

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

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

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S.C. Supreme Court

THE STATE,

vs.

WAYNE STEWART CURRY,

Petitioner,

Respondent.

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**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Wayne Stewart Curry, Appellant.

Appellate Case No. 2012-213370

Appeal From Lexington County
Howard P. King, Circuit Court Judge

Opinion No. 5258
Heard June 11, 2014 – Filed August 6, 2014

REVERSED AND REMANDED

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WILLIAMS, J.: Wayne Curry appeals his conviction for throwing bodily fluids on a correctional officer, arguing the circuit court erred in refusing to charge the jury regarding guilty but mentally ill. We reverse and remand.

FACTS/PROCEDURAL HISTORY

Curry was charged with throwing bodily fluids on a correctional officer in violation of section 24-13-470 of the South Carolina Code (2007) after an incident

that occurred while he was incarcerated at Lexington County Detention Center. Officer Frederick Hopkins testified that on August 18, 2010, he was working the first floor of the detention center, which housed inmates with special needs and mental health issues. That morning, Curry submitted an inmate request form to Officer Hopkins for a conjugal visit on the third floor of the detention center. The third floor houses the female inmates at the detention center. Because the prison had a strict policy of prohibiting sexual contact between inmates, Officer Hopkins denied Curry's request. Officer Hopkins stated he returned the request form to Curry, and Curry was "cool, very calm, and . . . made no comment" when Officer Hopkins informed him of the denial.

Later that day, Officer Hopkins returned to Curry's cell so it could be cleaned. He reserved Curry's cell for last because there was a strong smell emanating from his cell, which was later discovered to be a result of Curry "stockpiling feces underneath the sink." After he and another officer looked through the flap in the door and determined it was safe to enter, Officer Hopkins stepped inside Curry's cell, but "in a split second, [Curry] had lobbed with his right hand, like pitching a softball, the fecal matter which hit [Officer Hopkins] square in the abdomen, [and] dribbled down and onto [his] right leg." Officer Hopkins stated Curry did not say anything or have any expression on his face when the incident occurred; specifically, Officer Hopkins said, "Even after he . . . threw feces on me, we never once cursed each other, we never fought each other, never even argued."

Lieutenant James Clawson with the Lexington Count Sheriff's Department removed Curry from his cell after the incident with Officer Hopkins. According to Lieutenant Clawson, when he entered Curry's cell, Curry had feces on his hands, face, and clothing. Lieutenant Clawson stated Curry did not resist in any way or speak to any of the officers as he was transported to the detention center's medical facility.

Dr. William Miles, the onsite doctor at the detention center, stated he examined Curry, who was wearing a suicide gown, following the incident. He stated Curry was calm and did not appear to be agitated. Dr. Miles testified that after he examined Curry, Curry willingly permitted him to cut Curry's abnormally long fingernails, and Curry was then released from the medical facility.

Curry was subsequently interviewed on November 2, 2010, by Dr. Marla Domino, a psychologist with the South Carolina Department of Mental Health (SCDMH). Dr. Domino testified at Curry's pretrial competency hearing as well as at trial for the State. Dr. Domino stated she had seen Curry a number of times for forensic evaluations since 2006 and was well aware of his mental health history and

behavioral issues prior to her November 2010 examination.¹ She acknowledged Curry had a history of refusing to take his medications, including at the time of her interview and at the time of trial. According to Dr. Domino, Curry understood the seriousness of the charge, the differences between a guilty and not guilty plea, and the importance of controlling his behavior in the courtroom. She acknowledged Curry did not always give accurate responses to her questions regarding court proceedings.² In her clinical opinion, he was feigning his inability to comprehend certain things. She stated he had the capacity to understand the proceedings and assist in his own defense.

Dr. Domino also testified Curry was able to give her a very coherent, logical explanation for his actions. According to Dr. Domino, even if Curry suffered from a mental illness at the time of the offense, his symptoms had to be directly related to the crime he was accused of committing. In Curry's case, she believed he did not lack the capacity to distinguish between right and wrong at the time of the incident. She explained that Curry and Officer Hopkins both described Curry's behavior as calm and cooperative. Based on their separate accounts, she did not believe Curry was experiencing symptoms of a mental illness at the time of the alleged crime. When questioned as to why she believed Curry was malingering during their interview, she stated that individuals who are truly psychotic have disorganized speech, a hard time paying attention, and seem like they are responding to voices on many occasions. Dr. Domino stated, "[Curry] was able to engage in the regular give and take of conversation . . . I could understand his responses. They weren't accurate, but . . . [t]hey were logical."

Curry called Dr. Casandra Means, a mental health professional counselor with SCDMH, to testify at trial. As a counselor at the detention center, she had interacted with Curry prior to the August 2010 incident and stated Curry had a

¹ During cross-examination, Dr. Domino acknowledged the following: (1) Curry had been in a "special school" from an early age; (2) Curry had a learning disability and was emotionally handicapped; (3) Curry suffered a severe head injury as a result of a car accident when he was eleven or twelve; (4) Curry had received disability payments since 1995 based on his diagnosis of paranoid schizophrenia; and (5) prior to his incarceration, Curry slept under a bed, complained of seeing a bald Hispanic man, and believed his family members had been cloned.

² Specifically, Curry stated the prosecutor was his advocate, the trial judge was on his side, and his attorney was "rotten to the core" and wanted to "fry him."

history of mental illness. Although Curry initially interacted with her, as time passed, Dr. Means testified he became more isolated and would not engage or respond to questions. Dr. Means stated she never discussed the August 2010 incident with Curry, but she believed his symptoms were consistent with mania.

Curry also called Dr. Merrie Cherry, a senior psychiatrist with SCDMH and a mental health professional counselor at the detention center, to testify at trial. Dr. Cherry stated she saw Curry "fairly regularly" because he was detained on the first floor and had a significant mental illness. When questioned about her interactions with Curry, Dr. Cherry stated that in the past, Curry would answer her questions but recently had refused to answer any questions. When Curry was more depressed, he would "cocoon" himself by wrapping up in his sheets and blankets and lying on the floor. At those times, she testified he did not want to interact with others or leave his cell and his "affect [wa]s very flat," in that he showed no emotions or expression. Dr. Cherry refused to opine whether Curry understood the significance of his actions at the time of the August 2010 incident, stating she "didn't evaluate him for forensic purposes at that time."

Curry's mother and daughter both testified at trial. Both women confirmed Curry suffered from a long history of mental illness prior to his incarceration. Neither Curry's mother nor his daughter could testify to his state of mind in August 2010.

Curry testified in his own defense. Curry admitted he had received Social Security disability benefits in the past for his mental illness and acknowledged he had received treatment at Aiken Mental Health Center, Gilliam Psychiatric Hospital, and Just Care. Curry reiterated his desire to talk about his constitutional rights, but attempted to assert his Fifth Amendment right to silence when questioned about throwing bodily fluids on Officer Hopkins. When asked about throwing feces on Officer Hopkins, he claimed he did not remember doing that, but he admitted to putting feces on the walls "several times." Curry acknowledged requesting a conjugal visit, which he stated was denied.

At the conclusion of all testimony, the State argued outside the jury's presence that Curry was not entitled to charges on guilty but mentally ill and not guilty by reason of insanity. The State contended Curry failed to prove that his mental illness prevented him from distinguishing between right and wrong on the day of the incident. While the State conceded Curry suffered from a mental illness, it asserted it did not necessarily equate to an inability to be able to distinguish between right and wrong. In response, Curry's counsel stated Dr. Means's testimony that Curry was manic at the time of the incident was sufficient to sustain

Curry's burden of proof regarding insanity. The circuit court denied Curry's request, stating:

There's no question in this case [Curry has] got eccentric behavior or antisocial conduct, but I have not heard any testimony whatsoever in this record that the defendant did not have the ability to distinguish right from wrong. . . [A]nd we're talking about on the date of the incident and that's what crucial here . . . the Court is not going to charge either of those defenses; that is guilty but mentally ill or not guilty by reason of insanity The question will be either guilty or not guilty.

The jury returned a verdict of guilty, and the circuit court sentenced Curry to eight-and-one-half years of imprisonment with a recommendation for mental health treatment with the Department of Corrections. This appeal followed.

STANDARD OF REVIEW

"The law to be charged is determined from the facts presented at trial." *State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997). This court will not reverse a circuit court's decision to deny a specific request to charge unless the circuit court committed an error of law. *State v. Marin*, 404 S.C. 615, 619, 745 S.E.2d 148, 151 (Ct. App. 2013); see *State v. Commander*, 396 S.C. 254, 270, 721 S.E.2d 413, 421-22 (2011) ("An appellate court will not reverse the [circuit court]'s decision regarding a jury charge absent an abuse of discretion.").

LAW/ANALYSIS

Curry claims the circuit court erred in denying his request to charge the jury on guilty but mentally ill. We agree.

As defined by section 17-24-20(A) of the South Carolina Code (2014),

A defendant is guilty but mentally ill if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong or to recognize his act as being wrong as defined in [s]ection 17-24-10(A),³ but because of mental disease or defect he lacked

³ A defendant is insane if, at the time of the commission of the act constituting the offense, as a result of mental disease or defect, he lacked the capacity to

sufficient capacity to conform his conduct to the requirements of the law.

S.C. Code Ann. § 17-24-20(A) (2014). The guilty but mentally ill statute ensures the jury applies the legal definition of insanity properly by emphasizing that a person may be mentally ill, yet not legally insane. *State v. Hornsby*, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997). "The [guilty but mentally ill] verdict clarifies the distinction between a defendant who is not guilty by reason of insanity and one who is mentally ill yet not criminally insane and, therefore, is criminally liable." *Id.*

We find Curry presented sufficient evidence that he lacked the requisite capacity to conform his conduct to the requirements of the law so as to justify a jury charge of guilty but mentally ill. The supreme court's decision in *State v. Hartfield*, 300 S.C. 469, 388 S.E.2d 802 (1990), leads us to this conclusion. In *Hartfield*, the defendant was convicted of trafficking in marijuana and possession of crack cocaine with intent to distribute and sentenced to twenty years' imprisonment. *Id.* at 470, 388 S.E.2d at 802. On appeal to the supreme court, Hartfield contended the circuit court erred in ruling he could not present the defense of insanity or attempt to obtain a verdict of guilty but mentally ill. *Id.* The circuit court based its ruling on an expert's report who evaluated him four separate times. *Id.* at 471, 388 S.E.2d at 803. The expert initially believed Hartfield suffered from psychosis but changed his opinion to conclude Hartfield was malingering after observing Hartfield for an extended time in the state hospital. *Id.* In contrast, a defense expert opined Hartfield was delusional and incapable of standing trial. *Id.* The circuit court refused to permit Hartfield to produce any evidence relative to either not guilty by reason of insanity or guilty but mentally ill, finding Hartfield's insanity was caused by his voluntary use of drugs, and as such, it was not a defense to his crimes. *Id.*

The supreme court reversed, holding that if permanent insanity was caused by the use of drugs and destroyed a defendant's ability to know right from wrong, it could constitute a defense to a crime. *Id.* at 473, 388 S.E.2d at 804. Our supreme court found Hartfield was entitled to present the defense of insanity or attempt to obtain a verdict of guilty but mentally ill because Hartfield presented evidence at his competency hearing that his use of illicit drugs caused permanent brain damage, which manifested as a mental illness. *Id.*

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) (2014).

In the instant case, the circuit court focused on the testimony of Dr. Domino and the lack of specific expert or lay testimony that Curry could distinguish right from wrong and conform his conduct to the requirements of the law on the date of the incident. However, we find Dr. Means's opinion that Curry suffered from mania at the time of the incident combined with other lay and expert testimony on Curry's antisocial conduct, odd mannerisms, and isolationist behavior indicate his mental illness may have prevented Curry from being able to conform his conduct to the law at the time of this offense. We also find Curry's affirmative actions of stockpiling his feces under his sink and placing feces on his face and clothing at the time of the offense created a jury question as to whether he truly appreciated the nature of his actions. Arguably, if Curry was willing to keep his feces in his living quarters and even to smear them on himself, the jury could reasonably conclude he lacked the requisite mental capacity to be able to abide by the law.

We are aware that a defendant found guilty but mentally ill "must be sentenced as provided by law for a defendant found guilty." *Hornsby*, 326 S.C. at 126, 484 S.E.2d at 872. Although a defendant's sentence is the same regardless of whether he is merely guilty or guilty but mentally ill, a defendant found guilty but mentally ill "is entitled to immediate treatment and evaluation." *Id.* (citing S.C. Code Ann. § 17-24-70 (Supp. 1995)). The circuit court included a recommendation for mental health treatment when it issued Curry's sentence, but the court did not mandate treatment as is required for a defendant found guilty but mentally ill pursuant to section 17-24-70 of the South Carolina Code (2014).⁴ Because evidence was presented from which the jury could have concluded Curry was guilty but mentally ill under section 17-24-70, the circuit court's failure to include this jury charge amounted to reversible error.⁵

⁴Section 17-24-70(A) states: "If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence."

⁵ Because the circuit court's failure to charge the jury on guilty but mentally ill necessitates a new trial, we decline to address Curry's arguments regarding his fitness to stand trial and whether the circuit court properly denied Curry's request to charge the jury on not guilty by reason of insanity. *See Hartfield*, 300 S.C. at 473, 388 S.E.2d at 804 (finding the defendant was entitled to present a defense of

CONCLUSION

Based on the foregoing, we reverse Curry's conviction and remand for a new trial.

REVERSED AND REMANDED.

KONDUROS and LOCKEMY, JJ., concur.

insanity and attempt to obtain a verdict of guilty but mentally ill, and because this issue required reversal of his conviction and remand for a new trial, the supreme court did not need to address the other issues raised in the defendant's appeal); *Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (recognizing that an appellate court need not address remaining issues when resolution of a prior issue is dispositive).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County
Honorable Howard P. King, Circuit Court Judge

THE STATE,

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vs.

WAYNE STEWART CURRY,

Appellant.

RESPONDENT'S PETITION FOR REHEARING

On August 6, 2014, this Court issued an opinion in which it reversed Curry's conviction and sentence. State v. Curry, Op. No. 5258 (S.C. Ct. App. filed August 6, 2014) (Shearouse Adv. Sh. No. 31 at 116). Pursuant to Rule 221(a), SCACR, Respondent ("the State") respectfully petitions for rehearing on the following points the State believes were possibly misapprehended or overlooked by this Court.

A.

Most importantly, this Court's decision to reverse Curry's conviction based solely on its determination that the Trial Judge erred in not submitting a GBMI verdict to the jury constituted certain error. In the absence of any evidence that he was NGRI, any possible error in not submitting a GBMI verdict to the jury was *per se* harmless error. The GBMI statute codified the diminished capacity 'irresistible impulse defense' for sentencing considerations expressly distinct from the adjudication of guilt. The legislature intended the GBMI statute to function

within South Carolina's rich history of adherence to *M'Naghten*. By reversing Curry's conviction, this Court has indirectly ushered in a troubling new era where the accused can now attack the adjudication of guilt from the backdoor conduit of the GBMI statute despite over a century of jurisprudence that has forbid him from asserting an 'irresistible impulse' insanity defense.

In *State v. Wilson*, 306 S.C. 498, 413 S.E.2d 19 (1992), the Supreme Court of South Carolina upheld the imposition of a death sentence on a defendant whom the plea judge found was GBMI under S.C. Code Ann. § 17-24-70 (2003). In doing so, the Court rejected Wilson's contention that a death sentence was not contemplated by the legislature¹. The Court pointed to two provisions in the statute that supported its holding and which Wilson had ignored. First, the statute provides that " '[i]f a verdict is returned of 'guilty but mentally ill' the defendant **must** be sentenced ... as provided by law for a defendant found **guilty** ...' (emphasis added)." *Wilson*, 306 S.C. at 502-03, 413 S.E.2d at 22 (emphasis in original).

Based upon this sentence, the Court held that "the plain language of the GBMI statute clearly allows for a death sentence in an appropriate case." *Id.* at 503, 413 S.E.2d at 22. The Court further noted that:

Beyond the plain language of § 17-24-70, however, there exist other reasons why we are convinced that the legislature intended that a sentence of death be possible for certain GBMI defendants. First, we are persuaded that [S.C. Code Ann. § 17-24-20(C) (1989 Cum.Supp.)], which provides "[t]he verdict of 'guilty but mentally ill' may be rendered only during the phase of a trial which determines guilt or innocence and **is not a form of verdict which may be rendered in the penalty phase,**" (emphasis added) is indicative of a legislative intent that a bifurcated capital case may be necessary for some GBMI defendants. We interpret this language to prohibit juries or judges from treating the defendant as anything

¹ This Court notably did not reconcile its opinion in the present case with the Court's seminal GBMI opinion in *State v. Wilson*.

other than an ordinary "guilty" defendant for purposes of rendering their sentencing verdict.

Secondly, it is well established that the purposes for the enactment of GBMI statutes nationwide are: (1) to reduce the number of persons being completely relieved of criminal responsibility due to their mental condition; and (2) to insure that mentally ill defendants receive treatment while incarcerated for their benefit as well as society's. See generally, Annotation, "Guilty But Mentally Ill" Statutes: Validity and Construction, 71 A.L.R.4th 702, 777-780 (1989); People v. Smith, 124 Ill.App.3d 805, 80 Ill.Dec. 310, 465 N.E.2d 101 (1984); People v. Ramsey, 422 Mich. 500, 375 N.W.2d 297 (1985); Commonwealth v. Trill, 374 Pa.Super. 549, 543 A.2d 1106 (1988). Hence, as a general proposition, GBMI statutes were created in part to narrow the field of defendants who could successfully claim a lack of culpability via the insanity defense. Wilson seeks here to use the verdict as a shield to protect him from punishment, which is contrary in a fundamental way to its creation as a mechanism to enable the state to punish and treat a larger group of defendants.

306 S.C. at 503-04, 413 S.E.2d at 22.

The Court thereafter explained that:

South Carolina has chosen as its insanity defense what is commonly known as the *M'Naghten* test, or the "right and wrong" test. (The test is set forward in footnote three, *supra*). It was spawned in England, in M'Naghten's Case, 8 Eng.Rep. 718 (1843). M'Naghten shot the Prime Minister's private secretary, mistaking the secretary for the Prime Minister, and was acquitted based on an insanity defense. The outcry at the acquittal eventually led to the formulation of the aforementioned test for insanity. It is conceded that Wilson was not "insane", as that term is defined by our *M'Naghten* test. South Carolina has rejected the so-called "irresistible impulse" test as an insanity defense.

* * *

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. When this power exists in a defendant ... he must answer for his acts." State v. Grimes, 292 S.C. 204, 205 n. 1, 355 S.E.2d 538, 539 n. 1 (1987) (quoting State v. McIntosh, 39 S.C. 97, 17 S.E. 446 (1893)) (emphasis omitted).

* * *

Willard Gaylin, a respected psychoanalyst, has observed:

We must maintain our distinctions between the purposes of psychiatry and the purposes of the law. Psychiatry serves the individual, and is directed at restoring him to health. The law serves the community, and is designed to secure its values and preserve its safety. The law demands an essential responsibility of its citizens. It assumes with Aristotle that "what lies in our powers to do, lies in our powers not do to." Gaylin, Legal Insanity: Gone Bonkers, Washington Post, June 20, 1982 at C1, C5. (quoted in diGenova and Toensing, The Federal Insanity Defense: A Time For Change in the Post-Hinckley Era, 24 S.Tex.L.J. 721, 727-78 (1983).

* * *

Therefore, South Carolina has rejected the irresistible impulse test for insanity. As a constitutional matter, this is clearly permissible. In Leland v. Oregon, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952), FN4 the United States Supreme Court ruled that a defendant is not entitled, as a matter of fundamental due process, to an irresistible impulse insanity defense, and that states are free to adopt the *M'Naghten* test for insanity. South Carolina does not recognize that one acting under an irresistible impulse is somehow less culpable. Instead, the statutory scheme specifically provides that one acting under such an impulse is guilty, albeit "guilty but mentally ill." We are aware of no authority which requires this Court to recognize that the irresistible impulse test, when satisfied, conclusively demonstrates a lack of culpability. In fact, all authority of which we are aware indicates to the contrary-that this state is free to define culpability, as it relates to insanity, under the *M'Naghten* standard rather than the irresistible impulse standard. With this in mind, we turn now to Wilson's precise arguments.

Wilson, 306 S.C. at 505-08, 413 S.E.2d at 23-25.

In light of Wilson, a defendant who is not NGRI is not prejudiced by the failure to submit GBMI as a possible verdict because the treatment provided for by § 17-24-70 is merely a collateral consequence of the defendant being found guilty. South Carolina does not recognize a diminished capacity defense, the decision of whether a diminished capacity defense is purely a state law issue, and a defendant who is found GBMI is not less guilty than a defendant who is simply found guilty. Id. See also Gill v. State, 346 S.C. 209, 220, 552 S.E.2d 26, 32 (2001) ("The trial judge did not err by refusing to charge diminished capacity because it is not recognized in South Carolina. Furthermore, ... a defendant is not entitled to an instruction concerning his capacity to form the requisite intent for malice aforethought when the instructions, taken as a

whole, properly present elements of malice”); Goins v. Warden, Perry Correctional Institution, No. 13-6407, *15 (4th Cir., June 18, 2014) (unpublished) (rejecting the appellant’s argument that the state court of appeals “erroneously ‘confabulated the affirmative defense of diminished capacity with more traditional defensive efforts to introduce evidence to undermine the prosecution’s burden’ of proving intent,” and observing that “[w]hat other courts may think of South Carolina law ...is of no moment – ‘[i]t is beyond the mandate of federal habeas courts [] to correct the interpretation by state courts of a state’s own laws’ ”) (quoting Richardson v. Branker, 668 F.3d 128, 141 (4th Cir. 2012) and citing Wilson v. Corcoran, 131 S. Ct. 13, 16 (2010) (per curium)). As a result, a jury verdict of GBMI in South Carolina carries the same legal effect as the standard guilty verdict aside from carrying some additional collateral consequences related to the treatment.

