when she last saw her. (App., p. 1401-1402).

Ms. Jessica Cummings testified that she had informed the defense team that she was a life-long friend of Petitioner, but was not interviewed or called to testify. She provided testimony as to Petitioner's personality and good character growing up with her. However, Petitioner had moved away from the area and as a result their friendship had to rely more upon phone calls than visits. She testified that she spoke with Petitioner on the phone on the Friday before the crime (the crime took place early on Tuesday morning, May 14, 2013). During that call, Ms. Cummings testified that Petitioner appeared to be exhibiting some signs of paranoia, similar to what she saw with Petitioner in 2012. (App., p. 1409-1415).

Beth Simmons was the last witness to testify on behalf of Petitioner at the PCR evidentiary hearing. She testified that she and Petitioner became friends during college and kept in touch in the years afterward. She testified to the same general good character traits as the others, and that she had noticed some behavior changes in Petitioner around the time of her 2012 episode. However, Ms. Simmons had given birth to a child around that time and admitted that she had only spoken to Petitioner once between her 2012 hospitalization and the 2013 crime and such was not around at the time of the crime. (App., p. 1417-1426).

Solicitor Walt Wilkins, III

Solicitor Wilkins testified that the State's theory of the case was that Petitioner's behavior before, during, and after the crime demonstrated that she was sane and therefore criminally responsible. (App., p. 1431). He agreed that details of Petitioner's good character did come in during the course of the trial, but they were entered in such a way as not to trigger Rule 404. For that reason, he did not believe the door had been opened to counter such testimony with "bad character" evidence. Had the defense sought to enter good character evidence he also would have objected to relevance as it does not demonstrate Petitioner's mental state at the time of the crime. (App., p. 1429-1431). Solicitor Wilkins testified that he had "bad character" evidence pertaining to Petitioner as a mother, a wife, and the disciplining of her kids. He testified that such evidence would have demonstrated a fear of being abandoned and losing her kids, her anger, and a motive for her violence that would have detracted from the defense's claim of insanity. (App., p. 1431-1433). Ultimately, Solicitor Wilkins believed that any venture into the presentation of character at trial would have been a risky decision by the defense and would have helped the State's case against Petitioner. (App., p. 1434-1435).

STANDARD OF REVIEW

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b}, SCACR. The South Carolina Appellate Court Rules set forth a nonexclusive list of the circumstances in which review may be granted. Therein, Rule 242(b) continues: "[t]he following, while neither controlling nor fully measuring the Supreme Court's discretion or power to grant review in general, indicate the character of reasons which will be considered:

(1) Where there are novel questions of law.

(2) Where there is a dissent in the decision of the Court of Appeals.

(3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.

(4) Where substantial constitutional issues are directly involved.

(5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court."

Rule 242(b), SCACR.

ARGUMENT

I. Certiorari is not warranted because the record clearly demonstrates the defense team *did* investigate, interview, and prepare for Dr. Smith as a witness, and counsel had a valid rationale for not seeking to include Dr. Smith into his defense strategy.

Petitioner has failed to present any meritorious basis for certiorari in this matter. The PCR Court correctly found no basis for post-conviction relief under Petitioner's allegation that counsel failed to investigate, interview, and prepare for Dr. Smith as a witness. The record definitively addresses such issues as contrary to Petitioner's claims.

Addressing first the controlling law for this subject, *Strickland* requires that an applicant prove deficient performance that fell below an objective standard of reasonableness based upon prevailing norms, and prejudice resulting from that deficient performance. Specific to the question of investigation, *Strickland* instructs: "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 v. Washington*, 466 U.S. 668, 691, 104 S. Ct. 2052, 2066, 80 L. Ed. 2d 674 (1984). In light of such, "[t]his Court has stated previously that criminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011) (citing *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008)). However, there is a strong presumption that counsel rendered adequate assistance, and where "counsel articulates a valid reason for employing a certain strategy, such conduct generally will not be deemed ineffective assistance of counsel." *Id.* Every effort must be made to eliminate the distorting effect of hindsight, and evaluate decisions based upon the time and circumstances in which they were made. *Id.*