Chief Justice Toal’s opinion in Wilson represented a continued affirmation on the Court’s jurisprudence concerning the viability of *M’Nghaten* and the rejection of the irresistible impulse insanity defense. In State v. Gilstrap, the South Carolina Supreme Court revisited the historical significance at issue.

The appellant was also granted the right to review and attack previous decisions of this Court dealing with the doctrine of irresistible impulse as a defense—notably, State v. Levelle, 34 S.C. 120, 13 S.E. 319, 27 Am.St.Rep. 799; State v. Alexander, 30 S.C. 74, 8 S.E. 440, 14 Am.St.Rep. 879; State v. Bundy, 24 S.C. 439, 58 Am.Rep. 263. Error is assigned because the trial Court refused to charge this principle. This Court in the foregoing cases repudiated the doctrine of irresistible impulse as a valid defense against a charge of crime; and, in State v. Levelle, supra, quoted the following with approval from State v. Pagels, 92 Mo. 300, 4 S.W. 931: “It will be a sad day for this state when uncontrollable impulse shall dictate a rule of action to our courts.” [34 S.C. 120, 13 S.E. 321]. And the Court further stated: “It is a matter that is not susceptible of proof, and to allow a person to escape the consequences of his criminal act by asserting that he acted under an impulse which he could not restrain, although he knew his act to be unlawful, would be dangerous, if not destructive, to the peace of society.

State v. Gilstrap, 205 S.C. 412, 32 S.E.2d 163, 167 (1944). Subsequently, the Court issued the following opinion in State v. Gardner that, “[i]t must be remembered that we have never accepted in this State the doctrine of uncontrollable impulse.” State v. Gardner, 219 S.C. 97, 106, 64 S.E.2d 130, 135 (1951). Despite Curry’s revisionist interpretation of the GBMI statute, even the contemporary detractors of the legislation poignantly noted its intended function.

Although the South Carolina GBMI statute embodies the irresistible impulse test, the statute does not enlarge the definition of insanity beyond the cognitive, knowing right from wrong, test. Indeed, the statute appears to exist merely to emphasize that South Carolina’s definition of insanity does not include any volitional aspect.

Rene J. Leblanc-Allman, Guilty but Mentally Ill: A Poor Prognosis, 49 S.C. L. Rev. 1095, 1114, n.8 (1998) (internal citations omitted). Because the Trial Judge correctly found that Curry was not entitled to a NGRI jury instruction, the State stresses that any error in not submitting a GBMI verdict is *per se* harmless error. See McDonough Power Equip., Inc. v. Greenwood, 464 U.S. 548, 553, 104 S. Ct. 845, 848, 78 L. Ed. 2d 663 (1984) (internal citations omitted) (“We have also come a long way from the time when all trial error was presumed prejudicial and reviewing courts were considered “citadels of technicality.”); United States v. Mechanik, 475 U.S. 66, 72, 106 S. Ct. 938, 942, 89 L. Ed. 2d 50 (1986) (“The reversal of a conviction entails substantial social costs: it forces jurors, witnesses, courts, the prosecution, and the defendants to expend further time, energy, and other resources to repeat a trial that has already once taken place; victims may be asked to relive their disturbing experiences.”). As a result, this Court’s decision to reverse Curry’s conviction solely based upon the Trial Judge’s failure to submit a GBMI verdict to the jury was erroneous.

B.

Next, even assuming this Court was correct in its determination that a GBMI verdict should have been submitted to the jury, the State contends that the remedy that this Court fashioned was entirely inappropriate because it was irrelevant to this Court's purpose in reviewing the lower court's adjudication of Curry's guilt. This Court's decision to reverse Curry conviction provides no legitimate remedial relief to him at this present juncture of his incarceration. Assuming *arguendo* that that upon remand a subsequent jury returns a GBMI verdict, the entire process provides no substantive benefit to Curry where he already possess the constitutional right to medical treatment during his term of incarceration.

The Michigan Court of Appeals' opinion in People v. Ritsema, 307 N.W.2d 380, 384 (1981) (rejected on other grounds by People v. Gasco, 326 N.W.2d 397, 399 (1982) is instructive in the manner it fashioned a remedy from the lower court's error in not submitting a GBMI verdict to the jury. The defendant argued that the lower court erred when it instructed the jury on defense of insanity but declined to submit an accompanying GBMI verdict. In line with S.C. Code Ann. § 17-24-30, the Michigan legislature dictated that when an instruction on the defense insanity is warranted, a GBMI verdict must also be submitted to the jury. The Ritsema Court agreed with the defendant **but affirmed his conviction** and amended his sentence accordingly. (emphasis added).

In order to eliminate any prejudice which may have been suffered by the defendant, we hereby amend defendant's sentence, pursuant to GCR 1963, 820.1(7), to provide that the defendant shall undergo further psychiatric evaluation and be given such treatment as is psychiatrically indicated for any mental illness or retardation that he may be found to have and that defendant shall in all respects be treated in accordance with the provisions of s 768.36 of the Code of Criminal Procedure.

Id., at 385. The court expounded on its justification for affirming the defendant's conviction.

Under the circumstances of this case, however, we are not convinced that retrial is the appropriate disposition. Defendant was tried and found guilty of the charged offenses. The jury did not believe that defendant was insane. We have found no prejudicial error other than the trial court's acquiescence in defense counsel's request that the guilty but mentally ill instruction be omitted. The prejudice suffered by defendant was his being denied the possibility of having the jury find him guilty but mentally ill. The only consequence of the guilty but mentally ill verdict which differs from the guilty verdict is that a guilty but mentally ill defendant shall undergo further evaluation and be given such treatment as is psychiatrically indicated for his mental illness or retardation.

Id.

In the present case, the State contends that the underlying reasoning in the Ritsema court's holding to affirm the defendant's conviction is sound; however, the decision to amend the defendant's sentence is inapposite here because of the doctrine of mootness. In this jurisdiction, "a defendant found GBMI is entitled to **immediate treatment and evaluation.**" State v. Hornsby, 326 S.C. 121, 126, 484 S.E.2d 869, 872 (1997) (citing S.C. Code Ann. § 17-24-70) (emphasis added). In relevant part, the statute states:

If the sentence imposed upon the defendant includes the incarceration of the defendant, the defendant **must first be taken to a facility designated by the Department of Corrections for treatment and retained there until in the opinion of the staff at that facility the defendant may safely be moved to the general population of the Department of Corrections to serve the remainder of his sentence.**

S.C. Code Ann. § 17-24-70(A) (emphasis added). Curry entered the Department of Corrections subsequent to his conviction in November of 2012. Curry's continued confinement now, nearly two years later, negates this Court's concerns of whether Curry was entitled to the submission of a GBMI verdict because the ultimate benefit that Curry could reap upon remand is entirely moot. S.C. Code Ann. § 17-24-70 only provides for immediate evaluation and treatment for an inmate found to be GBMI. See Byrd v. Irmo High Sch., 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon

existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.”).

Moreover, this Court’s decision to reverse Curry’s conviction is more nonsensical and unnecessary where a separate forum presently exists for Curry to challenge the sufficiency of medical treatment, as a condition of his confinement, he either has or has not received from Corrections during his current term of imprisonment. Thus, the fact that Curry has served nearly two years in Corrections creates only two plausible scenarios. Either Curry has adjusted favorably to his housing in general population, encompassing the sufficiency of any medical treatment he may or may not have received; or, Curry adjusted unfavorably because of questionable mental illness which provides him a distinct civil rights cause of action against the Department of Corrections. See People v. Manning², 227 Ill. 2d 403, 422, 883 N.E.2d 492, 504 (2008) (citing Estelle v. Gamble, 429 U.S. 97 (1976)) ([T]here is virtually no difference in the treatment that defendant will receive under GBMI as opposed to a guilty plea. The eighth amendment to the United States Constitution requires that inmates receive adequate medical care.”).

Therefore, this Court’s chosen remedy inequitably prejudices the State. See Mechanik, 475 U.S. at 72 (internal citations and quotations omitted) (“Even if a defendant is convicted in a second trial, the intervening delay may compromise society’s interest in the prompt administration of justice, United States v. Hasting, and impede accomplishment of the objectives of deterrence and rehabilitation.”). Even if this Court remains unconvinced of the State’s argument that error in not submitting a GBMI verdict is *per se* harmless, the South Carolina

² See Leblanc-Allman, 49 S.C. L. Rev. at 1095 (“The Illinois legislature enacted its GBMI statute for substantially the same purposes as South Carolina.”).

Supreme Court's uniform rejection of the 'irresistible impulse' insanity defense compels this Court to amend its pronouncement to, at a minimum, affirm Curry's conviction separate and apart from his sentence, and any collateral consequence that a GBMI verdict would have triggered.

C(i.)

Additionally, in its opinion, this Court further erred by misconstruing several critical facts in arriving at its decision. First, this Court wholly misconstrued the facts of Curry's sanity during the commission of the offense in stating "the circuit court focused on the testimony of Dr. Domino and the lack of specific expert or lay testimony that Curry could distinguish right from wrong and conform his conduct to the requirements of the law on the date of the incident." Correctly, Dr. Domino, the only mental health professional to conduct a forensic evaluation on Curry, gave the expert opinion that Curry had the capacity to distinguish right from wrong at the time of the offense. However, this Court ignores the fact that Curry obstructed other mental health professionals from offering relevant findings here. He should not receive the windfall from his own obstinance. See White v. Livingston, 231 S.C. 301, 308, 98 S.E.2d 534, 537 (1957) (It may be added that the evidence adduced before the referee indicates that the result of the case is not a serious miscarriage of justice, if it is a miscarriage at all. At any rate, appellant has made his bed and he must lie in it."). Thus this Court further erred in stating "Curry's affirmative actions of stockpiling his feces under his sink and placing feces on his face and clothing at the time of the offense created a jury question as to whether he truly appreciated the nature of his actions." See State v. Bentley Collins, S.C. Ct. Op. No. 27439 (filed August 20, 2014) ("The Court of Appeals's obvious revulsion for the evidence, while certainly understandable, permeated its legal analysis.").

C(ii.)

Second, this Court abused its function as a court of error when it determined the Trial Judge erred in not submitting GBMI verdict to the jury based upon this Court's speculative and contingent facts undeveloped at the lower court. Because Curry was indisputably a sociopath who committed a despicable crime, this Court ventured through the looking glass to speculate that Curry's abnormal personal characteristics and behaviors "**may have prevented Curry from being able to conform his conduct to the law at the time of this offense.**" (emphasis added). This Court further hypothesized that, "**if Curry was willing to keep his feces in his living quarters and even smear them on himself, the jury could reasonably conclude he lacked the requisite mental capacity to be able to abide by the law.**" (emphasis added). This Court's conjecture is troubling where it has ignored the undisputed and pronounced history of Curry's serial malingering. See Ravan v. Greenville Cnty., 315 S.C. 447, 469-70, 434 S.E.2d 296, 309-10 (Ct. App. 1993) ("Verdicts may not be permitted to rest on surmise, conjecture or speculation.").

Last, this Court placed undo significance on Dr. Means's opinion that Curry suffered from mania without reconciling the absence of critical evidence necessitated to create a jury question on whether the diagnosis affected Curry's ability to conform his conduct to the requirements of the law when he assaulted the victim Corrections Officer.

Conclusion

Based on the foregoing, Petitioner requests that the panel reconsider this matter, and affirm Curry's conviction and sentence.

Respectfully submitted,

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August 21, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Lexington County
Honorable Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

vs.

WAYNE STEWART CURRY,

APPELLANT.

PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the Respondent's Petition For Reharing on his Attorney by depositing a copy of the same in the United States mail, postage prepaid, addressed to Susan B. Hackett, Esquire, SC Commission on Indigent Defense, Division of Appellate, Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 21st day of August, 2014.


Norma Bigbee
Administrative Assistant
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The South Carolina Court of Appeals

The State, Respondent,

v.

Wayne Stewart Curry, Appellant.

Appellate Case No. 2012-213370

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SEP 19 2014

Referred to Whitmire

Answered _____

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H B We J.

CKO J.

James E. Lockery J.

Columbia, South Carolina

cc:

Susan Barber Hackett, Esquire
Julie Kate Keeney, Esquire
Alan McCrory Wilson, Esquire
John Walter Whitmire, Esquire
The Honorable Howard P. King

FILED

September 19, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE STEWART CURRY,

APPELLANT

Appellate Case No. 2012-213370

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in finding Appellant competent to stand trial where Appellant presented evidence that he lacked an understanding of the proceedings against him and the ability to assist in his defense as a result of mental illness.
- II. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in failing to charge the jury regarding guilty but mentally ill where Appellant presented evidence that he was unable to conform his conduct to the requirements of the law at the time of the commission of the offense.
- III. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in failing to charge the jury regarding not guilty by reason of insanity where Appellant presented evidence that he lacked the ability to distinguish right from wrong or to recognize the particular act was wrong due to his severe mental illness.

STATEMENT OF THE CASE

Appellant was indicted for throwing bodily fluids on a corrections officer (2011-GS-32-3528) in violation of section 24-13-0470 of the South Carolina Code by a Lexington County grand jury on November 7, 2011. R. 239 (indictment). The prosecution, represented by Rhonda Patterson and Shannon Davis, called the case to trial before the Honorable Howard P. King and a jury on November 5, 2012. R. 1. The jury found Appellant guilty as charged. R. 217, lines 3-8. On November 6, 2012, Judge King sentenced Appellant to imprisonment for eight and a half years with a recommendation for mental health treatment within the Department of Corrections. R. 223, lines 7-12; R. 223, lines 18-21; R. 242 (sentence sheet).

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

STATEMENT OF FACTS

While Appellant was detained at the Lexington County Detention Center, he was charged with throwing bodily fluids on a corrections officer. Prior to his trial, Appellant was evaluated numerous times regarding his mental condition.

Hearing pursuant to *State v. Blair*¹

Judge King presided over a hearing to determine whether Appellant was competent to stand trial pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

Testimony of Dr. Marla Domino

The prosecution presented the testimony of Dr. Marla Domino, a psychologist with the South Carolina Department of Mental Health. Pursuant to a court order for a competency evaluation, Dr. Domino interviewed Appellant on November 2, 2010. R. 6, lines 18 – 22; R. 7, line 1. Appellant had significant mental health history and Dr. Domino gathered records concerning his prior psychiatric care. R. 7, lines 13 – 21. Dr. Domino's interview with Appellant lasted approximately one hour and thirty minutes. R. 8, lines 7 – 9. Additionally, Dr. Domino attempted to speak with Appellant on the date of the hearing, but Appellant refused to speak with her. R. 8, lines 10 – 14. Based upon her interview of 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." R. 8, lines 19 – 24; R. 10, lines 13 – 17.

Although Appellant seemed to understand the charges against him, he was unsure of the penalties and required education in various areas of competency. R. 8, line 25 – R. 9, line 5. When discussing the roles of court personnel, Appellant gave multiple incorrect

¹ *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981).

answers, including his belief that the role of the prosecutor was to advocate on his behalf, that the judge was on his side, and that his attorney was "rotten to the core" and wanted "to fry him." R. 9, lines 6 – 10; R. 20, lines 4- 14. It was the opinion of Dr. Domino that Appellant was feigning an inability to learn the information regarding the responsibilities of courtroom personnel. R. 9, lines 13 – 15; R. 20, line 18 – R. 21, line 1. Appellant appreciated the seriousness of the charges against him and understood the difference between pleas of guilty and not guilty. R. 9, lines 16 – 21. Although Appellant seemed to be able to assist in his own defense, according to Dr. Domino, he gave numerous incorrect responses regarding the role of his attorney. R. 9, line 25 – R. 10, line 9.

When Dr. Domino interviewed Appellant, he had tremors in his hand and lacked proper personal hygiene. R. 18, line 25 – R. 19, line 6. Appellant gave incorrect answers during the examination, such as Eisenhower was the current United States President and that the colors of the United States flag were brown and green. However, she concluded that Appellant intentionally gave incorrect information. R. 19, lines 7 – 15. She also explained that he acted silly by laughing or smiling all of a sudden, for no reason whatsoever. R. 19, lines 16 – 21.

On cross-examination, Dr. Domino admitted that Appellant had been in "special school" from an early age. R. 12, lines 3 – 7. She also admitted that he had a learning disability and was considered emotionally handicapped. R. 12, lines 8 – 11. Appellant suffered a severe head injury when he was eleven- or twelve-years old. R. 12, lines 19 – 21. Additionally, Appellant had received disability payments since 1995 based upon his diagnosis of paranoid schizophrenia. R. 12, lines 12 – 14. Although Appellant's mother had been his payee on these checks, he had another individual named as the payee

because of his paranoid distrust of his mother. R. 12, lines 15 – 18. Prior to his incarceration, Appellant had slept under a bed, complained of seeing a bald man, and believed his family members had been cloned. R. 13, lines 2 – 5; R. 13, lines 6 – 10; R. 16, line 21 – R. 17, line 4.

Appellant was admitted to the Gilliam psychiatric hospital multiple times between 1992 and 1999, where he was diagnosed as suffering from post-traumatic stress disorder, an anxiety and mania disorder, antisocial personality disorder, paranoid schizophrenia, and a delusional disorder. Not surprisingly, he was prescribed antipsychotic medications. R. 13, line 19 – R. 14, line 1; R. 22, lines 2 – 8; R. 14, line 25 – R. 15, line 4. Additionally, Appellant had received treatment at the Aiken Barnwell Mental Health Center between 1993 and 2010, where he had been diagnosed with schizophrenia, paranoid type and a delusional disorder. R. 15, lines 15 – R. 16, line 2; R. 224(Court's Exhibit #1).

Appellant had been evaluated by the Department of Mental Health in 1997, 2000, 2001, 2006, 2007, three times in 2008, and twice in 2010. R. 16, lines 3 – 8; R. 224 (Court's Exhibit #1). In 2007, Dr. Pamela Crawford found Appellant incompetent and not likely to restore. R. 16, lines 14 – 16. Appellant was admitted to Just Care in March 2010, on an emergency inpatient commitment due to his erratic behavior. R. 17, lines 13 – 23. Dr. Domino admitted that historically Appellant was noncompliant with his medications, including at the time of her interview and at the time of his trial. R. 18, lines 3 – 5; R. 20, lines 1 – 3. Dr. Domino admitted that Appellant's non-compliance with medication would have an impact on competency. R. 23, lines 6 – 9. Also, Dr.

Domino admitted that Appellant was not cooperative with her and that his lack of cooperation limited her ability to diagnose Appellant. R. 17, lines 5 – 8.

Testimony of Appellant

Appellant testified during the Blair hearing as well. Appellant stated that he understood he was in court “[t]o stand trial;” however, he indicated he was unsure of that response by posing it as a question. R. 31, lines 24 – 25. He further testified that it was the job of the jury to find him guilty or innocent. R. 32, lines 9 – 3. However, he indicated confusion regarding the subject matter that would be presented to the jury. Appellant wanted to testify regarding his having been hit on the head with a sledgehammer while he was at the jail and of his constitutional rights having been violated due to the delay in his trial. R. 32, lines 3 – 11; R. 32, line 25 – R. 33, line 2. He further indicated that he was charged with throwing bodily fluids. R. 32, lines 16 – 17. However, he indicated he was not worried about the seriousness of the charge because he was innocent. R. 32, lines 20 – 23. Appellant indicated unwillingness to help his attorney present his case explaining that he wanted to speak to the jury about the head injury. R. 33, lines 17 – 20.

Court’s Exhibits

Dr. Domino’s report indicated that on May 21, 2008 she determined Appellant was competent to stand trial because he was uncooperative and therefore, she had insufficient data to overcome the presumption of competence. Despite this finding by Dr. Domino, Appellant was found incompetent to stand trial by the court on June 16, 2008. R. 232 (Court’s Exhibit #2). After Appellant underwent a period of competency restoration, Dr. Domino reexamined him on August 19, 2008. Again, Dr. Domino opined

that Appellant was competent because he had been uncooperative and there was insufficient evidence to overcome the presumption of competence. Nevertheless, the court held Appellant was incompetent to stand trial and unlikely to be restored. R. 235(Court's Exhibit #3). A month later, on May 5, 2009, Dr. Domino evaluated Appellant again. Because he was uncooperative, she opined that there was insufficient evidence to overcome the presumption of competence. However, when Appellant cooperated with her interview in November 2010, Dr. Domino found Appellant competent to stand trial. R. 224 (Court's Exhibit #1).

Judge's Ruling

Judge King found Appellant was competent to stand trial. The judge concluded that based upon the evidence presented, his observations of Appellant, and Appellant's testimony that Appellant understood the charges and the role of the jury. He further concluded that Appellant was malingering in his answers to some questions regarding the functions of the court in order to convince everyone that he was unaware of what the proceeding was about. R. 39, line 19 – R. 41, line 18.

Trial

Following Judge King's finding that Appellant was competent to stand trial, the parties proceeded to present evidence concerning the charge against Appellant, throwing bodily fluids, and Appellant's defenses.

Testimony of Frederick Hopkins

Frederick Hopkins, an officer at the Lexington County Detention Center, testified that on August 18, 2010, Appellant was an inmate at the detention center. R. 44, lines 12 – 16. Hopkins was working the first floor, which is where the detention center housed

inmates with special needs and mental health issues, such as Appellant. R. 44, line 21 – R. 45, line 1; R. 46, line 20; R. 55, lines 4 – 5. The officers reserved the clean-up of Appellant's cell until last because of the strong smell emanating from his cell even through the closed door. R. 46, line 9 – R. 46, line 15. When Hopkins opened the door, Appellant lobbed fecal matter hitting Hopkins in the abdomen and dribbling down onto his right leg. R. 46, line 25 – R. 47, line 4. Hopkins immediately sealed the door and called for assistance. R. 48, lines 20 – 24.

Hopkins was well aware of Appellant's mental illness. In fact, Hopkins was aware that Appellant was refusing to take medications around the time of the incident. R. 57, lines 2 – 6. Appellant stayed alone in his cell and took his recreation alone. R. 58, lines 19 – 20; R. 59, lines 1 – 5. After the alleged incident, Hopkins discovered that Appellant was hoarding feces under the sink in his cell. R. 61, lines 6 – 7. Hopkins and Appellant had no cross words before or after the incident, and the incident occurred out of the blue. R. 67, lines 15 – 23.

Testimony of James Clawson

James Clawson, another officer with the detention center, testified that after the alleged incident, he and others cleaned feces from Appellant's cell. The officers removed the linens and the mattresses, and cleaned the walls and the toilet to remove feces. R. 73, lines 8 – 18; R. 81, lines 17 – 24; R. 86, lines 19 – 22. Appellant had feces on his face and clothing. R. 81, lines 1 – 12. Although Clawson had almost daily contact with Appellant, he explained that Appellant experienced very little human interaction. R. 82, lines 19 – 25. Appellant usually said very few words and spent most of his time of alone. R. 83, lines 1 – 8.

Testimony of Appellant

Appellant did not graduate from high school. In fact, Appellant did not even make it into middle school. R. 98, lines 11 – 21. Appellant received disability benefits for mental illness – paranoid schizophrenia. R. 199, lines 19 – 22. Appellant claimed that Ella Walker was not his real mother and that his real mother lived in New York. R. 100, lines 2 – 10. Much of Appellant's testimony was irrelevant to the matter before the court because Appellant wanted to discuss the infringement of his constitutional rights and his being hit on the head with a sledgehammer by correctional officers. Appellant testified that he did not remember throwing feces on Hopkins. R. 109, lines 23 – 25. However, Appellant did recall putting feces on the walls at the detention center more than once. R. 112, line 20 – R. 113, line 2.

Testimony of Casandra Means

Casandra Means, a counselor with the Department of Mental Health, worked as a counselor at the detention center. R. 118, lines 1 – 10. Appellant was housed with other individuals requiring mental health observation. R. 123, lines 2 – 18. Although Appellant initially interacted with her, his level of interaction decreased over time. Appellant was isolated, did not talk, and did not engage. Although he would make eye contact at times, he would not answer questions. R. 123, lines 19 – 25. Appellant always had a flat affect, meaning he showed no expression or emotion. R. 124, lines 10 – 13. Appellant's willingness to engage in conversations fluctuated. R. 124, lines 14 – 18. However, even at his best, Appellant was not a conversationalist. R. 125, lines 4 – 6. Appellant would not communicate with Means or anyone else for long periods of time. R. 125, line 7 – 9. She found him to be consistent in his conduct and mannerisms. R.

125, lines 10 – 16. Means recalled that at the time of the alleged incident, Appellant was presenting symptoms consistent with mania. Mania involved a high energy state and irrational thinking. R. 132, line 15 – R. 133, line 8.

Testimony of Merrie Cherry

Merrie Cherry, the psychiatrist at the detention center, had contact with Appellant fairly regularly because he had significant mental illness. R. 137, lines 1 – 9; R. 140, lines 3 – 4; R. 140, lines 12 – 16. She explained that Appellant had never been one to volunteer information. He would answer questions asked, but he would not elaborate or provide details. Recently, he refused to answer questions altogether. During his depressed state he isolated more. Although he may answer her questions, he would be “cocooned” in his sheets and blanket. She described him as having a very flat affect. During periods of mania, Appellant showed increased agitation, increased psychomotor activity, increased impulsivity, and hypersexuality. She also explained that during his mania, he would laugh loudly and inappropriately. R. 141, lines 1 – 24. Dr. Cherry diagnosed Appellant with bipolar affective disorder. R. 142, lines 3 – 5. She explained his disorder was defined by episodes of severe mania, including psychotic symptoms. R. 142, line 8 – 15. Dr. Cherry acknowledged that previously Appellant had been diagnosed with schizophrenia, indicating he had had delusions, false beliefs, and paranoia. R. 143, lines 5 – 24.

Testimony of Ella Walker

Ella Walker, Appellant’s mother testified. Although Appellant had testified that she was not his birth mother, Walker testified that she had in fact given birth to him on November 1, 1959. R. 152, lines 5 – 12. Appellant dropped out of school at the age of

twelve. R. 153, lines 1 – 3. Appellant received disability payments as he was unable to hold a job due to his mental illness. R. 153, lines 6 – 10. Although Walker had been the payee on his check, Appellant developed a distrust of her and the payee was changed. R. 153, lines 11 – 18. Walker allowed Appellant to live in the home next door to hers. Appellant tore out the walls because he saw a “bald headed Mexican,” who was trying to harm him. R. 154, lines 1 – 16. Appellant would not eat food that she prepared for him because he feared she was trying to poison him. R. 154, line 21 – R. 155, line 3.

When Appellant returned from the jail, he had a scar and insisted the scar showed that he had been cloned. He wore sheets and aluminum foil around his waist as protection. R. 155, lines 4 – 11. Appellant repeatedly complained of hearing voices throughout his life. R. 155, lines 15 – 19. Appellant additionally had visual hallucinations, usually involving the “bald headed Mexican.” R. 155, lines 20 – 24. Appellant’s visual and auditory hallucinations worsened over time. R. 156, lines 3 – 5.

Testimony of Dominique Curry

Dominique Curry, Appellant’s daughter testified. R. 158, lines 11 – 14. Appellant often claimed he saw “small, little midgets, white people, ball headed Mexicans running around.” R. 158, line 20 – R. 159, line 2. Appellant believed that his family members had been replaced by clones. R. 159, lines 3 – 8. Appellant accused his mother of attempting to poison him, and he refused to eat food prepared by others. R. 159, lines 12 – 19. Appellant tore down the walls in the house because he thought people were inside the walls trying to get to him or kill him. R. 159, line 23 – R. 160, line 5. Appellant believed the correctional officers had placed a tracking device in his chest. As a result, he always wore aluminum foil around his chest to keep the tracking device from

working. R. 160, lines 6 – 14. Appellant believed the tracking device was to aid others in killing him. R. 160, lines 15 – 18. Curry recalled Appellant sitting in the living room and then suddenly jumping up by the air because he believed people were attacking him. R. 160, line 19 – R. 161, line 1.

Testimony of Dr. Marla Domino

In reply, the prosecution called Dr. Domino. Specifically, Dr. Domino testified that in her opinion, Appellant did not lack the capacity to distinguish right from wrong at the time of the alleged crime. Dr. Domino reached this conclusion based upon her opinion that Appellant was not experiencing symptoms of mental illness at the time of the alleged act. R. 186, line 14 – R. 187, line 1. Additionally, Dr. Domino testified that in her opinion, Appellant was able to conform his conduct to the requirements of the law. R. 187, lines 2 – 5. This decision, as well, was based upon her opinion that Appellant was not experiencing symptoms of mental illness at the time of the alleged period. R. 187, lines 6 – 20; R. 224 (Court's Exhibit #1).

Charge Conference – Request for GBMI & NGRI

At the conclusion of the presentation of evidence, Appellant moved for the jury to consider the verdicts of not guilty by reason of insanity (NGRI) and guilty but mentally ill (GBMI). The judge refused to instruct the jury as to these two verdicts because he found no evidence in the record that Appellant lacked the ability to distinguish right from wrong. The judge surmised that the test in South Carolina is whether the moving party put forward evidence regarding the defendant's inability to distinguish right from wrong. The judge found no testimony in the record regarding Appellant's inability to distinguish right from wrong. He concluded that the only testimony in the record concerning the

issues was from the prosecution that Appellant possessed the ability to distinguish right from wrong. The judge agreed that Appellant displayed "eccentric behavior," but determined there was no testimony that Appellant lacked the ability to distinguish right from wrong. R. 196, line 5 – R. 201, line 20.

Renewal of requests to charge

At the conclusion of the jury instructions, Appellant renewed his request for the charge on the mental health defenses of NGRI and GBMI. R. 215, lines 16 – 19. The judge again denied the request. R. 215, line 20 – R. 216, line 1.

Motion for new trial

After the jury returned its guilty verdict, Appellant moved for a new trial based on the judge's refusal to charge the jury as to NGRI and GBMI. Appellant argued that the judge was requiring that he present testimony, either expert or lay, that at the minute of the alleged incident, Appellant did not know the difference between right and wrong, or that he was insane. Appellant argued that he presented testimony from Dr. Cherry and Dr. Means regarding his mental health around the time of the crime and had provided testimony regarding Appellant's mental health in general. R. 218, line 7. R. 219, line 18. The judge disagreed, stating that the law required Appellant to present evidence, not just of manifestations of mental illness, but specific evidence of his inability to distinguish right from wrong at the time of the crime. R. 219, line 19 – R. 220, line 13.

ARGUMENT

I. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in finding Appellant competent to stand trial where Appellant presented evidence that he lacked an understanding of the proceedings against him and the ability to assist in his defense as a result of mental illness.

An individual's constitutional right to due process of law as provided in the Fourteenth Amendment to the United States Constitution prohibits the conviction of an incompetent defendant. Medina v. California, 505 U.S. 437, (1992); Drope v. Missouri, 420 U.S. 162 (1975); Pate v. Robinson, 383 U.S. 375 (1966). Therefore, states must provide procedures adequate to protect this right. Pate, 383 U.S. at 378.

South Carolina law provides that whenever a judge "has reason to believe that a person on trial before him, charged with the commission of a criminal act ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him or assistant in his own defense as a result of lack of mental capacity," the judge shall order an examination of the individual by the Department of Mental Health. S.C. Code Ann. § 44-23-410.

The test for determining competency to stand trial is whether the defendant has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." State v. Weik, 356 S.C. 76, 81, 687 S.E.2d 683, 685 (2002) (citing Dusky v. United States, 362 U.S. 402 (1960)); State v. Bell, 293 S.C. 391, 395-396, 360 S.E.2d 706, 708 (1987). Competency to stand trial relates to the time the defendant is

before the court for trial, not the time of the alleged offense. Monahan v. State, 365 S.C. 130, 616 S.E.2d 422 (2005).

The Supreme Court found plea counsel provided ineffective assistance by failing to request a competency hearing to determine the defendant's fitness to stand trial where the defendant presented evidence at his post-conviction relief (PCR) hearing that he was learning disabled, suffered a major head injury from a near-fatal car accident a year before the crimes, and as a result of the accident had severe frontal lobe brain damage. The defendant's expert at the PCR hearing testified that the defendant was incompetent and could not assist in his defense. The Court concluded the defendant "clearly established by a preponderance of the evidence" that he was incompetent at the time he entered his guilty plea. Matthews v. State, 358 S.C. 456, 459-460, 596 S.E.2d 49, 50-51 (2004).

The judge erred in finding Appellant competent to stand trial where even the state's expert testified that Appellant answered questions regarding the judicial process incorrectly and had a history of severe mental illness dating back decades. His mental illness was documented from the early 1990s and included his receipt of disability payments based upon his diagnosis of schizophrenia. Dr. Marla Domino, the state's expert, admitted Appellant had significant mental health history, including multiple evaluations by the Department of Mental Health, commitments to Just Care and the Gilliam Psychiatric Unit, and outpatient treatment at community mental health centers. She further admitted that Appellant required education in various areas of competency. Appellant believed the prosecutor was his advocate, that the judge was on his side, and that his attorney was "rotten to the core" and wanted "to fry him." When Dr. Domino interviewed Appellant,

he had tremors in his hand and lacked proper personal hygiene. Additionally, Appellant gave incorrect answers during the examination, such as Eisenhower was the current President and that the colors of the flag were brown and green. She also explained that he acted silly by laughing or smiling all of a sudden, for no reason whatsoever. Despite Appellant's lengthy history of mental illness and clear evidence that he experienced manifestations of mental illness when not incarcerated, Domino opined that Appellant was feigning an inability to learn the information regarding the responsibilities of courtroom personnel. She also concluded that Appellant intentionally gave incorrect information.

Appellant's testimony indicated that he understood he was going to trial and that the jury would find him guilty or innocent, but he manifested a clear lack of understanding concerning the purpose of the trial. Appellant repeatedly explained that he believed the purpose of the hearing was to produce evidence concerning his having been hit in the head with a sledgehammer while incarcerated at the detention center and the infringement of his constitutional rights due to the delayed trial. His answers to questions posed and his spontaneous outbursts demonstrated his inability to comprehend the purpose of the trial itself.

The trial judge erred in finding Appellant competent to stand trial based upon the evidence presented. The records showed Appellant suffered from severe mental illness and the state was unable to dispute the clear historical record of Appellant's altered state of mind as the result of mental illness. The testimony of Dr. Domino and Appellant demonstrated his lack of understanding of the proceedings against him and his inability to assist in his defense.

II. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in failing to charge the jury regarding guilty but mentally ill where Appellant presented evidence that he was unable to conform his conduct to the requirements of the law at the time of the commission of the offense.

South Carolina law provides for the verdict of guilty but mentally ill (GBMI). S.C. Code Ann. § 17-24-30. A defendant is GBMI if, at the time of the commission of the act constituting the offense, he had the capacity to distinguish right from wrong, but because of mental disease or defect, he lacked sufficient capacity to conform his conduct to the requirement of the law. S.C. Code Ann. § 17-24-20(A); State v. Poindexter, 314 S.C. 490, 493, 431 S.E.2d 254, 255 (1993). The burden of proof is on the defendant to prove by a preponderance of the evidence that at the time of the crime he was mentally ill. S.C. Code Ann. § 17-24-20(B). If a defendant is found to be GBMI, the judge must sentence the defendant as provided by law for a defendant found guilty; however, if the sentence includes incarceration, then the defendant must be taken to a facility designated for treatment and retained there until he may be safely moved to the general population. S.C. Code Ann. § 17-24-70 (A). Expert testimony is not necessary to prove insanity or sanity; lay testimony may be sufficient. Id.; State v. Lewis, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997). In fact, a jury may disregard expert testimony on the issue of a defendant's sanity. Id. "The law to be charged is determined from the facts presented at trial." Lewis, 328 S.C. at 278, 494 S.E.2d at 117 (citing State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986)).

"The purposes for the enactment of GBMI statutes are (1) to reduce the number of defendants being completely relieved of criminal responsibility and (2) to insure mentally

ill inmates receive treatment for their benefit as well as society's while incarcerated." State v. Hornsby, 326 S.C. 121, 126, 484 S.E.2d 869, 872 (1997)(citing State v. Wilson, 306 S.C. 498, 413 S.E.2d 19 (1992)). The GBMI statute provides a guide for a jury when considering whether a defendant is not guilty, NGRI, GBMI, or guilty. Id. at 127, 484 S.E.2d at 872.

In State v. Hartfield, 300 S.C. 469, 471-472, 388 S.E.2d 802, 803 (1990), the South Carolina Supreme Court reversed a defendant's drug convictions where the trial judge refused to allow the jury to consider NGRI or GBMI because the defendant's mental condition was the result of organic brain syndrome caused by chronic substance abuse. The Court reasoned that although the voluntary intoxication or use of drugs does not constitute 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. In proceedings to determine whether the defendant was competent to stand trial, the defendant presented an expert who testified he was incompetent based upon his delusional thought system. The defendant suffered from paranoid psychosis. The expert testified that three weeks prior to the alleged incident, the defendant was "crazy as a billy goat." The expert opined that Appellant was unable to distinguish right from wrong or to recognize his acts as wrong. Id. at 471, 388 S.E.2d at 803.

At his trial, Poindexter presented lay testimony that he exhibited behavioral changes in the months prior to the murder for which he was charged. Poindexter presented an expert who testified that Poindexter was unable to absorb vitamin B-12 and was insane as a result. The jury rejected Poindexter's claim that he was insane, but found

him GBMI. Poindexter, 314 S.C. at 491-492, 431 S.E.2d at 254. The Supreme Court affirmed the trial court's refusal to direct a verdict of NGRI where the prosecution presented lay testimony that Poindexter fled after the murder, appeared normal within hours of the murder, and was cooperative during the arrest. Despite the strong evidence of Poindexter's insanity, the Court found evidence in the record from which the jury could have deduced that Poindexter was sane. "The jury was free to rely on circumstantial evidence to find Poindexter sane even though expert testimony favored a finding that he was insane." Id. at 493-494, 431 S.E.2d at 256.

Compelling testimony to support Appellant's contention that if he were guilty, then he was GBMI came from the officers and mental health specialist employed by the detention center. Hopkins, the alleged victim in the case, explained that Appellant was housed in an area of the detention center where inmates with special needs and mental health issues were placed. Appellant stayed alone in his cell and took his recreation alone. Hopkins was aware that Appellant was refusing to take medications around the time of the incident. After the alleged incident, Hopkins discovered that Appellant was hoarding feces under the sink in his cell, a clear sign of mental illness. Clawson, another officer with the detention center, testified that after the alleged incident, he and others cleaned feces from Appellant's cell, including on the linens, walls, and the toilet area. Appellant even had feces on his face and clothing.

Cassandra Means, a counselor with the Department of Mental Health, explained that although Appellant initially interacted with her, his level of interaction decreased over time. Appellant was isolated, did not talk, and did not engage. Although he would make eye contact at times, he would not answer questions. Appellant always had a flat

affect, meaning he showed no expression or emotion. Appellant's willingness to engage in conversations fluctuated in that he would not communicate with Means or anyone else for long periods of time. She found him to be consistent in his conduct and mannerisms. Means testified specifically that at the time of the alleged incident, Appellant was presenting symptoms consistent with mania associated with bipolar disorder. Merrie Cherry, the psychiatrist at the detention center, testified similarly to Means regarding Appellant's seclusion, affect, and communication. Dr. Cherry diagnosed Appellant with bipolar affective disorder. She explained his disorder was defined by episodes of severe mania, including psychotic symptoms.

The testimony of Appellant and his family reinforced the testimony of the detention center employees that he was severely mentally ill. Appellant claimed that Ella Walker was not his real mother and that his real mother lived in New York; however Walker testified clearly that she had given birth to Appellant. Additionally, much of Appellant's testimony was irrelevant to the matter before the court because Appellant wanted to discuss the infringement of his constitutional rights and his being hit on the head with a sledgehammer by correctional officers. Appellant testified that he did not remember throwing feces on Hopkins; however, he did recall putting feces on the walls at the detention center more than once.

Walker testified that Appellant developed a distrust of her for no apparent reason. He changed his disability check to reflect another family member as payee rather than Walker. He would not eat food prepared by Walker because he feared she was poisoning him. She explained that Appellant slept under the bed rather than on it and feared people were trying to kill him. He had hallucinations of a "bald headed Mexican," who was

trying to harm him, which led to Appellant tearing down walls in his home in an effort to defend himself. Appellant insisted he had been cloned and wore sheets and aluminum foil around his waist as protection. Appellant repeatedly complained of hearing voices throughout his life. Appellant's daughter testified that Appellant often claimed he saw "small, little midgets, white people, ball headed Mexicans running around." Appellant believed that his family members had been replaced by clones. Appellant tore down the walls in the house because he thought people were inside the walls trying to get to him or kill him. Appellant believed the correctional officers had placed a tracking device in his chest. As a result, he always wore aluminum foil around his chest to keep the tracking device from working.

Although Dr. Domino was presented as a reply witness by the state, she informed the jury of Appellant's history of severe mental illness and repeated hospitalizations. She informed the jury of Appellant's decades-long battle with mental illness.

The jury had ample evidence to support Appellant's contention that he was GBMI from lay witnesses and an expert. Nevertheless, the trial judge refused to charge the jury as to GBMI. The judge's comments indicated that he required a witness to testify to "magic words" in order for such a verdict and charge to be given. He stated there was no testimony in the record that Appellant lacked the ability to distinguish right from wrong. The judge agreed that Appellant displayed "eccentric behavior," but determined there was no testimony that Appellant lacked the ability to distinguish right from wrong. What the judge disregarded was the clear evidence in the record concerning Appellant's mental illness and the indications that he was suffering from mental illness at the time of the alleged crime. Appellant's family testified as to his delusions regarding correctional

officers attempting to kill him, clone him, and implant tracking devices. The mental health specialists who saw him around the time of the incident testified to Appellant exhibiting characteristics of mania shortly before the incident and that mania is characterized by delusions.

It was for the jury to determine whether Appellant's mental illness rendered him unable to conform his conduct to the requirements of the law at the time of the crime. Neither South Carolina case law nor statutory law required Appellant to present expert testimony regarding an opinion of such. Rather it is the province of the jury to make such a determination. The trial judge required specific testimony that Appellant lacked the ability to conform his conduct to the requirements of the law in order to instruct the jury concerning GBMI, but this is not the state of the law. Only an expert would be permitted to render an opinion that a defendant lacked the ability to conform his conduct to the requirements of the law, but our case law specifically provides that expert testimony is not necessary in order to entitle a defendant to a GBMI verdict and charge. A lay witness could never offer such opinion testimony. Therefore, specific testimony that Appellant lacked the ability to conform his conduct to the requirements of the law was not required.

III. In violation of Appellant's state and federal constitutional right to due process of law, the trial judge erred in failing to charge the jury regarding not guilty by reason of insanity where Appellant presented evidence that he lacked the ability to distinguish right from wrong or to recognize the particular act was wrong due to his severe mental illness.

A defendant is insane if, "at the time of the commission of the act constituting the offense, [he], 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). "[T]he key to insanity is 'the power of the defendant to distinguish right from wrong in the act itself – to recognize the act complained of is either morally or legally wrong.'" Lewis, 328 S.C. at 278, 494 S.E.2d at 117 (1997)(quoting State v. Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23 (1992)). A defendant is presumed to be sane. State v. Smith, 298 S.C. 205, 208, 379 S.E.2d 287, 288 (1989); State v. Poindexter, 314 S.C. 490, 431 S.E.2d 254 (1993). The burden is on the defendant to prove the defense of insanity by a preponderance of the evidence. S.C. Code Ann. § 17-24-10(B). "However, when a defendant offers evidence of insanity, the state no longer enjoys the presumption, but must present evidence to the jury from which the jury could find the defendant sane." Smith, 298 S.C. at 208, 379 S.E.2d at 288.