With that framework dictating the nature of the review of counsel's performance, certain facts make Petitioner's claim entirely untenable. First, investigation is not limited to face-to-face discussion. The work performed by Dr. Smith in treating Petitioner was of course highly relevant and counsel ensured that they obtained his medical records for review. Second, counsel hired both a forensic psychiatrist and a forensic psychologist based upon a valid strategy that such a

specialized certification is needed to best present opinion testimony as to the issue of criminal responsibility; Dr. Smith did not possess a forensic specialization. Third, in addition to a lack of forensic specialty, Mr. Mauldin also noted the dissatisfaction that existed with Dr. Smith in light of the crime and Petitioner's alleged condition, and he noted that such was relevant to his preparation of the case. Fourth, counsel ensured that their retained experts had Dr. Smith's files and access to Petitioner to thoroughly review her history of treatment as well as her current condition. Collectively, such efforts and testimony demonstrate a clear effort to investigate Dr. Smith's connection to the case, a strategy of desiring certain qualifications in their experts, and in not favoring Dr. Smith as a witness for the defense. Fifth, and definitively, Mr. Mauldin testified that a member of his defense team, Dr. Price, met with Dr. Smith in order to discuss the case and the medical conclusions being drawn.[4] That is an explicit demonstration that Dr. Smith was interviewed in advance of the trial. There is no requirement that an attorney personally conduct every witness interview; he is permitted to rely upon the efforts of investigators and experts. See *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003); *Stone v. State*, 419 S.C. 370, 406–07, 798 S.E.2d 561, 581 (2017); *Washington v. Murray*, 952 F.2d 1472, 1482 (4th Cir. 1991); *Pruett v. Thompson*, 996 F.2d 1560, 1574 (4th Cir. 1993).

Ultimately, Dr. Price reported back to Mr. Mauldin and informed him that Dr. Smith was in agreement with their findings. Such convinced Mr. Mauldin that no further investigative efforts concerning Dr. Smith were necessary, and Mr. Mauldin explicitly testified that this information was part of his strategic calculation that he need not bear concern for Dr. Smith as a witness for

[4] Dr. Price testified at trial that he met with Petitioner, reviewed her records, interviewed her parents, and interviewed both of her treatment providers, Dr. Smith and Dr. Hanna. He testified to having a very good understanding of Petitioner's medical history and treatment so as to form an opinion. (App., p. 513; 516).

the State. (App., p. 1209-1210). Now, it would appear that Dr. Price did not fully understand or that Dr. Smith did not adequately explain his position, and the degree of Dr. Smith's agreement was found to be overstated, but such does not constitute a failure to investigate or interview under *Strickland*, and there can be no deficiency under the proven facts of the case.

The same holds true for preparation. Mr. Mauldin had already expressed his reasoning for why Dr. Smith was not sought as an expert, and Mr. Mauldin further explained the legal arguments he raised at trial for why Dr. Smith should not be permitted to testify. However, the record is again clear that once Mr. Mauldin learned that Dr. Smith would be taking the stand, he took considerable efforts to develop his cross-examination by staying up all night to prepare. It therefore also cannot be stated that counsel failed to prepare for Dr. Smith as a witness at trial, and deficient performance cannot arise under *Strickland.*

The PCR Court's finding an absence of prejudice is also supported by the record. First, the jury returned a guilty verdict, demonstrating that Dr. Smith's medical opinion was likewise not accepted by the jury. Additionally, counsel's efforts in cross-examination were appropriately addressed toward trying to reduce the weight and credibility of Dr. Smith's testimony, given the lack of forensic specialization, the short duration of his visits with Petitioner, and his ultimate concession that Petitioner was sicker than he realized. While Petitioner attempted to downplay the significance of that admission, the PCR court was entirely justified in noting the critical importance of the State's own expert admitting that out of the four medical experts that testified, he was the one who was not aware of the severity of her (alleged) mental illness. That admission, along with the other efforts during cross-examination, demonstrated that there was no prejudice arising out of counsel's handling of Dr. Smith in advance of trial or in preparation for cross once identified as the State's rebuttal witness.

The ruling of the PCR Court is well supported and the facts of the case squarely refute Petitioner's claim. Petitioner simply disagrees with the PCR court's conclusion to deny relief, but such does not establish a basis for certiorari and in this case Petitioner's arguments to the contrary are not at all persuasive. The petition for certiorari under Issue I should therefore be denied.