As an initial matter, Appellant incorporates by reference the arguments and case law presented in reference to Issue II, supra. Just as the trial judge required actual testimony indicating Appellant lacked the ability to conform his conduct to the requirements of the law in order to instruct the jury concerning GBMI, the trial judge also required specific testimony indicating Appellant lacked the ability to distinguish right

from wrong in order to instruct the jury concerning NGRI. This was error. Appellant presented ample evidence from lay and expert witnesses regarding his mental health at the time of the incident.

CONCLUSION

As to Issue I, Appellant respectfully requests this Court reverse his conviction and sentence and find that he was incompetent to stand trial. Appellant requests this Court remand the case to the trial court for proceedings consistent with a criminal defendant having been found incompetent. As to Issues II and III, Appellant respectfully requests this Court reverse his conviction and sentence and remand the matter for a new trial.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 22nd day of January, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

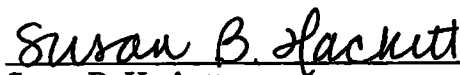
WAYNE STEWART CURRY,

APPELLANT

Appellate Case No. 2012-213370

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Julie Kate Keeney, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 22nd day of January, 2014.



Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 22nd day of January, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022.

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.**

FINAL 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. (R. p. 3; R. p. 6.) On November 2, 2010, Dr. Domino interviewed Appellant pursuant to a court order for a competency evaluation. (R. pp. 6-7.) In addition, Dr. Domino attempted to speak with Appellant on the day of the hearing, but Appellant refused to speak with her. (R. p. 8.) 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." (R. p. 8.)

According to Dr. Domino, Appellant understood the charge against him and the potential penalties associated with the charge. (R. p. 9.) 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. (R. p. 9.) Moreover, Appellant seemed to be able to assist in his own defense. (R. p. 10.) Although Appellant gave a number of incorrect responses regarding the responsibilities of court personnel, Dr. Domino opined that his responses appeared to be "feigned." (R. p. 10.) Dr. Domino did not believe that Appellant was confused about the role of his attorney. (R. p. 10.) At the time she interviewed Appellant, Dr. Domino did not see any evidence that Appellant suffered from a mental illness. (R. p. 10.)

Appellant told Dr. Domino that he attended special education classes from an early age. (R. p. 12.) Further, Appellant suffered a head injury when he was approximately eleven years old. (R. p. 12.) Since 1995, Appellant received disability payments based upon his diagnosis of paranoid schizophrenia. (R. p. 12.) Additionally, prior to his incarceration, Appellant slept under a bed, complained of seeing a bald man, and believed his family members had been cloned. (R. p. 13.)

Appellant was admitted to Gilliam Psychiatric Hospital multiple times between 1992 and 1999. (R. p. 13.) 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. (R. p. 14.)

Additionally, DMH evaluated Appellant numerous times from 1997 until 2010. (R. p. 16.) In 2007, one doctor found Appellant incompetent and not likely to restore. (R. p. 16.) In 2008, Appellant received treatment at the Aiken-Barnwell Mental Health Center, where he was diagnosed with schizophrenia. (R. p. 16.) 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. (R. p. 16; R. p. 23.) In March 2010, Appellant was admitted to Just Care on an emergency inpatient commitment due to his erratic behavior. (R. p. 17.) According to Dr. Domino, Appellant would normally refuse to cooperate with her. (R. p. 19.)

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." (R. p. 231.)

Appellant's Testimony

Appellant also testified during the competency hearing. (R. p. 28.) 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." (R. p. 30.) Appellant stated that he understood he was in court to "stand trial." (R. p. 31.) In addition, he stated that the jury's role was to find him guilty or innocent. (R. p. 32.) He wanted to testify at trial. (R. p. 32.) However, Appellant wanted to tell the jury about how he was hit in the head with a sledge hammer when he was in jail. (R. p. 32.) 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. (R. p. 32.) Appellant stated he did not want to talk to his lawyer. (R. p. 32.)

Trial Judge's Competency Ruling

After hearing testimony, reviewing the reports, and observing Appellant, the trial judge found Appellant competent to stand trial. (R. p. 40.) The trial judge found that Appellant understood the charges against him and understood the role of the jury. (R. p. 40.) "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." (R. p. 40.) 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[.]" (R. p. 40.) Ultimately, the trial judge found that Appellant failed to meet his burden of proof. (R. p. 41.)

Trial

Officer Frederick Hopkins' Testimony

At trial, Officer Frederick Hopkins, a correctional officer with the Lexington County Sherriff's Department, testified for the State. (R. p. 43.) According to Officer Hopkins, on August 18, 2010, Appellant requested a conjugal visit. (R. pp. 44-45.) Officer Hopkins denied Appellant's request due to policy reasons. (R. p. 45.) When Officer Hopkins denied Appellant's request for a conjugal visit, Appellant appeared to be calm and made no comment. (R. p. 45.) Thereafter, Officer Hopkins learned that an odor was emanating from Appellant's cell. (R. p. 46.) When Officer Hopkins looked through the flap of Appellant's cell door, Appellant did not appear to be violent. (R. p. 46.) 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. (R. pp. 46-47.) Immediately thereafter, Officer Hopkins sealed the door and called for assistance. (R. p. 48.) After the incident, Officer Hopkins discovered that Appellant was hoarding feces under the sink in his cell. (R. p. 61.) According to Officer Hopkins, he and Appellant had no cross words before or after the incident, and the incident occurred out of the blue. (R. p. 67.)

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. (R. pp. 71-72.) Appellant had feces all over his face, hands, and clothing. (R. p. 81.) But Appellant was calm. (R. p. 72.)

Questioning of Appellant by the Trial Court

After the State rested, the trial court questioned Appellant regarding his constitutional rights. (R. p. 89.) When asked whether or not he understood his 5th

Amendment rights, Appellant responded, "Yes." (R. p. 91.) Appellant talked to his attorney and wanted to testify. (R. pp. 94-95.)

Appellant's Testimony

According to Appellant, he never graduated from high school. (R. p. 98.) Appellant received disability benefits for his mental illness. (R. p. 99.) 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." (R. pp. 100-103; R. p. 110.) 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." (R. p. 110.) When advised by the trial court that he had to answer the question, Appellant stated: "Maybe I did, maybe I didn't." (R. p. 110.)

Dr. Casandra Means' Testimony

At trial, Dr. Casandra Means, a counselor with the DMH, testified for the defense. (R. pp. 118-119.) Dr. Means testified that Appellant used to interact with her, but his level of interaction decreased over time. (R. p. 123.) Further, Appellant always had a flat affect. (R. p. 124.) Dr. Means was unable to recall when she examined Appellant. (R. p. 131.) Dr. Means did not know if she saw Appellant in August of 2010. (R. p. 131.) However, Dr. Means testified that at the time of the incident, Appellant had symptoms consistent with mania. (R. p. 132.)

Dr. Merrie Cherry

Additionally, Dr. Merrie Cherry, a psychiatrist with DMH, testified for the defense at trial. (R. p. 136.) In the past, Appellant would answer questions but would not elaborate. (R. p. 141.) But recently, Appellant refused to answer questions altogether. (R.

p. 141.) According to Dr. Cherry, Appellant suffered from bipolar affective disorder one, which meant he experienced episodes of severe mania. (R. p. 142.) Dr. Cherry acknowledged that Appellant had been diagnosed with paranoid schizophrenia in the past. (R. p. 143.) 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." (R. p. 150.)

Dr. William Miles' Testimony

In reply, Dr. Miles, a doctor at the detention center, testified he treated Appellant right after the incident. (R. pp. 163-165.) Appellant was calm. (R. p. 166.)

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 signed by Appellant requesting appointment of counsel to his criminal case. (R. p. 171; R. p. 175.) Additionally, she received a motion on November 17, 2010 signed by Appellant requesting relief of counsel. (R. p. 173.)

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. (R. pp. 186-187.) Also, in her expert opinion, Appellant was not experiencing symptoms of mental illness at the time he committed the act. (R. p. 186.) 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. (R. p. 187.) She noted that the witnesses indicated to her that Appellant was calm and cooperative after the incident occurred. (R. p. 187.) 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 law. (R. pp. 187-188.)

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. (R. p. 9.) 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. (R. p. 9.) Moreover, Appellant seemed to be able to assist in his own defense. (R. p. 10.) 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." (R. p. 10.) Dr. Domino did not believe that Appellant was confused about the role of his attorney. (R. p. 10.) 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." (R. p. 30.) Appellant stated that he understood he was in court to "stand trial." (R. p. 31.) In addition, he stated that the jury's role was to find him guilty or innocent. (R. p. 32.) He wanted to testify at trial. (R. p. 32.)

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." (R. p. 110.) When advised by the trial court that he had to answer the question, Appellant stated: "Maybe I did, maybe I didn't." (R. p. 110.) 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 he 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. (R. p. 187.) She noted that the witnesses indicated to her that Appellant was calm and cooperative after the incident occurred. (R. p. 187.) 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. (R. pp. 187-188.)

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. (R. p. 157.) 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. (R. p. 162.)

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. (R. pp. 186-187.) Also, in her opinion, Appellant was not experiencing symptoms of mental illness at the time he committed the act. (R. p. 186.) Appellant's own expert, Dr. Cherry, was unable to determine whether Appellant could distinguish between right and wrong at the time of the crime. (R. p. 150.) 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." (R. p. 150.)

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.

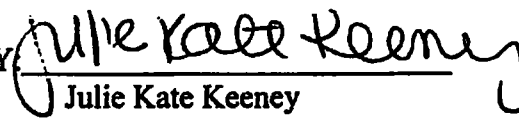
CONCLUSION

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

Respectfully submitted,

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February 6, 2014

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,

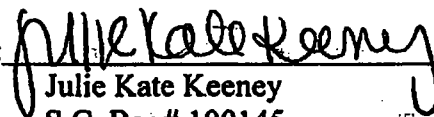
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

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February 6, 2014

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.

PROOF OF SERVICE

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

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I further certify that all parties required by Rule to be served have been served.
This 6th day of February, 2014.

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Howard P. King, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WAYNE STEWART CURRY,

APPELLANT

APPELLATE CASE NO. 2012-213370

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1 State of South Carolina) In the Court
2 County of Lexington) Of General Sessions

3 Indictment No.: 2011-GS-32-03528
4
5

6 State of South Carolina,)
7 Plaintiff.)

8 vs.)

Transcript of Record

9)
10 Wayne Stewart Curry,)
Defendant.)

11
12 November 5-6, 2012
13 Lexington, South Carolina
14

15 B E F O R E:

16 The Honorable Howard P. King, Judge and a jury.
17

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

19 Rhonda Patterson, Assistant Solicitor
20 Shannon Davis, Assistant Solicitor
21 Attorneys for the State

22 Robert M. Madsen, Esquire
Attorney for the Defendant

23
24 Brenda J. Sigwald, Circuit Court Reporter
For the Honorable R. Knox McMahon
25 P.O. Box 206, Jackson, South Carolina 29831

1 still have some matters that we need to tend to before we
2 can go forward with the trial on this matter, but I didn't
3 want to keep you waiting unnecessarily in the jury room
4 back there. So I'm going to excuse you now and allow you
5 to go and get your lunch and ask you to please report back
6 to your jury room, not to the courtroom, but to the jury
7 room at 2:30 this afternoon. The bailiffs will show you
8 how to get in and out of here and if you'll be back in the
9 jury room perhaps at 2:30, perhaps, hopefully, we will have
10 all these administrative matters taken care of and we'll be
11 ready to go forward.

12 So I'm going to excuse you now. Go with the
13 bailiffs and they'll show you how to get back in here.
14 Please get your lunch and be back in the jury room at 2:30
15 this afternoon. Thank you, I'll see you then.

16 (WHEREUPON the jury left the courtroom at 12:43.)

17 **PRETRIAL MOTIONS**

18 **THE COURT:** All right. From in chambers
19 conferences, I understand from counsel that there are some
20 pretrial matters that we need to take care of, specifically
21 with regard to the defendant's competency to stand trial
22 and also with regard to his competency under M'Naghten to
23 distinguish the difference between right and wrong and be
24 criminally responsible for his actions.

25 And Ms. Patterson, I understand he has already been

1 evaluated, is that correct?

2 MS. PATTERSON: Yes, sir, he has. He was evaluated
3 December 7, 2010.

4 THE COURT: Okay. And are you prepared to go
5 forward with the presentation with regard to the matter of
6 competency on behalf of the State?

7 MS. PATTERSON: Yes, sir, Your Honor.

8 THE COURT: All right. You may proceed.

9 MS. PATTERSON: Thank you, Your Honor.
10 The State calls Dr. Marlo Domino.

11 THE COURT: All right. Dr. Domino come up.

12 MS. PATTERSON: Marla, excuse me, Marla Domino.

13 MARLA DOMINO,

14 having been duly sworn, testified as follows:

15 THE CLERK: Have a seat, please, ma'am. Once
16 you're seated, state your full name, spelling your last on
17 the record, please.

18 THE WITNESS: Marla Domino, M-a-r-l-a D-o-m-i-n-o.

19 DIRECT EXAMINATION - IN CAMERA

20 BY MS. PATTERSON:

21 Q Dr. Domino, where are you employed?

22 A The South Carolina Department of Mental Health.

23 Q And how long have you been employed at the South
24 Carolina Department of Mental Health?

25 A Almost ten years.

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 Q And what is your position at the Department of
2 Mental Health?

3 A I am a chief psychologist at the forensic
4 evaluation service.

5 Q And can you tell us a little bit about your
6 education?

7 A Yes, I have a bachelor's degree from the University
8 of California Santa Cruz, in psychology. I have a master's
9 degree in criminal justice from Northeastern University. I
10 have a doctorate in clinical psychology from the University
11 of Alabama in which I did an internship at the federal
12 medical center in Butner, North Carolina and UNC Chapel
13 Hill Hospital. After that, I did a one year post-op in
14 clinical forensics psychology at the University of
15 Massachusetts. When I completed that, that is when I
16 started my job at the Department of Mental Health.

17 Q And have you testified in court before?

18 A Yes.

19 Q And what types of courts have you testified before?

20 A I've testified in federal court, several state
21 courts, North Carolina, Massachusetts, and South Carolina
22 state courts.

23 Q About how many times have you testified?

24 A Approximately sixty times.

25 Q And I failed to ask you, do you have any experience

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 in publications?

2 A Yes. I have several publications in forensic
3 psychology and clinical psychology as well as publications
4 in medical journals about fibro myalgia.

5 Q And do you have any teaching experience?

6 A Yes, I'm also an assistant professor at the
7 University of South Carolina. I don't teach currently, but
8 for about six years, I did teach abnormal psychology as
9 well as different courses in forensic psychology, such as
10 one on the insanity defense and one about mania and the
11 mental illness.

12 Q And are you currently a member of any professional
13 organizations?

14 A Yes, I am a member of the American Psychological
15 Associations, American Psychology and Law Society. It's
16 basically the primary organizations for forensic
17 psychologists in the United States.

18 Q And do you hold any professional certifications?

19 A I am a licensed clinical psychologist in South
20 Carolina.

21 Q And when you testified before, were you able --
22 were you ever certified as an expert?

23 A Yes.

24 Q And what areas were you certified previously?

25 A In clinical and forensic psychology.

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 Q Okay.

2 MS. PATTERSON: Your Honor, at this time, I would
3 ask that Dr. Domino be admitted as an expert in this court
4 in forensic and clinical psychology.

5 THE COURT: Voir dire with regard to
6 qualifications, Mr. Madsen?

7 MR. MADSEN: No, Your Honor.

8 THE COURT: All right. No issue under State versus
9 Council or with regard to qualifications; is that correct?

10 MR. MADSEN: That's correct, Your Honor.

11 THE COURT: All right. The State would -- the
12 Court would qualify Dr. Domino as an expert in the field of
13 clinical psychology and she will be allowed to testify as
14 an expert under the Rule 702 and subsequent rules of the
15 South Carolina rules of evidence.

16 MS. PATTERSON: Thank you, Your Honor.

17 BY MS. PATTERSON:

18 Q Dr. Domino, did you receive an order from this
19 Court to examine Mr. Wayne Curry?

20 A Yes, I did.

21 Q Do you remember when you received that order?

22 A We received that order on September 24th, 2010.

23 Q And did you examine Mr. Curry?

24 A Yes, I did.

25 Q Do you know what date that examination took place?

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 A I interviewed him on November 2nd, 2010.

2 Q And where was that interview held?

3 A At the Department of Mental Health's forensic
4 evaluation service.

5 Q And who was at that evaluation?

6 A Myself and the -- what we call a second examiner.
7 She is a social worker, Cassandra Simms.

8 Q And did you receive any information prior to the
9 examination?

10 A Yes, I did.

11 Q And what type of information did you receive about
12 Mr. Curry?

13 A Well, we received -- I have seen Mr. Curry since
14 2006 for forensic evaluations, so I had the material that
15 we have gathered since that time and that included his past
16 psychiatric records, both outpatient and inpatient, his
17 medical records, previous forensic reports by myself, as
18 well as other examiners, past psychological testing that I
19 have conducted; and we obtained information about his
20 current charges, so legal information, incident reports,
21 victim 's statements of that nature.

22 Q And why do you obtain all that information before
23 you examine someone?

24 A We'd like to know -- well, for different reasons.
25 Obviously, you need to know about the charges so we know

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 what specific questions to ask the defendant. We like to
2 know about their mental health history to help us arrive at
3 a more accurate diagnosis. We obtain forensic -- previous
4 forensic reports just to see what other examiner's opinions
5 are to give another clinical viewpoint about the person's
6 mental health history and things of that nature.

7 Q And about how long did the examination take place?

8 A I saw Mr. Curry at that point one hour and
9 thirty-five minutes.

10 Q And did you spend any time with Mr. Curry today?

11 A I attempted to speak with Mr. Curry. He did not
12 say a single word to me. We were in -- alone in a room
13 together for probably a total of thirty minutes and he did
14 not say one word to me.

15 Q Well, getting back to the December 7, 2010
16 evaluation, are you familiar with the legal standards for
17 competency?

18 A Yes, I am.

19 Q And what was determined, if anything, on that date
20 to decide if Mr. Curry was competent?

21 A Well, it was my opinion at the time that he did not
22 lack the capacity to understand the proceedings against him
23 or to assist in his own defense as a result of the lack of
24 mental capacity.

25 Q Did he seem to understand the charges against him?

Marla Domino - Direct Examination In Camera by Ms. Patterson

1 A He did, yes.

2 Q Did he seem to understand the penalties?

3 A Yes, he did. He guessed at the penalties at the
4 time and he was educated about that and appeared to
5 appreciate that education.

6 Q Was he able to appreciate the responsibilities of
7 the court personnel?

8 A Well, he gave a number of incorrect answers about
9 what people do, for example, he said the solicitor is his
10 advocate whose job it is to get you out of jail. He was
11 confronted about these responses at which time he often
12 then would give the correct response but sometimes he would
13 not. The times he did not give the correct responses, it
14 was our clinical opinion that he was feigning an inability
15 to learn new information.

16 Q Did he seem to appreciate the seriousness of the
17 charges?

18 A He did, yes.

19 Q Did he know the difference between pleas of guilty
20 and not guilty?

21 A Yes, he did.

22 Q Did he understand the importance of controlling his
23 behavior in the courtroom?

24 A I believe so, yes.

25 Q Did he seem to be able to assist in his own

1 defense?

2 A Yes.

3 Q Did he realize his attorneys position or his
4 attorney's -- the significance of his attorney?

5 A Well, again, he gave some incorrect responses about
6 the roles of different members of the Court, but he
7 appeared -- these appeared to be feigned. I don't believe
8 that he was confused about what his attorney does and the
9 role of his attorney.

10 Q Was there any evidence that Mr. Curry suffered from
11 a mental illness?

12 A At that time that I saw him, no.

13 Q And again, what was your expert opinion regarding
14 his competency?

15 A That at that time he did not lack the capacity to
16 understand the proceedings against him or assist in his
17 defense as a result of a lack of mental capacity.

18 Q And did you generate a report with records to your
19 expert opinion?

20 A Yes, I did.

21 MS. PATTERSON: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.

24 BY MS. PATTERSON:

25 Q I'm going to show you what's been marked as Court's

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 Exhibit No. 1 and ask you to take a look at that.

2 A Yes, this looks like the report that I submitted.

3 MS. PATTERSON: Your Honor, at this time, I would
4 move that Dr. Domino's report be admitted into evidence as
5 Court's Exhibit 1.

6 THE COURT: Any objection Mr. Madsen?

7 MR. MADSEN: No, Your Honor.

8 THE COURT: All right. It will be admitted as
9 Court's Exhibit No. 1, the report of the Department of
10 Mental Health and Dr. Domino.

11 (WHEREUPON Court's Exhibit No. 1 was admitted into
12 evidence.)

13 MS. PATTERSON: Thank you, Your Honor.

14 Dr. Domino, please answer any questions Mr. Madsen
15 has for you.

16 THE COURT: How about hand it up, let me see the
17 report, please.

18 MS. PATTERSON: I apologize Your Honor.

19 THE COURT: All right. Mr. Madsen,
20 cross-examination.

21 CROSS-EXAMINATION IN CAMERA

22 BY MR. MADSEN:

23 Q Now, Dr. Domino, as part of your evaluation of him,
24 you get some background information, whether you get it
25 from outside sources or stuff you've already had; is that

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 correct?

2 A That is correct.

3 Q And based on that you were able to determine that
4 apparently he was in special school during or from the
5 fourth and fifth grade on?

6 A Yes, that's what he told us, that he was in special
7 education classes for third, fourth, and fifth grade.

8 Q And you were able to determine, I guess, from the
9 history that he had had a learning disability or was
10 considered emotionally handicapped?

11 A Yes.

12 Q And that apparently he has been on SSI disability
13 since 1995 for paranoid schizophrenia?

14 A That is my understanding, yes.

15 Q And I guess at some point in time, his mother was
16 his payee, but ultimately, according to her, he stopped it
17 because he didn't trust her?

18 A That's my understanding, correct.

19 Q And it's -- that additionally, apparently he had
20 had a head injury when he was eleven or twelve?

21 A Correct.

22 Q During this evaluation or prior to it, at some
23 point, did either you or someone in your office speak to
24 family members such as his mother?

25 A Yes. The second examiner, Ms. Simms, talked to his

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 mother on the telephone.

2 Q And I guess indications were that when he was out
3 and about, I guess he slept under a bed and complained
4 about seeing bald men?

5 A Correct, that is what his mother said.

6 Q I believe also from some of the previous
7 evaluations there were complaints about him not trusting
8 his mother or his family in general because he believed
9 them to be clones?

10 A That is correct, yes.

11 Q I think at some other point in time, he thought
12 that the republican party was stalking him. Is that
13 something -- I guess that was with Dr. Crawford?

14 A Okay.

15 Q Do you remember seeing anything about that?

16 A I remember reviewing Dr. Crawford's report. I
17 don't remember anything specifically about the republican
18 party.

19 Q Ultimately, though, in reviewing stuff, I guess, he
20 had had admissions to GPH, which I guess is Gilliam
21 Psychiatric Hospital, your notes reflect March of 1992, May
22 of '92, September -- twice in September of '92, twice in
23 March of '93, looks like May of '93, November of '93, April
24 of 1999 and May of 1999; is that correct?

25 A Yes, I believe he had a total of five admissions to

1 Gilliam.

2 Q And he was diagnosed by them as having PTSD and an
3 anxiety mania and then was diagnosed as an antisocial or
4 antisocial personality disorder and schizophrenia with a
5 paranoid type?

6 A Yes.

7 Q And a delusional disorder?

8 A That is correct.

9 Q And then I guess, polysubstance abuse. What
10 does -- when someone is schizophrenic and has a paranoia
11 type, could you explain to me what that means?

12 A It's a -- paranoid type is a subtype of
13 schizophrenia and essentially what it indicates is not
14 necessarily a person is paranoid, but they have repeated
15 hallucinations or repeated delusions and other types --
16 other symptoms of schizophrenia are not prominent.

17 Q And then what is the delusional disorder?

18 A Delusional disorder is diagnosed when somebody's
19 primary symptoms are delusions, which we define as
20 false-fixed beliefs, but they don't have any other symptoms
21 that are typical schizophrenia, so they don't hallucinate,
22 their speech is organized, really their primary clinical
23 concern -- their primary problem is that they're delusional
24 about something or multiple topics.

25 Q And then ultimately, I guess he was prescribed

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 drugs like Zyprexa, Haldol and Cogentin?

2 A Yes, those are antipsychotic and Cogentin is used
3 to control the side effects of the antipsychotic
4 medication.

5 Q So Cogentin is kind of used to help some of the
6 side effects that come from the Zyprexa or Haldol?

7 A That is correct.

8 Q Can you tell me what does Zyprexa do?

9 A Well, both Zyprexa and Haldol are called
10 antipsychotics and most antipsychotics are geared toward
11 assisting people with what we call the positive symptoms of
12 schizophrenia, meaning they typically address disorganized
13 speech and hallucinations. To a lesser extent, they
14 address delusional thinking.

15 Q You also have records, I think from the -- I
16 believe it's Aiken Barnwell Mental Health center; is that
17 correct?

18 A That's correct.

19 Q And those records appear to start back in 1993?

20 A Yes.

21 Q Ultimately, I guess he was seen on a sporadic basis
22 by them from 1993 to 2003; is that correct?

23 A That's correct.

24 Q And apparently they diagnosed him with
25 schizophrenia paranoid type and also a delusional disorder;

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 correct?

2 A That is correct.

3 Q It appears that he has been additionally evaluated
4 by Department of Mental Health in '97, 2000, 2001, 2006. I
5 think 2007 and then by you in 2007 -- twice or actually
6 three times in 2008. And then, of course, the two times I
7 guess in 2010, correct?

8 A That is correct.

9 Q And it appears by the Aiken Barnwell Mental Health
10 he was also diagnosed with schizophrenia in 2008 also?

11 A All I see in any notes is that he was diagnosed to
12 be malingering at the mental health center in 2008 by Dr.
13 Smith.

14 Q And back in 2007, Dr. Crawford had found him
15 incompetent, not likely to restore; is that correct?

16 A That is correct.

17 Q And I believe in his reports, it indicates at
18 points in time that he has either reported hearing voices
19 and/or visual hallucinations?

20 A Yes.

21 Q And have you -- you've spoken with -- someone in
22 your department has spoken with family members who have
23 corroborated that he is having the auditory or visual
24 hallucinations when he's not in any kind of trouble. In
25 other words, when he's just out and about on the street?

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 A I believe his mother has said that he speaks of
2 seeing and/or talking to a bald man at times. And he has
3 voiced concern that other people are out to get him at
4 other times.

5 Q And it would be fair to say that generally when you
6 evaluate him, he's not terribly cooperative with you,
7 correct?

8 A That is correct.

9 Q And that greatly limits your ability to give a
10 diagnosis when he either A, refuses to answer any questions
11 or B, gets kind of nonsensical?

12 A Yes, that is correct.

13 Q Did you take a look at -- apparently he was
14 admitted to Just Care in March of 2010 on an emergency
15 inpatient commitment. Did you -- did you review that and
16 can you tell me what that was for?

17 A Yes. He was admitted to the Department of Mental
18 Health hospital from jail due to staff report that he was
19 paranoid, hostile, and emotionally labile.

20 Q What does that mean? Emotional labile?

21 A That means sort of moody, that he would have mood
22 swings, you know he would be happy at one time, angry at
23 another time.

24 Q Are you aware of what, if any, medications they
25 were giving him at the Lexington Detention Center?

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 A At that time or currently?

2 Q Currently.

3 A Yes, I spoke to mental health staff this morning.
4 They said he is prescribed Haldol and Lamictal, but he has
5 been refusing those medications for quite some time.

6 Q What is Lamictal?

7 A It's a mood stabilizer.

8 Q And, obviously, if he's not taking those
9 medications -- once someone takes it, how long will the
10 effects of that medication last?

11 A I'm a psychologist, not a psychiatrist. I can't
12 really speak to that.

13 Q But you would agree with me he hasn't taken those
14 in a period of time and there's a good possibility that any
15 benefits he would derive from that medication, he's not
16 receiving now?

17 A That's a complicated question. If you -- for
18 somebody who has a genuine mental illness, if they go off
19 their medications, yes, their symptoms will likely become
20 more active if they stop medication.

21 Q And I believe -- can Haldol be given by injection?

22 A Yes.

23 Q And Lamictal is taken by a pill?

24 A It is my understanding, yes.

25 Q Okay. And then if I understand correctly, when you

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 saw him at the evaluation that we're talking about, when he
2 came in, he had tremors in his hands?

3 A Yes.

4 Q His personal hygiene wasn't great, he smelled a
5 little bit; is that correct?

6 A That is correct.

7 Q And that he, according to you had given
8 intentionally irrelevant or erroneous information?

9 A Yes.

10 Q Such as a -- you would ask him who the U.S.
11 President was and he had answered, I guess Eisenhower?

12 A Correct.

13 Q He did not give the you the colors of the flag?

14 A Yes, he said the colors of the U.S. flag were brown
15 and green.

16 Q And at various times he appeared to be just kind of
17 silly?

18 A Yes.

19 Q Laughed or smiled or even smirked all of a sudden
20 for no reason whatsoever?

21 A That is correct.

22 Q And given your history with him, that's kind of
23 consistent with every time you've seen him in the past?

24 A Pretty much except for the very first time I saw
25 Mr. Curry in 2006, he was fairly cooperative at that time.

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 Q And you were able to document that he has a history
2 of noncompliance with medications?

3 A Yes.

4 Q And when you had asked him what the individuals in
5 the courtroom do, he answered those questions wrong?

6 A Not all of them, but some of them, yes.

7 Q He'd indicated, I guess that the judge was on his
8 side?

9 A Yes.

10 Q When asked about me, he had told you that, quote, I
11 was rotten to the core?

12 A Yes.

13 Q And that I wanted him to fry?

14 A That's correct.

15 Q And additionally he had messed up the functions of,
16 I guess, the jury?

17 A Yes.

18 Q And ultimately, you tried to give him, I guess
19 what's call-corrective education, correct?

20 A Yes, that's correct.

21 Q And he did not seem to benefit from that but you
22 thought that that was intentional?

23 A Well, at times he did benefit from that education.
24 So he was able to at the end of the exam recall what we had
25 told him. However, there were other times he did not

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 benefit from that education.

2 Q And ultimately, I guess, you sat down with him on
3 that day or an hour and a half, correct? Or right around
4 an hour and a half?

5 A Yes.

6 Q An hour and thirty-five minutes?

7 A Yes.

8 Q And that was back, I guess, almost a little over
9 two years ago now, correct?

10 A Yes, that was two years ago, yes.

11 Q And someone's mental health can drastically change
12 within a two-year period, can it not?

13 A Yes.

14 Q And I guess you have met with him twice since then,
15 once about three or four months ago and then once this
16 morning, correct?

17 A That's correct.

18 Q And in both of those times, he was not cooperative
19 with you, was he?

20 A No. The last time I spoke to him, I believe that
21 was in July. He did speak a little bit to me, but not very
22 much.

23 Q There were a lot of questions that you asked that
24 he just would not acknowledge you or give you any type of
25 answer?

Marla Domino - Cross-Examination In Camera by Mr. Madsen

1 A That is correct.

2 Q And then, I believe you said, did he just did not
3 speak to you whatsoever after half an hour?

4 A That is correct.

5 Q And were you made aware that he had recently just
6 gotten back from Just Care again?

7 A Well, I actually did not know that until I came to
8 court today when you told me about that and I was able to
9 speak with his treating psychiatrist.

10 Q And what was that for? That he was there?

11 A It was my understanding that he was again committed
12 emergently from the jail, basically for not talking.

13 Q Did they indicate a period of time that he wasn't
14 talking or not talking with anyone?

15 A I'm not sure about that, no.

16 Q How long was he at Just Care?

17 A I believe approximately three weeks.

18 Q Was he forcibly medicated while he was there? Do
19 you know?

20 A I'm not sure about that. I know that the
21 psychiatrist said that he continued the medications that
22 the jail was prescribing and from our conversation it
23 sounded like Mr. Curry took them every time, but I can't
24 confirm that.

25 Q Okay. And do you know if he's on any medication

Marla Domino - Redirect Examination In Camera by Ms. Patterson

1 right now as far as that -- not that he's prescribed
2 medication, but that he's actively under the influence of
3 any medications now from the jail?

4 A It's my understanding, no, that he's been off
5 medications for several months.

6 Q And, obviously, whether he's on or off, that could
7 have a significant impact on his potential competency,
8 could it not?

9 A It could.

10 MR. MADSEN: That's all the questions I have, Your
11 Honor.

12 THE COURT: Redirect?

13 MS. PATTERSON: Briefly, Your Honor.

14 REDIRECT EXAMINATION - IN CAMERA

15 BY MS. PATTERSON:

16 Q Dr. Domino, throughout your report you stated that
17 Mr. Curry was malingering. What is malingering?

18 A Malingering means to either fabricate psychiatric
19 symptoms or exaggerate current symptoms for a secondary
20 gain. So, for example a number of the folks that we see
21 malingering because they think that it will either get them
22 out of jail or it will reduce any future punishment they
23 might get.

24 Q And was this the opinion of several of the doctors
25 that have interviewed Mr. Curry in the past?

Marla Domino - Recross-Examination by Mr. Madsen

1 A Yes.

2 Q And just because Mr. Curry may be suffering from
3 the mental illness, does that preclude him from
4 understanding the charges against him?

5 A No. Someone could very well have active symptoms
6 of mental illness and still be competent to stand trial.

7 Q And just because Mr. Curry may suffer from a mental
8 illness, does that preclude him from being able to assist
9 in his own defense?

10 A No.

11 Q Thank you, Dr. Domino.

12 MS. PATTERSON: I have no further questions.

13 THE COURT: Mr. Madsen, anything else for this
14 witness?

15 **RECROSS EXAMINATION - IN CAMERA**

16 BY MR. MADSEN:

17 Q Ultimately though, I think what you had said is
18 that the people who malingers generally are trying to help
19 themselves out some way, correct?

20 A Well, people malingers for a number of different
21 reasons, but, yes, the majority of people we see that
22 malingers are -- either think it will get them out of jail
23 or might get them treated more nicely if they get a
24 punishment.

25 Q So ultimately some, I guess, are kind of goal

Marla Domino - Recross-Examination by Mr. Madsen

1 oriented when they're malingering?

2 A Sometimes, yes.

3 Q And as far as what you say about competency, since
4 he is not cooperating, to a certain extent that leads to
5 escalation on your behalf as far as what's going on with
6 him? Isn't that correct?

7 A Today, you mean? What's going on with him?

8 Q Yes.

9 A Right. That is correct.

10 MR. MADSEN: That's all the questions I have.

11 THE COURT: All right. Doctor, since I need to
12 make a decision based on competency here and this is a
13 nonjury matter, I have just a couple of questions.

14 Back in your initial evaluation with him back in
15 2010, I think I have got the answer to this in the report,
16 but my question would be, do you have an opinion as to
17 whether he was at that time trying to mislead you.

18 THE WITNESS: Yes, it was my opinion he was
19 intentionally trying to mislead me.

20 THE COURT: And do you think that that -- in your
21 opinion is that more of a malingering issue, that is he was
22 trying to improve his position by intentionally trying to
23 mislead you?

24 THE WITNESS: I'm not sure what Mr. Curry's
25 motivation was for malingering at the time. I think he

Marla Domino - Recross-Examination by Mr. Madsen

1 had, in fact, told the doctors at Just Care that he acted
2 out at jail because he wanted to get out of there. So, it
3 was my supposition that he was going along with that
4 mindset at that time.

5 THE COURT: But it would be your opinion that at
6 that time he was basically malingering?

7 THE WITNESS: Yes.

8 THE COURT: And of course, you've seen him twice
9 since then, this would be -- the other time you saw him was
10 some six months ago and he did cooperate nominally with you
11 at that time; is that correct? Or cooperated with you a
12 little bit?

13 THE WITNESS: Yes, yes.

14 THE COURT: Okay. And would it also be your
15 opinion that at that time he was malingering?

16 THE WITNESS: Yes.

17 THE COURT: Okay. And obviously, today, he
18 wouldn't even speak to you, so it's hard for you to make an
19 evaluation one way or the other?

20 THE WITNESS: That's correct.

21 THE COURT: As far as this is concerned?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Is it your opinion that his
24 refusal to cooperate currently is because of his mental
25 condition or he's just refusing to cooperate.

Marla Domino - Recross-Examination by Mr. Madsen

1 **THE WITNESS:** It's hard to assess. He's off his
2 medication, which means that if he has a genuine mental
3 illness, it's possible he's paranoid and that's why he's
4 not speaking. It's also possible that he is just wanting
5 to be manipulative and not wanting to speak, but it's --
6 since he's saying absolutely nothing and doing absolutely
7 nothing it's hard to make an assessment either way.

8 **THE COURT:** Okay. All right. Thank you very much.
9 You may step down.

10 **THE DEFENDANT:** Your Honor, can I please take the
11 stand?

12 **THE COURT:** No, sir, just have a seat, please, sir.

13 All right. Ms. Patterson, anything else on behalf
14 of the State on this issue of competency to stand trial,
15 which apparently is the only thing that we're addressing at
16 this time?

17 **MS. PATTERSON:** Nothing else from the State on this
18 issue.

19 **THE COURT:** All right. Mr. Madsen, anything that
20 the defense would like to present.

21 **THE DEFENDANT:** I want to take the stand.

22 **MR. MADSEN:** We'll call --

23 **THE DEFENDANT:** Your Honor --

24 **THE COURT:** No, wait a minute, I'm asking
25 Mr. Madsen.

Wayne Curry - Direct Examination In Camera by Mr. Madsen

1 MR. MADSEN: We'll call Mr. Curry.

2 THE COURT: All right. Come around, Mr. Curry.

3 THE DEFENDANT: I would like to take the stand.

4 THE COURT: No, sir, you have to be sworn to take
5 the stand.

6 THE CLERK: Place your left and raise your right.

7 THE DEFENDANT: I want to take the stand when this
8 jury is here.

9 THE COURT: No, just a moment.

10 THE CLERK: The other way.

11 WAYNE CURRY,

12 having been duly sworn, testified as follows:

13 THE CLERK: Have a seat.

14 THE COURT: You'll be given an opportunity if it
15 gets to a jury trial, but the issue before the Court,
16 Mr. Curry, is not whether -- it's competency to stand trial
17 now and that's the only thing -- I want this examination
18 limited to that, Mr. Madsen.

19 DIRECT EXAMINATION IN CAMERA

20 BY MR. MADSEN:

21 Q Wayne, where did you grow up?

22 A In North Augusta.

23 Q And where did you go to school?

24 A Paul Knox.

25 Q And what kind of classes did you take there?

Wayne Curry - Direct Examination In Camera by Mr. Madsen

1 A It's been so long ago -- I'm an old man. I'm 53
2 years old.

3 THE WITNESS: Your Honor, do I get to talk on the
4 jury stand?

5 THE COURT: No, sir, you've got to answer the
6 questions that your lawyer is asking you.

7 THE WITNESS: Do I get to talk to the jury?

8 THE COURT: There will be an opportunity if this
9 case goes forward, yes, sir.

10 BY MR. MADSEN:

11 Q Wayne, who did you live with growing up?

12 A I don't know.

13 Q Have you ever worked anywhere?

14 A No, I haven't.

15 Q How about are you on -- were you on disability?

16 A Yes, I was.

17 Q Who -- what were you on disability for?

18 A Mental illness.

19 Q And who was your doctor back when you lived in
20 Aiken County?

21 A I didn't have no doctor.

22 Q Well, who diagnosed you with a mental illness?

23 A The Gilliam Center.

24 Q At the Gilliam Center?

25 A Yep, in prison.

Wayne Curry - Direct Examination In Camera by Mr. Madsen

1 Q And did you live with your mother for a period of
2 time?

3 A Yes, I did.

4 Q And was she your payee on your disability check?

5 A That's right.

6 Q And you changed it from her to someone else,
7 correct?

8 A No, I didn't.

9 Q You never changed it to your aunt in Augusta?

10 A Nope.

11 Q You have told people in the past that your family
12 was cloned. Could you tell me about that?

13 A What's cloned?

14 Q Did you never tell anyone about that in the past?

15 A No, I didn't.

16 Q How about, Wayne, let's -- let me ask you -- you
17 heard Dr. Domino testify. You refused to talk to her. Why
18 is that? She seems like a nice lady.

19 (WHEREUPON there was a pause in the proceedings.)

20 THE COURT: Please answer the question, Mr. Curry.

21 THE WITNESS: What about Dr. Domino?

22 THE COURT: The question was why did you refuse to
23 talk to Dr. Domino today.

24 THE WITNESS: I don't want to talk to her, that's
25 why.

Wayne Curry - Cross-Examination by Ms. Patterson

1 BY MR. MADSEN:

2 Q How about --

3 A I just didn't want to talk to her.

4 Q At the jail, did they give you medication to help
5 you with your mental illness?

6 A No.

7 Q Do you take the medication that they give you?

8 A No, I don't.

9 Q And you're housed by yourself in a cell, correct?

10 A That's correct.

11 Q And you rec by yourself also?

12 A Yeah.

13 Q And I guess you went to Just Care a couple of
14 months ago. What was that for?

15 A I don't even know.

16 Q How long were you there?

17 A A little while, two weeks.

18 Q And then they brought you back here after that?

19 A That's right.

20 MR. MADSEN: That's all the questions I have.

21 THE COURT: Cross-examination?

22 CROSS-EXAMINATION - IN CAMERA

23 BY MS. PATTERSON:

24 Q Mr. Curry, do you know why you're here today?

25 A To stand trial, isn't it?

Wayne Curry - Cross-Examination by Ms. Patterson

1 Q And you talked about wanting to talk to the jury.
2 Do you know what the jury does?

3 A Find me guilty or find me innocent. That's what I
4 want to do, talk to them. I don't want to talk to nobody
5 else. I don't want to talk to nobody but that jury. I
6 don't even want to talk to be my lawyer. I believe he
7 against me. I been in jail three years. I been hit in the
8 head with a sledge hammer since I been in the jail. Now,
9 why should I want to talk to him or talk to you. I want to
10 talk to the jury. That's who I want to talk to and that's
11 all.

12 Q So you understand what the jury does then, don't
13 you?

14 A Find me guilty, find me not innocent. That's it,
15 send me to prison.

16 Q Do you know what you're charged with?

17 A Throwing bodily fluids. I want to talk to the
18 jury. I don't want to talk to y'all. Get the jury out
19 here. Let me talk to them people.

20 Q Okay. And do you understand how serious your
21 charge is?

22 A I ain't worried about how serious it is. I'm
23 innocent.

24 Q And --

25 A Them people don't -- that people in the jail hit me

Wayne Curry - Cross-Examination by Ms. Patterson

1 in the head with sledge hammers. I got a knot on my head.
2 Look at that knot.