II. Certiorari is unwarranted for review of Issue II because neither the established facts nor the testimony of experts demonstrates that Petitioner's psychosis was chemically induced, Petitioner's retained medical experts did not disclose Adderall induced psychosis as a defense strategy for exploration by counsel, and the record ultimately demonstrates that the jury was informed multiple times of the potential for Adderall to "worsen" the symptoms of an underlying mental psychosis.

As an initial matter, Petitioner appears to alter the nature of her argument for relief. For the PCR hearing, and as set forth in the application, Petitioner portrays her argument for relief as being a failure to investigate an "Adderall *Induced* Psychosis." She then bolsters that theory with the contraindicative nature of the drug for someone who has experienced psychosis while also maintaining a stabilized mood (which Petitioner arguably never experienced until allegedly *after* the crime. (See App., p. 475, 571). She then relied on the theory of "Kindling" to try and sidestep the fact that evidence from the record did not support abuse of Adderall and even suggested that Petitioner had not taken her Adderall at all in the day leading up to the crime.

However, on appeal, Petitioner now attempts to characterize the alleged error of counsel as more simply failing to pursue a "mismanagement of Anna's medical treatment" theory. In short, Petitioner appears to be playing down the original causation theory promoted at the PCR hearing in favor of simply placing blame on Dr. Smith for alleged mismanagement of Petitioner's medications and not sufficiently cross-examining Dr. Smith as a negligent doctor. Such is improper. "A party cannot argue one ground …in trial and then an alternative ground on appeal." *State v. Bailey*, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Though Respondent would argue that

both claims lack merit for a grant of certiorari, the distinction is an important one, because the facts of the record bear out that the expert testimony at both the trial and the PCR hearing argue that Adderall did not the cause Petitioner's psychosis, it only had the potential to make it worse. The cause was demonstrated to be Petitioner's underlying mental health and the failure to take her mood-stabilizer medication. Respondent would argue that Issue II, as raised, is not preserved, but will also argue alternative grounds for dismissal of the petition for certiorari as set forth below.

A. Counsel was never alerted to a potential theory of medication mismanagement, the facts do not align with such a theory sufficiently to render it a reliable trial defense, the experts dispute Adderall as a cause for the psychosis, and their testimony still informed the jury of Adderall's potential to make an underlying psychosis worse.

Subpart "A" of Petitioner's argument alleges deficient performance under *Strickland* for failing to develop a "medication mismanagement theory." [5] Petitioner's argument is lacking merit due to the record testimony offered at both the trial and the PCR evidentiary hearing.

Mr. Mauldin testified that his experts did not alert him to the possibility that Petitioner's psychosis was induced chemically as a result of Adderall usage. He was likewise not provided any indication from the record that Petitioner was abusing her medications. (App., p. 571; 1213; 1249). Consistent with Mr. Mauldin's testimony, Dr. Price agreed that they did not identify as a focus the role Adderall might have played as a cause for the psychosis and crime. (App., p. 1256-1257). Dr. Frierson's trial testimony indicated that Adderall did not cause Petitioner's psychosis, it simply has

[5] Petitioner asserts that Dr. Frierson testified that the standard of care requires a doctor cease prescribing Adderall (or stimulants) "if a patient develops any sort of *psychotic or manic symptoms*." (emphasis added). That is not an accurate assessment of the medical testimony offered in the record. There is no testimony tending to demonstrate that "manic" symptoms are prohibitive of Adderall treatment. It is psychosis only. But also, there is an important distinction that a diagnosis of psychosis can only exist when the patient's mood is stabilized but the psychosis remains or develops. (See App., p. 475; 520; 544-545; 571).

the potential to make her symptoms worse. His PCR testimony articulated the same. (App., p. 1275). Moreover, Dr. Frierson's trial testimony ruled out Adderall as the cause of Petitioner's psychosis because her prior episode in 2012 took place when testing showed the absence of Adderall in her system. (App., p. 570). Counsel has the right to rely upon the findings and explanations of his expert witnesses in the preparation of trial strategy. See *Walton v. Angelone*, 321 F.3d 442, 466 (4th Cir. 2003); *Stone v. State*, 419 S.C. 370, 406–07, 798 S.E.2d 561, 581 (2017); *Washington v. Murray*, 952 F.2d 1472, 1482 (4th Cir. 1991); *Pruett v. Thompson*, 996 F.2d 1560, 1574 (4th Cir. 1993).