3 THE COURT: All right, sir. Please answer the
4 questions.

5 THE WITNESS: I want to talk to the jury, Your
6 Honor. I want to talk to them people.

7 BY MS. PATTERSON:

8 Q Okay. Mr. Curry, and so you understand who
9 Mr. Madsen is, even though you don't want to talk to him?

10 A I want to talk to the jury.

11 Q Okay. And you're going to help Mr. Madsen present
12 your case today? Are you able to do that?

13 THE COURT: Answer the question. If you can.
14 Let's move this along.

15 THE WITNESS: Am I going to do what now?

16 BY MS. PATTERSON:

17 Q Are you going to help your attorney present your
18 case today?

19 A I want to talk to the jury, that's all.

20 Q Okay.

21 MS. PATTERSON: Thank you, Your Honor.

22 THE COURT: Mr. Madsen, anything else for this
23 witness.

24 MR. MADSEN: No further questions, Your Honor.

25 THE COURT: All right. Thank you, Mr. Curry, you

1 may step down.

2 All right anything else in the way of evidence
3 regarding the competency to stand trial issue, Mr. Madsen?

4 MR. MADSEN: Your Honor, I would just like to mark
5 as Court's Exhibit at this point in time just the prior
6 report from a previous competency hearings that were had in
7 Aiken County.

8 THE COURT: All right. Give them to the court
9 reporter. How many are there.

10 MR. MADSEN: I believe there's three total.

11 THE COURT: All right. It will be Court's numbers,
12 2, 3, and 4.

13 (WHEREUPON Court's Exhibits No. 2, 3, and 4 were
14 marked for evidence.)

15 THE COURT: All right.

16 MR. MADSEN: I just wanted to make sure she had
17 copies.

18 THE COURT: All right.

19 MR. MADSEN: And that would be it, Your Honor.

20 THE COURT: All right. Anything in reply on the
21 issue of competency to stand trial, Ms. Patterson?

22 MS. PATTERSON: No, sir, Your Honor.

23 THE COURT: All right. Let me look at these
24 orders. Give me just a moment.

25 (WHEREUPON there was a pause in the proceedings.)

1 **THE COURT:** All right. It appears that Exhibit No.
2 2 is an order by Judge Early, dated June 16 of 2008,
3 whereby Judge Early found the defendant unfit to stand
4 trial, but may likely become fit to stand trial in the
5 future and commit him to sixty days evaluation.

6 All right. Those are the only ones that I had.
7 Did you hand -- here they are, excuse me. Court's Exhibit
8 No. 3 is an order of Judge Newman, dated 18, September of
9 2008, whereby he ordered that judicial admission
10 proceedings be instituted by Aiken County and then the
11 other order is an order of Judge Early dated June 18 of
12 2009 and the Court has reviewed all of the orders in
13 connection with this matter.

14 All right. That being the case, that's all the
15 State has offered. Is there anything -- I believe you said
16 there is nothing in reply, is that correct, Ms. Patterson?

17 **MS. PATTERSON:** Yes, sir, Your Honor.

18 **THE COURT:** All right. Counsel, I will hear from
19 you on the -- well, let me ask you a couple of questions
20 first of all. Of course, it looks to me like the only
21 issue before the Court now is the Blair Matter, that is
22 competency to stand trial, not criminal responsibility and
23 that from pretrial conferences, it appears that if the
24 matter were to go forward, it would be the defendant's
25 position that the question of criminal responsibility under

1 M'Naghten becomes a jury issue or will become a jury issue.
2 Is that the question, Mr. Madsen?

3 MR. MADSEN: That is correct, Your Honor.

4 THE COURT: Okay. Let me ask you from the
5 standpoint of two things as far as the Blair matter is
6 concerned, that's burden of proof and the standard of
7 proof. Ms. Patterson, what's the State's position, who has
8 the burden of proof in competency and what is the standard
9 that the Court must apply?

10 MS. PATTERSON: Your Honor, the defendant has the
11 burden of proof by a preponderance of the evidence.

12 THE COURT: Okay. You agree with that, Mr. Madsen?

13 MR. MADSEN: I do, Your Honor.

14 THE COURT: All right. Okay. I would agree also
15 that the defendant has the burden of proving there's
16 basically a presumption of competence and he would have the
17 burden of proving by a preponderance of the evidence of
18 incompetency to stand trial.

19 All right. That being the case, since the burden
20 would be yours, Mr. Madsen, let me hear from you.

21 MR. MADSEN: Your Honor, ultimately, we have a
22 situation here with a gentleman who has had a long-standing
23 mental illness back from 1992. He is on SSI disability for
24 that. I don't think that anyone disputes that he has a
25 mental illness and given the fact that he's had multiple

1 diagnoses of schizophrenia paranoid type, also delusional
2 disorder and, in fact, has been medicated on that, you
3 know, quite honestly, I think he puts the Department of
4 Mental Health in a difficult situation because he does not
5 fully cooperate with him or his medicals or medicines that
6 he received. But in the end, we do believe that we have
7 shown that he does lack the competency because I think that
8 ultimately, that leads them to ultimately have to base some
9 of their opinions on conjecture since he does not
10 cooperate.

11 **THE COURT:** Well, how about addressing his
12 testimony here today. Hasn't he basically taken the stand
13 and said that he understands these proceedings and he wants
14 to tell his story to the jury and it's the jury's job to
15 find him guilty or not guilty and isn't that really the
16 test of competency to stand trial.

17 **MR. MADSEN:** Well, that can be a portion of the
18 competency to stand trial, but obviously, Dr. Domino had
19 testified when she asked him about other aspects of the
20 trial, he did not appear to benefit from corrective
21 education although she believed that that was malingering.
22 Additionally I think there's a second prong about being
23 able to assist your counsel, which, quite frankly,
24 conversations with Wayne very greatly and recently have
25 been none, whatsoever. But we do believe that we have met

1 the low burden of preponderance that he is not competent at
2 this point in time, Your Honor.

3 THE COURT: All right. Ms. Patterson?

4 MS. PATTERSON: Thank you, Your Honor. It's the
5 State's position that Mr. Curry is competent. Dr. Domino,
6 as well as other doctors in the past have ruled -- well,
7 have determined that he's malingering. He knows what he's
8 doing. He understands -- he understands what a jury trial
9 is, Your Honor. He insists on testifying in front of a
10 jury. We had him here months ago in front of Judge
11 Cottingham. He did the same. He just wanted to exercise
12 his right to have his day in court. Even with the prior
13 orders from the judge -- and Judge Newman's order in
14 particular, I have a copy that they did initiate probate
15 proceedings and the doctors there determined that he was
16 not mentally ill; and therefore, their treatment was not
17 needed. It's our position that Mr. Curry knows what he's
18 doing, whether he's just being mean, uncooperative, what
19 his goal is, is unbeknownst to us.

20 Even the doctor can't figure it out, but he knows
21 what he's doing. He knows how to work the system. He
22 knows how to -- he knows when to lash out at people when
23 he gets upset with people. Because he doesn't like his
24 attorney doesn't mean that he doesn't understand the
25 proceedings against him and is not able to assist in his

1 own defense. He insists, again, on testifying and he knows
2 who he wants to cooperate with him if he doesn't.

3 So it's our position that he is competent to stand
4 trial.

5 THE COURT: All right. Mr. Madsen, anything you'd
6 like to add?

7 MR. MADSEN: No, Your Honor, but I think in the
8 end, I mean, he's had some kind of goal for the
9 malingering, we think that he's kind of shocked himself
10 into -- ultimately I think if he's not cooperating, that in
11 the end -- that says something about -- because he's
12 consistently been like that over a period of time, but been
13 diagnosed with a mental illness and we just do not believe
14 he's competent at this point in time.

15 THE COURT: Okay. Thank you, sir.

16 MR. MADSEN: And if Your Honor has any questions
17 for him -- if the Court has any inquiry --

18 THE COURT: No, sir, I do not.

19 All right. The issue before the Court this morning
20 as a result of this -- or the purpose of this hearing is to
21 evaluate and determine the defendant's competency to stand
22 trial. The issue of criminal responsibility under
23 M'Naghten is not the issue before the Court at this time.
24 The testimony before the Court, of course, is the report of
25 the Department of Mental Health and Dr. Domino as well as

1 her testimony. Also the defendant's own testimony and the
2 orders of the -- previously entered in other cases
3 regarding the defendant's competency to stand trial. The
4 parties have agreed that the standard is that the defendant
5 has the burden of proofing his incompetence or inability to
6 stand trial by reason of incompetence and the burden is on
7 him and that the standard of proof is by a greater weight
8 or a preponderance of the evidence.

9 I can appreciate the arguments being made by the
10 defendant and his counsel, Mr. Madsen. Most of these
11 arguments go to the criminal responsibility under M'Naghten
12 and become a jury issue under the defenses that the
13 defendant has indicated he will raise, that is not guilty
14 by reason of insanity or guilty but mentally ill and not
15 with regard to his competency to stand trial. Based upon
16 the evidence before me as well as my own observations of
17 the defendant and his testimony on the stand today, I find
18 that he does understand the charges, that he understands
19 the role of the jury. In fact, he very clearly states that
20 he wants to tell his story to the jury and it's the jury's
21 role to either find him guilty or not guilty.

22 I would also find that he is specifically
23 malingering in answer to some of the functions of the Court
24 in order to convince everyone that he does not know what
25 the Court proceeding is about, but I don't think that that

1 is credible because he very clearly indicated to the Court
2 today that the jury's role is to find him guilty or not
3 guilty. And so it would be my view that he has failed to
4 meet his burden of proving by a preponderance of the
5 evidence that he is not competent to stand trial; and
6 therefore, the Court would find that he is competent to
7 stand trial and he can raise the issues of mental illness
8 as a defense to the -- to the two verdicts of either guilty
9 by -- not guilty by reason of insanity or guilty but
10 mentally ill, but I do not think that that is the issue
11 before the Court today.

12 My view is that he has failed to prove by a
13 preponderance of the evidence that he does not understand
14 the nature of these proceedings and the nature of the
15 charges against him and that some of his statements with
16 regard to the roles of various people is simply malingering
17 on his part and I would find that he is competent to stand
18 trial.

19 All right. We'll take a forty-five minute recess
20 for lunch and be ready to start back at 2:30.

21 MS. PATTERSON: Thank you.

22 (WHEREUPON a recess was observed.)

23 THE COURT: All right. Back on the record with
24 regard to the matter of the State versus Curry. Mr. Curry
25 is present with his counsel and I am advised that all of

1 the jurors are also here and they have returned from lunch
2 timely.

3 Just a couple of questions, Counsel. Mr. -- just
4 so I can kind of schedule, plan and do what I need to do.
5 Mr. Madsen, I understand the defendant's defense will
6 likely be -- and I'm not holding you to this, but either
7 not guilty by reason of insanity or guilty but mentally
8 ill; is that correct?

9 MR. MADSEN: I would anticipate that.

10 THE COURT: Okay. But, you know, I'm not holding
11 you to it, I'm just trying to think of what I need to be
12 looking at in the way of charges and in the way of verdict
13 form but that will depend on where we were at the
14 appropriate stage of the case.

15 MR. MADSEN: Yes, Your Honor.

16 THE COURT: Okay. All right. Anything else before
17 we bring the jury in, Ms. Patterson?

18 MS. PATTERSON: Nothing from the State, Your Honor.
19 If you wanted -- with regards to scheduling, I have two
20 officers here. If -- my other two witnesses, Your Honor,
21 are as to reply witnesses, Your Honor. So I'm not sure if
22 Mr. Madsen was prepared to --

23 THE COURT: Well, we'll just wait and see. I'm not
24 going to make him make that decision at this time. You
25 anticipate two witnesses in the case in chief?

Frederick Hopkins - Direct Examination by Ms. Patterson

1 by a preponderance of the evidence or sometimes called the
2 greater weight of the evidence. And ultimately, once you
3 hear about how his life has been, hear what kind of living
4 conditions he put himself in when he was in that cell;
5 listen to the background, the fact that he hasn't had a
6 sound mind for a long time. We believe that you'll find
7 him not guilty by reason of insanity. Thank you.

8 **THE COURT:** All right. Madame Solicitor, you may
9 call your first witness.

10 **MS. PATTERSON:** Thank you, Your Honor. The State
11 calls Officer Frederick Hopkins.

12 **THE COURT:** All right. Come around, please.

13 **FREDERICK HOPKINS,**

14 having been duly sworn, testified as follows:

15 **THE CLERK:** Have a seat, please, sir. Once you're
16 seated, speak up loud and clear, stating your full name,
17 spelling your last for the record, please.

18 **THE WITNESS:** My name is Officer Hopkins, Frederick
19 Hopkins, H-o-p-k-i-n-s.

20 **DIRECT EXAMINATION**

21 **BY MS. PATTERSON:**

22 **Q** Officer Hopkins, where are you employed?

23 **A** I'm currently employed with the Lexington County
24 Sheriff's Department as a deputy specializing in
25 corrections.

Frederick Hopkins - Direct Examination by Ms. Patterson

1 Q And how long have you been a correctional officer?

2 A I began working with Lexington County in November
3 of 2005.

4 Q And as a correctional officer, what are some of
5 your duties?

6 A Our duties are custody, care, and control. We
7 handle -- as the inmates are remanded to our custody, being
8 arrested, we house them, clothe them, feed them. That also
9 comes under care and then control. We control the inmates
10 so they don't hurt themselves, hurt my fellow officers and
11 myself or the public.

12 Q And were you on duty on August 18, 2010?

13 A Yes, I was.

14 Q And were you on duty -- did you have the occasion
15 to come in contact with Wayne Curry?

16 A Yes, I did.

17 Q And was Mr. Curry an inmate?

18 A Yes, he is.

19 Q And do you remember your initial contact with
20 Mr. Curry on that date?

21 A I was working first floor, the area that he's
22 housed in, which is our -- we call it the stress management
23 unit. It's where inmates are put that can't be housed with
24 general population either for health or physical danger or
25 protective custody and even for correction of infraction

Frederick Hopkins - Direct Examination by Ms. Patterson

1 area rules that were broken.

2 Q Okay.

3 A And, yes, I did -- I started shift at 6 a.m. and
4 didn't leave until 6 p.m. that night. So I was with him
5 all day.

6 Q And what were the circumstances surrounding that
7 first contact with him on that day?

8 A He had handed me an inmate request form and it
9 was -- it was a request that I had to take to the office to
10 sit down and decipher because I could barely read his
11 writing and on it was a request for a conjugal visit on
12 third floor, which housed the female inmates at the time,
13 except he didn't spell it conjugal, he spelled it
14 congregate. So it took me a minute to realize what he was
15 asking.

16 I immediately denied the request because our policy
17 states, No inmate may have contact sexually with another
18 inmate for any reason. So that was given back to Mr. Curry
19 prior to the other incident.

20 Q Now, did you pass it back to Mr. Curry?

21 A I did. And Mr. Youmans was with me at the time.

22 Q And did you tell him that his request was denied?

23 A I did.

24 Q And what was his reaction to you?

25 A Cool, very calm, and he made no comment.

Frederick Hopkins - Direct Examination by Ms. Patterson

1 Q Now, did you have any further contact with him on
2 August 18th?

3 A Yes, we had to -- throughout the day, we have to do
4 clean-up details. Sometimes we're able to get the cleaning
5 of the entire first floor, which can house up to anywhere
6 from -- let's say fifteen inmates all the way up to, I've
7 seen it as high as eight. Usually three per room and it
8 can go even higher than that. So with our transportation
9 details, our security checks and other duties, we have to
10 squeeze in clean up of the individual cells and the floor
11 in between different activities. His room was reserved for
12 the last because --

13 Q Why was that?

14 A -- of a smell that was emanating from his cell,
15 through a closed door. We didn't know it, but he had been
16 stockpiling feces underneath the sink.

17 Q Now, do you have a specific policy that you follow
18 before you enter into an inmate's cell?

19 A On first floor, C Wing has to have two officers
20 present at all times. B Wing is mental health. It is
21 encouraged that two officers be at each and every door
22 opening. Mr. Youmans was present with me when I looked
23 through the flap of the cell door and ascertained that he
24 wasn't violent or, you know, in any trouble prior to
25 opening his door to clean up. When the door was opened, in

Frederick Hopkins - Direct Examination by Ms. Patterson

1 a split second, he had lobbed with his right hand, like
2 pitching a softball, the fecal matter which hit me square
3 in the abdomen, which dribbled down and onto my right leg,
4 onto my duty belt, et cetera. I immediately --

5 Q Let me stop you for one second.

6 A Okay.

7 Q I'm sorry, Officer Hopkins. So you follow
8 procedure, you look through the flap?

9 A Yes.

10 Q Can you kind of describe the door to Mr. Curry's
11 cell?

12 A The door is a standard height door that is metal.
13 Okay. And in -- it's a hollow metal door with insulation
14 in it, but there is a rectangular viewing port that's about
15 six, seven inches wide and about ten to twelve inches long,
16 all right. It's enough for you to scan the inside of the
17 cell and to ascertain where the inmate is standing or where
18 he may even be hiding.

19 Q And you followed that procedure?

20 A Yes, I did.

21 Q And I'm sorry, but where was Mr. Curry? Where was
22 he positioned when you looked in there?

23 A At the time, he was positioned towards the -- not
24 the back wall, but the side wall, there the desk would be
25 and he was just standing there just calmly like the

Frederick Hopkins - Direct Examination by Ms. Patterson

1 solicitor is now. Not saying a word, not giving me any
2 indication that he's going to do anything.

3 Q And so the door was -- who opened the door?

4 A I did.

5 Q Okay. And did you enter in first?

6 A Did not enter the cell.

7 Q Okay. Where were you standing when the feces hit
8 you?

9 A I was standing to the left of -- where I insert the
10 key, I was standing more towards the left and when the door
11 swung out, that's when I had gone to the middle of the door
12 frame and that's when he lobbed it.

13 Q And did you see if it was contained in anything
14 or -- where --

15 A No, it was just in his hands.

16 Q And did he say anything when he threw it at you?

17 A Not a word. Not a word.

18 Q Did he have any response on his face whatsoever?

19 A None at all.

20 Q And so what did you do next?

21 A I immediately sealed the door and called for
22 assistance, which was to my sergeant at the time, now
23 Lieutenant Clawson. I stated that I needed to see him on
24 first floor immediately.

25 Q And when Mr. Curry through the feces at you, about

Frederick Hopkins - Direct Examination by Ms. Patterson

1 how far away were you?

2 A Three and a half feet.

3 Q And did backup come?

4 A Yes.

5 Q And what did you have to do after backup came?

6 A I had to be decontaminated. My uniform had to be
7 bagged up, thrown away, a new duty belt procured. I had to
8 take a shower. We had to scramble to find me some decent
9 bars of soap.

10 Q Did you have to go to medical or anything?

11 A Yes, Dr. Miles ended up clearing me.

12 (WHEREUPON State's Exhibit 1 and 2 were marked for
13 identification.)

14 MS. PATTERSON: Your Honor, may I approach the
15 witness?

16 THE COURT: Yes.

17 BY MS. PATTERSON:

18 Q Officer Hopkins, I'm going to show you what's been
19 marked as State's Exhibit 1 and 2 for identification
20 purposes only and ask you to take a look at it.

21 (WHEREUPON the witness was looking at the exhibit.)

22 THE WITNESS: Yeah.

23 BY MS. PATTERSON:

24 Q Do you recognize what's in that photo?

25 A Uh-huh.

Frederick Hopkins - Direct Examination by Ms. Patterson

1 Q And State's Exhibit 1, what does that photo depict?

2 THE COURT: Wait just a moment. Are they in
3 evidence?

4 MS. PATTERSON: No, sir, not yet.

5 THE COURT: All right. He can't testify to what
6 they depict until they're in evidence.

7 MS. PATTERSON: I'm sorry, Your Honor.

8 BY MS. PATTERSON:

9 Q Do you recognize those pictures?

10 A Yes, I do.

11 Q Do they fairly and accurately represent --

12 A Exactly.

13 Q -- what you experienced on August 18, 2010?

14 A Yes.

15 MS. PATTERSON: Your Honor, at this time, I'd move
16 State's Exhibit 1 and 2 be moved into evidence.

17 THE COURT: Any objection, Mr. Madsen?

18 MR. MADSEN: No, Your Honor.

19 THE COURT: All right. Exhibit -- State's No. 1
20 and State's No. 2 admitted without objection.

21 BY MS. PATTERSON:

22 Q In Exhibit No. 1, what does that depict?

23 A Exhibit No. 1 shows me standing in front of the
24 medical door. I'm kind of splayed -- kind of standing like
25 this so that the pictures can be taken and it's got the

Frederick Hopkins - Direct Examination by Ms. Patterson

1 fecal matter on me and on my duty belt and equipment.

2 Q And what does State's No. 2 depict?

3 A That is a close-up shot of where most of the fecal
4 matter hit me, which was just below the belt, in the groin
5 area.

6 Q Thank you. And Officer Hopkins, once backup
7 arrived, did you have any further contact with Mr. Curry on
8 this date?

9 A Yes. I was in medical when he was brought into
10 medical to be cleared by Dr. Miles as well. No words were
11 exchanged.

12 Q And did you have any -- did you have to do anything
13 else in response to this incident? Did you have any
14 further contact with Mr. Curry after you saw him in
15 medical?

16 A That day?

17 Q On that day, yes, sir.

18 A Yeah, because I finished the shift.

19 MS. PATTERSON: Beg the Court's indulgence, Your
20 Honor.

21 THE COURT: All right.

22 (WHEREUPON there was a pause in the proceedings.)

23 MS. PATTERSON: Officer Hopkins, no further
24 questions at this time, please answer any questions
25 Mr. Madsen may have for you.

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 THE COURT: Cross-examination, Mr. Madsen.

2 CROSS-EXAMINATION

3 BY MR. MADSEN:

4 Q Deputy Hopkins, you said you've been, I guess, with
5 the sheriff's office at the detention center since 2005?

6 A That is correct, sir.

7 Q And your general -- I think you said on this day
8 you were working six to six. Are twelve hour shifts normal
9 for you?

10 A Yes, they are.

11 Q Is that generally how the officers there in -- the
12 detention center officers work?

13 A Yes, we have two shifts, both working six to six.
14 One at night and one in the morning.

15 Q And while you were there or while you were working
16 there back in August of 2010, was the first floor just your
17 area or would you go out to the pods?