Crucially, what *was* made apparent to the jury was that when a mood-stable patient demonstrates psychosis of some kind, Adderall becomes contraindicated and can make the psychosis worse. Dr. Frierson made this point *twice* at trial. (App., p. 570-571; 576-577). Even Dr. Smith testified at trial that the two medications were tricky to coordinate, because ADD meds can make bipolar symptoms worse. (App., p. 662). As such, the jury was informed of what it needed to know from a medical perspective: Petitioner suffered from a mental illness that resulted in a psychosis and that her Adderall could have made it worse. The decision not to focus on Adderall as an explicit theory of the defense was logical and appropriate because, 1) it is questionable whether Petitioner was actually under the influence of Adderall at the time of the crime (App., p. 569); 2) it was generally agreed between the experts that Petitioner was not abusing her Adderall and that it was not the cause of the psychosis (App., p. 498-499; 570-571); and 3) the extent of Petitioner having a qualifying contraindicating "psychosis" is questionable because her pre-crime medical records demonstrate only the occasional mild paranoia and nothing arising to the level of delusion that she allegedly demonstrated to her defense team experts *after the crime*. That is the

kind of fact that is best not highlighted for the jury for what is otherwise an already established medication correlation.

Additionally, the testimony of Dr. Ballenger provided practically no substantive assistance. First, while Respondent has already parsed the testimony of the experts at trial that indicate the absence of a causal relationship between Petitioner's psychosis and Adderall, they most certainly did not alert counsel to the supposed theory of "kindling." So it cannot be said that counsel was ineffective for not pursuing a pharmacological theory that he had never been informed of in the first place. Second, Dr. Ballenger was not able to provide any factual basis that Petitioner actually suffered from the kindling phenomenon, either at the time of the crime or under a subsequent reported date. He provided his theory without having treated, evaluated, or even met Petitioner. The complete absence of facts tending to establish Petitioner actually suffered from a "kindling" induced psychosis would have negated any attributable weight the jury might have prescribed to the theory.

For much the same reasons, there was also no error in the PCR court finding an absence of prejudice. In the absence of facts that actually demonstrate Petitioner experienced an Adderall induced psychosis, it cannot be demonstrated that she was prejudiced in the absence of such a defense. Petitioner's argument runs counter to record facts, the testimony of existing experts, and the absence of grounding facts from the newly presented expert. Petitioner wholly failed to present evidence of prejudice such that there was a reasonable probability of a differing result at trial under *Strickland.*

Petitioner wants this court to consider granting relief for counsel failing to explore a defense theory that his experts did not identify as part of their trial preparation and evaluations, that the record does not support factually, and where the general risks of the medication were

already made known to the jury. There can be no basis for ineffective assistance under these circumstances and the PCR court did not err in denying relief. Certiorari to review this conclusion is entirely unwarranted.

B. Counsel did not err in failing to impeach Dr. Smith on the basis of bias.

Petitioner's subpart "B" argues that counseled was ineffective for failing to cross-examine Dr. Smith on the basis of bias. Respondent would again argue that this allegation is not preserved for appellate review. The allegation is distinctly separate from Issue I, which articulates a general failure to investigate and prepare, not to undertake a specific motive of cross-examination. Additionally, the argument is presented as part of the new "medication mismanagement" theory for relief and the PCR record contains no reference to a failure to cross-examine on the basis of bias. Nor does the issue appear in any fashion in the PCR Court's Order of Dismissal. In order for an issue to be preserved, it must be raised and ruled upon by the trial court. *State v. Moore*, 357 S.C. 458, 464, 593 S.E.2d 608, 612 (2004). Part "B" is not preserved for review.

In the alternative, Petitioner's allegations regarding ineffective assistance of counsel for failure to cross-examine Dr. Smith on the basis of bias are also not reasonable or persuasive. Petitioner's allegation, in summary, suggests that Dr. Smith was a biased witness because his failures led to the crime and he possessed a motive for not being forthcoming out of fear of liability and blame. The problem with that argument is twofold. First, Dr. Smith did not opine that Petitioner was without mental impairment at the time of the crime. Instead, he found that she could not conform her conduct. In so arguing, he has already shed some degree of bias because he has admitted she suffered a psychotic break, the risk for which he was previously unaware. Second, and critically, Dr. Smith's disagreement with the other experts was not over the propriety of their medical conclusions but over the foundational information that Petitioner provided them as it

pertained to her delusions and psychosis. *The absence of such facts is apparent throughout his entire three years of medical records created before there would be any motive for biased testimony.* Any attempt to cross-examine Dr. Smith on this topic would likely result in concern over whether Petitioner was being truthful or fully forthcoming about her symptoms after she had a reason for exaggeration, and could have damaged the credibility of findings of the other experts.

In short, while *ad hoc* testimony can be cross-examined for bias, it is far more difficult to do so when that testimony is corroborated by "over four file boxes of records" that span three years of treatment. (See App., p. 1257). It is questionable whether such could be accomplished at all. As such counsel was not ineffective for failing to cross-examine Dr. Smith on the basis of bias. Given that the record demonstrates Mr. Maulding's efforts to attack the qualifications and credibility of Dr. Smith in other ways, ultimately concluding with Dr. Smith's concession that he did not know how sick his own patient was, there was likewise no basis for prejudice. Certiorari should be denied.

III. The PCR Court correctly found counsel were not ineffective for failing to present good character witnesses at trial, such evidence does not establish Petitioner's mental state at the time of the crime, similar evidence had already come into the record prior to the defense's case-in-chief, and the risk of opening the door to bad character evidence was avoided.

A. Petitioner's relied upon authorities are not applicable to the question of the admissibility of good character evidence to establish NGRI.

Petitioner asserts that the PCR Court erred in failing to apply *Pantovich v. State*, and argues that "*Pantovich* holds that character evidence is critical when a defendant's mental state is disputed." This is not an accurate characterization of the holding *Pantovich*.

In *Pantovich*, the defendant killed his former girlfriend with a baseball bat. According to the Pantovich the killing was the result of self-defense. He claimed that the victim had physically abused him throughout the years of their relationship and that on the night of the murder, victim

was on drugs and attacked him with a fireplace poker. *Pantovich v. State*, 427 S.C. 555, 558-59, 832 S.E.2d 596, 598 (2019). At trial he presented five character witnesses whom he had known for many years. They characterized Pantovich as kind, caring, and good with children. Some of his character witnesses also testified to witnessing victim's violent acts toward the defendant that he never reciprocated. At the close of evidence, Pantovich submitted a request for the trial court to charge the jury on how to interpret and use good character evidence, while the state requested a good character charge that left it to the jury to determine whether the evidence constituted good character and how they might wish to use it. The court did not charge on good character at all however, and appellate counsel subsequently failed to brief the issue. *Id.*, at 599. He was granted PCR relief, and on appeal this Court affirmed noting that while the requested charge would have constituted an improper charge upon the facts, the PCR procedural posture was ill-suited for a new rule of substantive law. *Id.*, at 600.

Nowhere in the opinion is the mental health of the defendant discussed, nor is good character evidence deemed critical to such. In *Pantovich*, the case does not even involve a question of the defendant's mental health or sanity. It was deemed only relevant to the question of whether Petitioner brought on the difficulty under the first element of self-defense. The case is wholly inapplicable to the case at hand.

Similarly, Petitioner also mistakenly equates "lay witness testimony" as being the equivalent of "good character evidence." (Petition, p. 23). The two are not the same. Lay witness testimony, *which was used by both parties at the trial*, can constitute any nonexpert witness who is attempting to describe the defendant's actions, behaviors, or statements at or near the time of the crime so as to demonstrate either a sane or insane mental state. While such lacks the medical science for proving an inability to distinguish legal right from wrong, it can corroborate the

behavior of the defendant at the critical time or times in question. Good character evidence is distinguishable from such evidence because it has no bearing on the defendant's behavior at or near the time of the crime. For that reason, Petitioner's cited authorities do not support her position under Issue III. [6]

The record testimony of counsel is also not as supportive as Petitioner suggests. Mr. Mauldin conceded that he was not confident in the admissibility or weight of good character evidence if presented for the purpose of establishing Petitioner's mental state at the time of the crime. (App., p. 1246-1248). He likewise noted Petitioner's relationship to her family was demonstrated in a positive light through her mother's testimony at trial. (App., p. 1216). All of which came in without triggering the State's ability to present bad character evidence in response, under Rule 404. As Solicitor Wilkins testified, he was prepared and keen to present such information, had the door been opened by the defense.