18 A Not on those days. The first floor was my assigned
19 post for that day.

20 Q But there would be other days that you would go to
21 the pods?

22 A Yes.

23 Q Okay. And I guess, let's explain to the jury a
24 little bit, the jail is set up with pods that go from A to
25 F, correct?

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 A No, sir, A to G.

2 Q A to G. --

3 A Actually, if I may?

4 Q Sure.

5 A The jail is basically three areas. What we call
6 the old jail meaning first, second, third floor. Those are
7 all identical floors except for the wall that was put up on
8 first floor to divide the recreation yard for A Wing and B
9 and C Wing. Those floors are identical in set up. Now, as
10 he pointed out, we do have pods, which are lettered from
11 alpha to golf, meaning A through G. That's seven pods. We
12 call that the new jail; and then we have what is called the
13 annex. The annex is four -- let's say dormitories, that
14 you would put like -- we've got the inmate workers on one
15 side of A B Dorm and who've got sentenced to very light
16 charges on A side for like thirty to ninety day charges,
17 you know, when you put them down there. C and D is not
18 operational because we don't have the manpower, so they've
19 been shut down. So we have A and B Dorm. That's two
20 housing areas. The seven pods on Main Street and then the
21 three floors in the old jail.

22 Q And so you might work at the three different areas
23 of the jail -- you could be assigned to one of those areas,
24 just depending on the day? You're not always going to be
25 on the old jail or the pods?

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 A That is correct.

2 Q And this day you ended up -- you happened to be on
3 the first floor, correct?

4 A Yes.

5 Q And the first floor divided up into A and B Wings?

6 A There are three wings. Think of it as a cross. On
7 one wing you have -- if you're facing the administration
8 side of the jail, C Wing is going to be to your left, A
9 Wing is going to be to your right, with B Wing at your
10 back. So it's in the form of a cross.

11 Q And is that entire first floor called -- I think
12 you said it was called stress management --

13 A The stress management unit; that is correct.

14 Q And those different A B and C, are they divided up
15 differently as far as who is housed within those?

16 A Yes, they are.

17 Q Well --

18 A C Wing is our confinement for inmates that have
19 broken rules that are serious enough that they have to be
20 immediately taken out of the area for either the safety of
21 other inmates, themselves or even staff. And they'll go
22 through the disciplinary hearing process and get anywhere
23 from time served, which is seven days, on up to whatever
24 admin decides over thirty days. I believe my sergeants can
25 give thirty days per individual charge, but anything over

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 that for disciplinary reasons have to be approved by admin,
2 which is lieutenants on up.

3 Q Okay.

4 A Now, B Wing, for the most part is supposed to be
5 our medical and our inmate mental health unit. We will put
6 inmates such as for -- for example, we had an inmate that
7 had to have a CPAP machine going constantly, so he was put
8 by himself in that room with his machine so that nobody
9 could mess with the machine and that -- you know, we could
10 give him better care. The mental health unit is also that
11 same wing and that usually encompasses the mental health
12 watches, the max watches for suicide prevention and even
13 medical watches such as monitoring the -- make sure the
14 machine and the inmates are doing well.

15 A Wing is our protective custody wing. That is
16 where inmates are put when they might be in danger from
17 general population or they could even be housed there to
18 separate them from their fellow conspirators/defendants.
19 I've often seen inmates housed on PC to keep them away from
20 multiple codefendants for that reason.

21 Q And Wayne was housed on the B Wing that day,
22 correct?

23 A Yes, he was housed that day in 1B05.

24 Q And I believe that that's where you said is for
25 medical and/or mental problems, correct?

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 A Yes.

2 Q And you're not aware that Wayne --

3 A Or -- well, also for inmates that cannot deal with
4 general population. And that might not be for mental
5 health reasons. We have an inmate, his name is George
6 Murphy. Every time he comes to jail, he goes straight to
7 that wing because he just cannot function in a pod. He
8 gets into trouble or just a whole myriad of things can come
9 up. So it's not necessarily all the time mental health
10 and/or medical reasons. There are just some people can't
11 adapt.

12 Q And the jail -- you said that the jail, you were
13 responsible or the jail is responsible for care, custody,
14 and control, correct?

15 A That is correct.

16 Q And part of that, I guess, is the administration of
17 medicine that the inmates might need, correct?

18 A That is correct.

19 Q It could be everything from someone who has, say
20 high blood pressure and needs to have medicine every day to
21 anxiety, mental health problems, up to psychiatric
22 medication such as Haldol?

23 A I have seen medicines given on first floor. Not
24 being a medical pharmacist or nurse or doctor, I can't
25 testify as to what type of medicines. Yes, the whole

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 gambit of pills have been given on that floor.

2 Q And with Wayne, were you aware of whether or not he
3 was receiving medication from the --

4 A Yes, but he was receiving them on a sporadic basis
5 because he would refuse them and we can't force meds unless
6 he's a danger to himself.

7 Q And ultimately, mental health medications, I
8 believe, at the jail, there's Dr. Means and Dr. Cherry; is
9 that correct?

10 A Dr. Cherry is the M.D., psychiatrist and Dr. Means
11 is the PhD.

12 Q Psychologist?

13 A Psychologist, yes.

14 Q And generally, those -- I believe they're both
15 women, correct?

16 A Yes, they are.

17 Q Both of those individuals are generally responsible
18 for the mental health aspect of the inmate population,
19 correct?

20 A Yes, but there are other workers. There's
21 Ms. Brown and there's a whole -- actually they've gotten
22 two or three others to come in on weekends that I haven't
23 gotten their names down yet because they come in on a
24 voluntary basis, I think.

25 Q Now, when they administer medication to inmates, do

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 they generally have an officer there at least on the B Wing
2 with them that helps?

3 A We accompany -- both officers usually accompany the
4 nurse to each and every cell on first floor during med pass
5 to -- one to insure the safety of the nurse; two to insure
6 that if the medicine is given that the inmates don't cheek,
7 hide, or otherwise not imbibe the medication to use at a
8 later time or to even sell and then to make sure that, you
9 know, the doors are locked.

10 Q And ever since Wayne came into the jail, he has --
11 pretty much had been on that first floor, B Wing, correct?

12 A I've never known him to be anywhere else.

13 Q And you had quite a bit of contact with him prior
14 to August 18th? Were you working on the first floor a lot
15 or --

16 A I have worked first floor quite a bit in the past.
17 He was one of the many charges that we would have for that
18 day.

19 Q And Wayne lived in that cell alone, did he not?

20 A Several times we tried giving him a cell mate and
21 it was not good. He just --

22 Q Wayne's not much of a conversationalist, is he?

23 A No.

24 Q He generally doesn't speak with anyone?

25 A No, he will speak, it's just -- it's on his terms.

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 He -- you know, he usually recs alone now because we don't
2 want inmates threatening him or him hurting the other
3 inmates.

4 Q So he's housed alone and reked alone?

5 A Yes.

6 Q And I guess you had said earlier in that day, you
7 come in contact with him and he had requested a conjugal
8 visit with the third floor?

9 A Yes.

10 Q I think back at that point in time, the third floor
11 was a --

12 A Female pod, yes.

13 Q They stopped that in this interim, but I think
14 that's back in place?

15 A It's gone back to the third -- yes.

16 Q Was that the first time that you had ever had an
17 inmate give you a request for a conjugal visit?

18 A Yes, it was.

19 Q Kind of silly, isn't it?

20 A Haven't had one since.

21 Q And you told him, of course, no.

22 A No, I didn't tell him, I wrote it.

23 Q Okay. And can you explain to me, when you got that
24 note from him, were you at the cell or how did you come
25 about getting that note?

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 A We were doing clean up of his cell and he handed me
2 the request form. Since I couldn't read it there, I said
3 after we -- you know, after we finish the clean up, you
4 know, we'll get it to where it needs to go, and I put it in
5 my pocket. So after clean up was finished, we went back to
6 the office, got ourselves cleaned up, and pulled out the
7 request form and began to read it. It took me a while to
8 decipher it because he doesn't have the neatest of
9 handwriting.

10 Q Okay. And did you -- what did you end up doing
11 with that note, do you know?

12 A Gave it back to him --

13 Q Okay.

14 A -- after I'd written denied due to policy and
15 signed it.

16 Q And you had said something about that you had
17 gotten it when you were cleaning up his cell. Is that
18 something that you do with each and every inmate's cell
19 every day?

20 A Every-day every inmate is expected to clean their
21 housing area and that the sweep, mop, clean toilets, clean
22 the sink, clean the mirrors, clean their beds. Even on
23 laundry days, they're expected to turn in all sheets to get
24 new sheets issued and laundry done.

25 Q And there had been some problems though with Wayne

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 and the cleanliness of his cell, correct?

2 A He doesn't like to clean, no, sir.

3 Q And, in fact, I guess, specifically with maybe some
4 feces around the cell, around the walls, or --

5 A No, I've never known him to spread the feces except
6 on me. But we did find that he was hoarding it underneath
7 the sink which is immediately to the left of the door.

8 Q Could you explain that to the jury? What do you
9 mean by hoarding it? How would he...

10 A It was in a Styrofoam cup or container, I believe
11 when it was found underneath the sink. There's a three or
12 four inch gap that you cannot see underneath from the door.
13 You literally have to get down on all fours with a
14 flashlight to see under that sink.

15 Q And when you were there earlier in the day, you
16 didn't see it or smell it?

17 A Oh, we smelled it, that's why we were making sure
18 that his room was going to be cleaned.

19 Q So you smelled it when you were there earlier in
20 the day --

21 A The whole day.

22 Q -- you ended up coming back to check on it again?

23 A Right.

24 Q The second time.

25 A No, the smell never left us. And that's not

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 unusual on that floor because at one time we've had just
2 about the whole wing either flood or smeared. So, I mean,
3 smelling feces is not an unusual incident.

4 Q And you had done a report that had indicated that
5 there was a strong smell of feces, but you had also
6 indicated in your report about him -- or that his room had
7 been cleaned due to unsanitary living conditions?

8 A Yes, because he refused to clean. When he was
9 removed from the cell, we ended up having to clean it.

10 Q Could you just explain to them what do you mean by
11 the unsanitary? I mean, what did y'all have to do? What
12 was unsanitary or unclean about it?

13 A Well, we had to mop -- sweep and mop the floors,
14 make sure -- that's how the feces was found. That had to
15 be removed from the cell. That had to -- you know, his
16 linens and bedding would have had to have been changed out.
17 Anything that was contaminated with it would have been gone
18 through.

19 Q And your testimony is he really didn't say anything
20 to you before he pitched --

21 A No.

22 Q And ultimately, I guess you said your clothes were
23 destroyed?

24 A We bagged them up in a bio hazard bag, yes, sir.

25 Q Did they just not watch them and give them back or

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 put them some place?

2 A They -- once that happens, I would never wear that
3 uniform again.

4 Q And so ultimately, you then go and change out of a
5 uniform, I guess and take a shower, correct?

6 A Uniform was procured from supply and I was able to
7 shower.

8 Q And ultimately at this area on the first floor, is
9 there any type of video surveillance within the detention
10 center?

11 A Yes. There's a camera in the day room on the A
12 side. There's one in the B and C rec area, which is the
13 same rec area for B and C Wing. All the wings have cameras
14 on them, except for B Wing, which because that's the main
15 thoroughfare, there's nowhere to put a camera.

16 Q So there's no camera that sees the outside of the
17 cells on B Wing?

18 A Well, there is at the head of the -- of where the
19 gait is locked, but where his room is, there's an old
20 doorway that we would move the door from because that used
21 to be the SMU just the two cells five and six when there
22 was no other part of the jail, when only the first, second
23 and third floor existed, the door was removed, but they
24 didn't take out the walls to make it smooth like the other
25 two floors had been.

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 Q And do you know at any point in time, has anyone
2 ever documented or taken photos of the unsanitary living
3 conditions of his cell at the jail?

4 A No, because it's always been made to be cleaned up.
5 I mean, we've either had to do it ourselves or get an
6 inmate worker when he refuses.

7 Q And that's pretty much been the entire time that he
8 was in jail, correct?

9 A I would say about half the time.

10 Q About half the time. And then once this is done,
11 he is taken, I guess to medical and I guess cleaned up or
12 decontaminated -- do you know?

13 A No, he's allowed to shower, there's a shower right
14 there at B and C Wing.

15 Q Okay.

16 A And he usually refuses. The last couple of times
17 that I worked first floor, he refused rec. He wouldn't,
18 you know, get up or, you know, do anything, even to take a
19 shower.

20 Q So he just stays in his cell alone by himself?

21 A On a day he refuses, yes.

22 Q And your report had indicated that later he had
23 been put into -- after that that he had been put into a max
24 watch down for his protection, for erratic behavior. Can
25 you tell the jury what is a max watch gown?

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 A A max watch gown is a green padded material. It's
2 not canvas, but it's a very, very heavy course fabric and
3 in it -- it looks like the quilt, but it's made into a
4 smock and it's green. That's why we call it the green
5 gowns. The inmates call them turtle suits, the green
6 skirt, stuff like that. There's also a matching blanket
7 that goes with it and the gowns and the blankets are
8 designed that you cannot wrap the uniform or the blanket
9 around your neck to strangle yourself or alledgedly other
10 people. It's a very thick batting that's been inserted and
11 it's just very stiff.

12 Q And your report had indicated that that was done
13 for erratic behavior. Besides the --

14 A The erratic behavior -- when an inmate is showing
15 erratic behavior, that means they are possibly a danger to
16 themselves or to other inmates, so we, for security
17 reasons, will often put them on max watch to, one, closely
18 observe the inmate and once we know that he is calm, which
19 can be as little as a day to three days to whenever they
20 become manageable that they'll come out of that gown and be
21 given a uniform, blanket, shoes, you know anything that
22 would, you know, be a danger to someone that's intent on
23 hurting someone or themselves.

24 Q And basically hoarding or stockpiling feces in an
25 unsanitary living condition, that's something that y'all

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 don't want because that could adversely affect, I guess,
2 the health of the --

3 A It could affect the health of the inmates, it could
4 affect the health of staff, and it can even attract vermin.

5 Q And you had made mention about, I guess a couple of
6 officers would go around with either Dr. Means or Dr.
7 Cherry or one of the nurses when they provide
8 medications --

9 A No, sir. No, sir. They prescribe the medications.
10 They write the orders and then the medical unit with the
11 nurses goes around giving the medications. Neither Dr.
12 Cherry nor Dr. Means hand out the mental health meds.

13 Q So it would be the nurses or some kind of medical
14 professional --

15 A Right.

16 Q -- that does that, but it's based on, I guess,
17 orders, or prescriptions from the doctors?

18 A Yes, yes, they're noted on what they call an MAR.
19 I don't know what that stands for, but that's what they
20 call it. It's a booklet that's broken down for the month
21 and a check mark or number is written in to that booklet
22 that inmates either received it, refused it, or did not
23 have it or -- you know, et cetera. And those orders are
24 written out at the first of each month.

25 Q And you have been with them when they have tried to

Frederick Hopkins - Cross-Examination by Mr. Madsen

1 give medications to Wayne?

2 A Yes.

3 Q And generally, I guess, you said he refuses?

4 A He refuses about half the time. You know, it's --
5 being that you cannot force the medications, also they're a
6 danger to themselves, there's not a whole lot we can do
7 except write the report.

8 Q Is -- ultimately, those medications, are they
9 always in pill form or sometimes are they administered by
10 say a shot?

11 A I've seen both shots, I've seen pills, I've seen
12 crushed, I've even seen them in liquid form. And I've even
13 seen the pills dissolved in the liquid so that the inmates
14 could not hoard or sell the medications.

15 Q And prior to this on this day, you and he hadn't
16 had any cross words or arguments nor anything like that?

17 A We never have. That's the whole funny thing about
18 the whole thing. Even after he smeared -- you know, threw
19 the feces on me, we never once cursed each other, we never
20 once fought each other; never even argued. Never -- you
21 know, it just --

22 Q It was just kind of out of the blue?

23 A Yes.

24 MR. MADSEN: That's all the questions I have.

25 THE COURT: Redirect?

James Clawson - Direct Examination by Ms. Patterson

1 THE DEFENDANT: Can I take the stand next?

2 THE COURT: No, sir, sit down, please, sir.

3 MS. PATTERSON: Your Honor, no follow up questions.

4 THE COURT: All right. Thank you. You may step
5 down.

6 THE COURT: All right. Madame Solicitor, you may
7 call your next witness.

8 MS. PATTERSON: State calls lieutenant James
9 Clawson.

10 JAMES CLAWSON,

11 having been duly sworn, testified as follows:

12 THE CLERK: Have a seat, please, sir. Once you're
13 seated, state your full name, spelling your last on the
14 record, please.

15 THE WITNESS: My name is James Jamal Clawson, last
16 name is spelled C-l-a-w-s-o-n.

17 DIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q And Lieutenant Clawson, where are you employed?

20 A I'm employed at the Lexington County Sheriff's
21 Department.

22 Q And what is your position at Lexington County
23 Sheriff's Department?

24 A I am the security lieutenant for the detention
25 center.

James Clawson - Direct Examination by Ms. Patterson

1 Q Okay. And when were you promoted to lieutenant?

2 A I was promoted to lieutenant a year ago last
3 September.

4 Q And as a lieutenant, what are some of your duties?

5 A My duties include inspecting all areas, handling
6 inmate grievances, dealing with any issues with officers,
7 supervisors, just generally the supervision of all inmates
8 and all officers.

9 Q And prior to becoming a lieutenant, what was your
10 position?

11 A I was a shift sargent on one of the four shifts in
12 the detention center.

13 Q And what were some of your duties as a shift
14 sargent?

15 A Okay. As a shift sargent, I ran one of the shifts,
16 of course. I was over eighteen officers and the inmates
17 that were in our facility, made sure the place was safe,
18 secure, and quiet, inmates did what they were supposed to
19 do and officers did what they were supposed to do.

20 Q And were you on duty on August 18, 2010?

21 A I was.

22 Q And do you remember an incident involving Wayne
23 Curry?

24 A I do.

25 Q And how were you first notified of this incident?

James Clawson - Direct Examination by Ms. Patterson

1 A I believe -- I'm not sure whether it was Officer
2 Hopkins or the other officer on the floor, but a backup was
3 called on first floor at the detention center and I
4 responded to it.

5 Q About how long did it take you to get to the
6 incident location?

7 A Less than a minute because at that time I was at
8 the booking desk, which is right beside the lockup area.

9 Q And which cell were you asked to come to?

10 A I believe it was first floor, B Wing, cell number
11 five.

12 Q And when you got to that cell what was the first
13 thing you saw?

14 A I saw Officer Hopkins -- the cell was secure, but
15 Officer Hopkins had feces on his boots, on his uniform and
16 on his belt.

17 Q And what was the first thing that you did as a
18 shift sargent?

19 A I asked Officer Hopkins what occurred.

20 Q And without saying what he told you, did he tell
21 you what happened?

22 A He did, yes.

23 Q And then what did you do after you found out what
24 happened?

25 A At this point, we took Officer Hopkins to the

James Clawson - Direct Examination by Ms. Patterson

1 medical area so he could be checked by medical. He had
2 another officer go and get him a brand new uniform and he
3 disposed of his uniform that had the feces on it.

4 Q And what did you do after you took care of Officer
5 Hopkins?

6 A After we took care of Officer Hopkins, we proceeded
7 to first floor to handle the situation with Inmate Curry.

8 Q And did you make contact with Mr. Curry?

9 A I did.

10 Q And before you made contact with him, did you
11 follow any procedures or policies?

12 A Yes, what we did was we made Inmate Curry lay flat
13 on the floor and -- before we entered the cell; and he did
14 comply with that. When he laid on the floor, we handcuffed
15 him at that point and we removed him from the floor and we
16 took him to medical.

17 Q And who ordered him to lay on the floor?

18 A I did.

19 Q And how did you make that order?

20 A I had my X 21 Taser, which is a device we use which
21 will shoot out electric, two prongs with electrodes, but it
22 has a red beam on it. What I did was I placed the beam on
23 Inmate Curry and gave him a loud, direct order to lay on
24 the floor on his stomach.

25 Q And how were you able to -- how were you able to

James Clawson - Direct Examination by Ms. Patterson

1 speak to him and show him the beam?

2 A What we did was -- in the door there's a flap with
3 a small window. I placed the X 26 through the door with
4 the beam which he could see.

5 Q And once you entered -- well, once you -- when you
6 looked in the flap, were you able to see Mr. Curry?

7 A Yes.

8 Q And what was his demeanor?

9 A He was calm.

10 Q Did you see where he was positioned?

11 A I can't recall. He was in the cell. I can't
12 recall where he was. He was -- he wasn't being belligerent
13 or anything at that time, though.

14 Q And so once you entered his cell, what happened.

15 A We handcuffed him. We took him to medical. We got
16 him a different uniform. We allowed him to -- we allowed
17 him to clean up. We also noticed that his fingernails were
18 very long, which could be used as a weapon, so Dr. Miles at
19 this point not only checked Inmate Curry, but did trim his
20 fingernails.

21 Q And was he able to comply with your orders to get
22 him to medical as well?

23 A Yes, ma'am.

24 Q Did he resist in any way?

25 A No, ma'am.

James Clawson - Direct Examination by Ms. Patterson

1 Q Was he -- did he say anything to you on the way to
2 medical?

3 A No, ma'am.

4 Q And how far was medical -- is medical from where
5 you were?

6 A They're right beside each other. It's probably no
7 more than 25 yards.

8 Q And after you went to medical, what did Mr.
9 Curry -- do you know what he did after he left medical?

10 A Well, what we did with -- Mr. Curry, while he was
11 in medical, I had some more officers, along with inmate
12 workers go to Inmate Curry's cell. Of course, we took
13 photos of everything, Inmate Curry, Officer Hopkins and the
14 cell before we did anything. At this point, we cleaned the
15 cell of all feces. We just took out all the linen, took
16 out the mattresses, cleaned the walls, the floor, the
17 toilet, everything in the room prior to returning Inmate
18 Curry to that cell.