Likewise, Teal Johnson conceded that none of the other identified character witnesses would have been around Petitioner near the time of the crime to discuss what her mental state appeared to be. However, despite this concession, she asserted that these witnesses still could have offered an opinion as to Petitioner's mental state, and that such would have been "worth a shot." (App., p. 1334). Her statement is not persuasive, and it is a textbook example of relying upon the distorting effects of hindsight. Moreover, Ms. Johnson attempted to claim that Petitioner was only portrayed in a cold and monstrous way, but conceded that the record demonstrated Petitioner's confirmation of being a good mother, that she worried about her children's safety, and that she cared for her marriage. At the conclusion of her testimony Ms. Johnson conceded that this

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[6] Petitioner's citation to *Weik v. State* is likewise wholly distinguishable as it addresses sentencing mitigation in a capital case, not a NGRI defense. 409 S.C. 214, 216, 761 S.E.2d 757, 758 (2014).

testimony was counter to her assertion that Petitioner was only characterized as a monster during the trial. (App., p. 1333-1336).

In short, the testimony of counsel indicated that that generalized "good character evidence" cannot establish evidence of the mental state at the time of the crime that is required to successfully present an NGRI defense. As such they were rightfully focused upon the forensic presentation and were not deficient for failing to present friends or family who would have had no ability to describe Petitioner's behavior. There was no deficient performance under *Strickland* and certiorari should be denied.

B. Counsel was not ineffective for presenting a "clinical, cold" case.

Petitioner argues that the failure to present good character evidence was prejudicial under *Strickland* because the existing testimony failed to provide the jury with context for the NGRI defense and an emotional connection to Petitioner. Petitioner is mistaken for a number of reasons.

First, Petitioner does not allege that the PCR Court erred in finding good character evidence not relevant to the question of her mental status at the time of the crime or unfairly prejudicial. Instead, Petitioner is asserting that good character evidence *should have been presented for establishing an emotional connection to the jury*. Such is inherently improper. See *State v. Robinson*, 438 S.C. 421, 439, 882 S.E.2d 883, 893 (Ct. App. 2023). Counsel cannot be ineffective for failing to present evidence for improper purposes. In any case, the evidence fails to establish relevance because a person's prior history of good character does inform the jury as to whether that person could actually distinguish between wrong and right at the time of a crime *that they admit to committing*.

As the PCR court discussed, even if the evidence were to be found relevant, it falls to the same 403 pitfalls of confusion of issues and cumulative error. The sole issue at trial is whether

Petitioner could discern legal right from wrong so as to establish an NGRI defense. Presenting evidence of good character risks confusing the issue for the jury. Petitioner's claim of prejudice also fails because the type of testimony presented found its way into the record without invoking Rule 404 – primarily because Petitioner was discussing her concern for her children, her husband, and her marriage *near the time of the crime*. What Petitioner is now essentially arguing is that counsel were ineffective for not presenting more generalized character evidence that lacks any temporal connection to the crime. The failure to present cumulative evidence does not suffice for prejudice. See *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011). Lastly, Petitioner does not take into account the bad character evidence that was available to the State, had they opened the door to its admission. Prejudice concerns all of the consequences of the alleged actions of counsel, not just the ones that Petitioner wishes to focus upon as allegedly having a negative impact upon his case.

The PCR Court correctly denied relief. Petitioner has failed to present a basis for certiorari in this case and the Petition should be denied.

CONCLUSION

As set forth above, the Court of Appeals' reasoning and legal bases for affirming Petitioner's conviction and sentence decisions were well-founded and proper. For all the foregoing reasons, it is respectfully submitted that certiorari be denied in this matter.

Respectfully submitted,

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