19 Q Now, did Inmate Curry -- did you say he showered in
20 medical?

21 A Not in medical. There's a shower right in booking
22 where first floor -- you go from first floor to the booking
23 area to the medical area. The medical area is part of the
24 booking area, but at a different part of the booking area,
25 we allowed him to shower, yes.

James Clawson - Direct Examination by Ms. Patterson

1 Q And did anybody have to assist him with his shower?

2 A No one assisted him, but we did have officers
3 observing him while he showered.

4 Q And how is he clothed after the shower?

5 A After this shower, we placed him on max because of
6 his behavior, his irregular behavior, which is a green out
7 fit that we removed all his other clothing, underwear,
8 socks, that kind of thing. It's a -- it's got Velcro on
9 it, it's to -- the gown you can't tear or use to hurt
10 yourself.

11 Q And are you able to walk -- is the person able to
12 walk with this on?

13 A Oh, yes, it's almost -- it almost looks like an
14 address to a point.

15 Q And why is a person clothed in that way?

16 A They are placed in that if they might be harmful to
17 themselves, harmful to other people. It's a mental health
18 precaution that we use a lot.

19 Q And were you with Mr. Curry when Dr. Miles examined
20 him?

21 A No, I was not. We had other officers with him. I
22 was with Officer Hopkins.

23 Q And was Wayne disciplined for his behavior?

24 A He would have -- yes, he would have received a
25 disciplinary action. I'm not sure how long -- how much

James Clawson - Direct Examination by Ms. Patterson

1 time he would have gotten for that. But we do have
2 administrative hearings also on top of the warrant that was
3 taken out on him.

4 Q And describe these administrative hearings?

5 A An administrative hearing is where one of the --
6 seeing that it happened on my shift, one of the other
7 sargents on the other shifts would do like a hearing --
8 they would bring Mr. Curry into a hearing room, read what
9 happened to Inmate Curry, ask him if he had anything to say
10 about it and that sargent would determine whether a person
11 was guilty of the infraction or not guilty of the
12 infraction and then would determine how many days -- if
13 they did find them guilty, how many days they would stay on
14 confinement.

15 Q And was Mr. Curry sanctioned as well?

16 A He was also placed on what we call neutraloaf,
17 which is a -- where some inmates -- when we have a lot of
18 problems with them or they cause a problem inside the
19 institution, instead of giving them a plastic tray like we
20 would give most of the other inmates, which could be used
21 as a weapon, what they do is they have a -- which is
22 prescribed by a dietitian, it's called neutraloaf, where
23 they basically a -- items, food items, they grind them
24 together and bake them and a person can eat that with their
25 hands. It's brought to them in a Styrofoam tray.

James Clawson - Direct Examination by Ms. Patterson

1 Q And how often is that sanction used in Lexington
2 County Detention Center?

3 A Not that often. I can recall probably using it
4 maybe four or five times at the most.

5 Q And is that a recognized form of administrative
6 sanction?

7 A It is, yes.

8 Q And how is it determined who gets --

9 A It has to be approved by the bureau commander and
10 also approved by Dr. Miles or the physician in charge.

11 Q And were you involved in that staffing that decided
12 what Mr. Curry would get --

13 A No, I would not have been. That would have been
14 decided by Dr. Miles and the administrative staff at that
15 time.

16 Q And do you know how long he was given the
17 neutraloaf?

18 A I can't recall how long it was, ma'am.

19 Q Do you remember when he was taken off that
20 neutraloaf?

21 A I can't recall the date, no.

22 MS. PATTERSON: Beg the Court's indulgence.

23 (WHEREUPON there was a pause in the proceedings.)

24 (WHEREUPON State's Exhibit 3 was marked for
25 identification.)

James Clawson - Direct Examination by Ms. Patterson

1 MS. PATTERSON: Your Honor, may I approach the
2 witness?

3 THE COURT: Yes.

4 BY MS. PATTERSON:

5 Q Lieutenant Clawson, I'm going to show you what's
6 been marked as State's Exhibit 3 for identification
7 purposes only and ask you to take a look at that picture.

8 A Yes.

9 Q Do you recognize what's depicted in that picture?

10 A Yes, ma'am, that would be feces.

11 Q Does that picture fairly and accurately represent
12 Mr. Curry on August 8, 2010?

13 A It would for his hands, yes, ma'am.

14 MS. PATTERSON: Your Honor, at this time, I would
15 move that State's Exhibit 3 be entered into evidence.

16 THE COURT: Any objections?

17 MR. MADSEN: No, Your Honor.

18 THE COURT: All right. State's No. 3 admitted
19 without objection.

20 (WHEREUPON State's Exhibit 3 was entered into
21 evidence.)

22 MS. PATTERSON: Thank you. Beg the Court's
23 indulgence.

24 (WHEREUPON there was a pause in the proceedings.)

25 ///

James Clawson - Direct Examination by Ms. Patterson

1 BY MS. PATTERSON:

2 Q Lieutenant Clawson, before this August 18, did you
3 have any other problems with Mr. Curry?

4 A There was only one other incident with Mr. Curry
5 and I can't recall whether it was after or before Officer
6 Hopkins. He did try to throw feces on another officer but
7 did miss.

8 MR. MADSEN: Objection.

9 THE COURT: Hold on just a moment.

10 MR. MADSEN: We've got a matter of law.

11 THE COURT: Come up.

12 (WHEREUPON, there was a bench conference out of the
13 hearing of the jury and the Court Reporter.)

14 THE COURT: All right. The objection is sustained
15 and the jury is asked to disregard both the question and
16 the purported answer.

17 BY MS. PATTERSON:

18 Q Lieutenant Clawson, could you describe what kind of
19 inmate Mr. Curry was, his demeanor?

20 A Very quiet, very calm, says very few words; kept to
21 himself even when he used to rec with other inmates he kept
22 to himself, said very few words.

23 MS. PATTERSON: Thank you, Lieutenant Clawson,
24 please answer any questions Mr. Madsen has.

25 THE WITNESS: Yes, ma'am.

James Clawson - Cross-Examination by Mr. Madsen

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MR. MADSEN:

4 Q Afternoon, Lieutenant Clawson, how are you?

5 A Afternoon, good.

6 Q So if I understand correctly, the first floor, B
7 Wing is where the inmates that have the, I guess the most
8 serious mental health problems are generally housed,
9 correct?

10 A Yes -- we house mental health inmates in there and
11 also some medical inmates that require a lot of attention.

12 Q And you also house inmates that have mental health
13 problems in other areas including the pods, but generally
14 the inmates that have the most significant problems end up
15 on the first floor?

16 A Yes, first floor, B Wing, yes.

17 Q And the entire time that Wayne has been there, he's
18 generally been housed on the first floor, B Wing?

19 A As far as I can remember, yes, he's always been on
20 B Wing.

21 Q And that makes it easier, I guess, to -- to have
22 them get the mental health and/or medical treatment that
23 they need as compared to in one of the pods?

24 A It's very close -- very close to medical and it's
25 an area where mental health, the psychiatrist and the

James Clawson - Cross-Examination by Mr. Madsen

1 people that work for her can have, if not a daily, almost a
2 daily contact with them, yes.

3 Q And you had mentioned something about taking photos
4 of the cell. You know where those photos of the cell that
5 day are?

6 A I think they were in that -- they should have been
7 in a packet we submitted, yes.

8 Q So those would have gone to the solicitor?

9 A Yes, they should have, yes.

10 Q Do you know -- is there a possibility that no one
11 took any photographs of the cell?

12 A I believe there were pictures taken of the cell,
13 yes.

14 Q When you came in contact with him, I think you said
15 that you had placed the X 26 on him?

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

17 Q Which is kind of, I guess, a stun gun or a --

18 A Well, it's an electrical device. A stun gun is
19 actually where you've got to be up on top of somebody, it
20 only worked on a certain muscular group. This one actually
21 shoots like two darts out with wires on it and immobilizes
22 your whole motor system.

23 Q It sends an electrical shock through the
24 individual, correct?

25 A Yes, yes, it does.

James Clawson - Cross-Examination by Mr. Madsen

1 Q And, I guess, when you came in contact with him,
2 you had done a report and indicated that he had had feces
3 on his hands, correct?

4 A Yes.

5 Q And on his face; is that correct?

6 A Yes, I believe so, yes.

7 Q And, I guess, there were feces all over his
8 clothing also?

9 A Yes, yes.

10 Q And so y'all ended up, I guess, getting rid of his
11 clothing?

12 A Yes.

13 Q And then allowing him a shower to get rid of the
14 feces on his hands and on his face or basically on his
15 body?

16 A Yes, sir.

17 Q And then I guess someone under our supervision then
18 would have gone in and cleaned his cell?

19 A Yes, we do clean it from top to bottom.

20 Q And when you're there with the cell, was there an
21 odor of feces within the cell?

22 A Oh, yes, yes.

23 Q Very unsanitary living condition?

24 A With the feces on it, yes.

25 Q And ultimately, one of your jobs is to make sure

James Clawson - Cross-Examination by Mr. Madsen

1 that obviously -- not only do the inmates stay where
2 they're supposed to stay, but you're responsible not only
3 for the health of other individuals, but also that inmate's
4 personal health?

5 A Yes, exactly.

6 Q And as far as his personal hygiene, I want was poor
7 that day, was it not?

8 A Yes, with the feces on him, it would have been.

9 Q And I think, I guess, you being a supervisor or a
10 lieutenant, you kind of float over the entire jail? You're
11 not -- in other words, you're not a deputy that's working
12 just A Pod or B Pod or even just --

13 A No.

14 Q -- or even the first floor, correct?

15 A No, I move -- when this incident happened, I was a
16 sargent. What I would do is I would go from one living
17 area to another living area just checking on the officers
18 and the inmates. Basically that's what I did all day long.

19 Q But you had had contact with Mr. Curry, or Wayne,
20 prior to this, correct?

21 A Almost every day.

22 Q And I think what you had told the jury is he's not
23 someone that really has any kind of human contact or human
24 interaction, does he?

25 A Very little. Very little.

James Clawson - Cross-Examination by Mr. Madsen

1 Q Okay. You don't sit down and talk about the
2 weather with him?

3 A No.

4 Q He is -- he just says very few words and is
5 generally housed alone and/or reeked alone the entire time?

6 A Most of the time, yes.

7 Q I mean, let's be honest, he's an odd fellow?

8 A He's a little different, yes.

9 Q And it's not that he's just odd in short spurts, I
10 mean that's just kind of how he is or the entire time that
11 he's been there in that jail cell?

12 A Yes, yes.

13 Q And it's unusual to have an inmate that doesn't
14 have or desire any contact with anybody isn't it?

15 A That is definitely not the majority of inmates.

16 Q It's very rare?

17 A On that wing, that's not that unusual, but...

18 Q And were you aware whether or not he was prescribed
19 and/or taking any medication that was prescribed, I guess
20 by Dr. Cherry?

21 A I'm not -- I don't know what medications he was
22 taking, no.

23 Q And Dr. Cherry is the psychiatrist --

24 A Yes.

25 Q -- for the jail facility, correct?

James Clawson - Cross-Examination by Mr. Madsen

1 A She is, yes.

2 Q And I believe Dr. Means is the psychologist?

3 A Yes.

4 Q And those are the two ladies that are kind of in
5 charge of mental health problems within the facility?

6 A Exactly, yes.

7 Q And it appears that during that time that he had
8 been incarcerated that Wayne was sent to Just Care a couple
9 of times. Could you just tell the jury a little bit, what
10 is Just Care?

11 A Just Care is a, I guess you would describe it as a
12 more involved area for treatment for medical and mental
13 issues. It's still like a prison set up, but there's more
14 doctors and nurses and psychiatrists and stuff over there.

15 Q And where is Just Care located?

16 A I'm not sure of their exact location. I know it's
17 here --

18 Q Go ahead.

19 A I know it's here in town, but I'm not sure what
20 street it's on.

21 Q And it's a residential place, correct? In other
22 words, it's outside of the detention center?

23 A Yes, oh yes.

24 Q And do you know why Wayne was sent a couple of
25 different times to Just Care for a period of time?

James Clawson - Cross-Examination by Mr. Madsen

- 1 A I do not know, no.
- 2 Q Did you know that he'd been sent to Just Care?
- 3 A I did, yes.
- 4 Q Do you know when the last time he was sent or when
- 5 he had gotten back?
- 6 A I know it's been -- I think in the last six months
- 7 he's been over there, yes.
- 8 Q And ultimately when an inmate is sent to Just Care
- 9 because someone doesn't feel that he could get adequate
- 10 treatment or -- who makes that decision within your
- 11 facility?
- 12 A It would be Dr. Cherry, Dr. Means, and Dr. Miles.
- 13 And it has to be approved by the bureau commander.
- 14 Q When you say --
- 15 A They --
- 16 Q -- bureau commander, I guess the head of the
- 17 detention center?
- 18 A Yes, Major Jones, yes, or Major Tweed, whoever was
- 19 there at that time.
- 20 Q And were you there when they had cleaned his cell?
- 21 A I was going back and forth. I knew his cell -- I
- 22 was there -- I did observe the cell being completely
- 23 cleaned before he went back in it. I went with him when
- 24 they took him back to his cell.
- 25 Q And within that portion of the jail, is there any

James Clawson - Redirect Examination by Ms. Patterson

1 type of video surveillance?

2 A There is limited, not in the rooms or anything like
3 that, no there are some -- there are fixed cameras in
4 the -- in B Wing, but you -- you probably will not have
5 seen anything like that because there's like a, like a
6 partial wall right by B5 and B6 where it's only a doorway.

7 Q And generally, I guess, that's where Wayne was, is,
8 I guess, 1BL5?

9 A He stayed there a good bit of time, yes.

10 Q How many cells are on the B Wing?

11 A Ten.

12 Q And I guess he was in that cell alone?

13 A Yes, sir.

14 MR. MADSEN: That's all the questions I have.

15 THE COURT: Redirect, Madame Solicitor?

16 MS. PATTERSON: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. PATTERSON:

19 Q Lieutenant Clawson, when you entered Wayne's cell,
20 what were the conditions of the cell?

21 A Well, there was feces on the cell floor, on the
22 toilet area, on Inmate Curry himself.

23 Q And -- and all of this was cleaned up by officers
24 at your direction?

25 A Well, actually, we had officers supervising. What

James Clawson - Redirect Examination by Ms. Patterson

1 we had were inmate workers that came and cleaned the cell.

2 Q And what are the different things the inmates may
3 be sent to Just Care for?

4 A It can be a wide range of things. Medical reasons,
5 psychiatric reasons, if they need an operation we send them
6 to Just Care for operations, things like that.

7 Q So it's just not for mental --

8 A No, it's just not for mental. If we have an inmate
9 that has to have, for example, his appendix removed, we
10 would send them to something like that. Or if they need
11 physical therapy, which we can't do -- if they have -- if
12 we have somebody that comes in that's had a bad car
13 accident.

14 Q And how many cells did you say there is on the
15 floor?

16 A On that floor, there are thirty-four. On the B
17 Wing, there's ten.

18 Q B Wing there's ten. And you said it's not rare for
19 people on that B Wing to not want any interaction with the
20 other inmates?

21 A You have other inmates that are like that also, you
22 know, that we've had to deal with, yes.

23 Q Thank you, Lieutenant Clawson. No further
24 questions.

25 THE COURT: Redirect (sic)?

James Clawson - Recross-Examination by Mr. Madsen

RECCROSS-EXAMINATION

BY MR. MADSEN:

Q But ultimately, that B Wing is generally where the most severe mental health department -- inmates with the most severe mental health problems are housed, correct?

A Mental health or medical. We do have some people down there that need breathing machines and stuff like that also.

Q And you're not aware that during the time that he'd been at -- that Wayne has had any severe medical problems that would facilitate him going to Just Care?

A No, not that I know of.

Q Ultimately, he was sent there for mental problems?

A I would have to assume that, yes.

Q Okay. That's all the questions I have.

THE COURT: All right. Thank you Lieutenant Hopkins (sic) you may step down.

THE DEFENDANT: Your Honor, may I take the stand?

THE COURT: No, sir.

All right. Madame Solicitor?

MS. PATTERSON: Your Honor, may we approach, please?

THE COURT: Yes.

(WHEREUPON, there was a bench conference out of the hearing of the jury and the Court Reporter.)

1 MS. PATTERSON: Yes, sir.

2 THE COURT: All right. Good. That answers that
3 question. And we will consider the State having rested at
4 this time.

5 All right. Mr. Madsen, I'd like to talk with the
6 defendant at this time with regard to his Fifth Amendment
7 rights and give you a chance over the recess to discuss
8 those matters with him.

9 Mr. Curry, let me ask you to stand for me for just
10 a moment, please.

11 (WHEREUPON the defendant and his attorney stood.)

12 **QUESTIONING OF THE DEFENDANT BY THE COURT**

13 THE COURT: Mr. Curry, you may be called as a
14 witness to testify in your own behalf. I want to advise
15 you that you have the right to invoke the protections given
16 to you by the Fifth Amendment to the Constitution of the
17 United States and a similar counterpart provision of the
18 Constitution of the State of South Carolina. The
19 constitution provides that no person shall be compelled in
20 any criminal case to be a witness against himself.

21 This provision of constitutional law means that you
22 cannot be compelled or required to testify in this case.
23 It is a right and a privilege which the law extends to you.
24 It is a personal privilege and no one can waive this right
25 except you. You have the right not to testify, but you

1 also have the right to testify. The Court will grant you
2 the right to consult with your lawyer before you make a
3 decision.

4 If you elect not to testify, your election not to
5 testify cannot be used by the State as an inference of
6 guilt and your failure to testify cannot be considered by
7 the jury in their deliberations and I would so instruct
8 them. However, if you elect to testify and waive the
9 privileges extended to you by the Constitution of the
10 United States and a similar counterpart provision of the
11 Constitution of the State of South Carolina, I advise you
12 that you would then assume the role of a witness in this
13 case and you would then waive or give up your
14 constitutional privilege against self-incrimination. This
15 means if you voluntarily take the witness stand and
16 testify, you will then subject yourself to the same rules
17 that govern other witnesses and you may be examined and
18 cross-examined on any relevant issues in this case and you
19 may be impeached to the same extent as any other witness,
20 all of which is subject to the rules of law and the rules
21 of evidence.

22 I would further advise you that if you elect to
23 take the witness stand and testify that this decision on
24 your part must be made freely, voluntarily, intelligently
25 and with knowledge of the protections given to you by the

1 constitution.

2 Now, we're going to take a recess at this time and
3 I'm going to allow you to consult with your lawyer about
4 whether you should or should not testify in this case and
5 I'm not going to require an answer from you at this time,
6 but I would ask you, do you understand what I've explained
7 to you about the constitutional rights of
8 self-incrimination?

9 THE DEFENDANT: Yes.

10 THE COURT: You understand what I've explained to
11 you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Speak up, please.

14 THE DEFENDANT: Yes.

15 THE COURT: Okay. Do you have any questions about
16 your constitutional rights that you would like to ask me?

17 THE DEFENDANT: No, I don't.

18 THE COURT: Okay. All right. You may be seated.

19 One of the factors that always impacts on the ;
20 decision as to whether or not a defendant should or should
21 not testify are the impeachment factors under Rule 609.
22 Madame Solicitor, what do you -- what do you have on the
23 defendant's record that you would consider impeachment
24 factors or offenses that you would like to use if he were
25 to testify in this case?

1 **MS. PATTERSON:** Your Honor, I apologize. I've got
2 everything except his rap sheet with me, but I can give
3 that to you --

4 **THE COURT:** All right. Well, give it to Mr. Madsen
5 and y'all see if y'all can agree on it and if you have any
6 problems that you cannot agree on, come on back to chambers
7 because I'd like to get this resolved before Mr. Curry
8 makes a decision about whether or not to testify.

9 All right. We're going to take a recess. Get
10 that -- get with Mr. Madsen and y'all discuss what you
11 think are the factors that would be impeachment matters.

12 **MS. PATTERSON:** Yes, sir, thank you, Your Honor.

13 **THE COURT:** Thank you. All right. We'll take a
14 recess of about fifteen minutes.

15 (WHEREUPON a recess was observed.)

16 **THE COURT:** All right. We're back on the record
17 with regard to the matter of the State versus Curry.
18 Mr. Curry is present in court with his counsel. A couple
19 of things that came up during the recess, one of which has
20 to do with impeachable offenses which I asked the State to
21 furnish to the defendants so they could make a
22 determination regarding his Fifth Amendment rights.

23 And I believe, Madame Solicitor, that you have
24 advised that the State does not have any offenses that you
25 consider to be impeachable offenses; is that correct?

1 MS. PATTERSON: Yes, sir, Your Honor.

2 THE COURT: All right. Next thing, Mr. Madsen, and
3 I do want to get into this. I know that it also came up in
4 chambers that the defense would likely have some witnesses
5 other than the defendant in this case. I know that I did
6 not request a witness list from the defense, I really
7 expected that to be submitted, but I know the rules don't
8 necessarily provide for that.

9 I headed a committee to revise the criminal rules
10 about three years ago and we have done our work and the
11 revised criminal rules have been submitted to the Supreme
12 Court, but have not been submitted to the legislature as is
13 required before they can be adopted and one of the things
14 that those rules did provide was that a witness list had to
15 be presented by both the State and the defendant so that
16 any issue regarding whether that was necessary would be
17 resolved. Right now, I think it's probably silent. The
18 rules are probably silent on that, but I do really expect
19 the defense to furnish their witness list as well as the
20 State so that the jury can be quizzed as to whether they
21 know any of the proposed witnesses.

22 Be that as it may, I'm going to require the names
23 of the witnesses at this time so that I can ask the jurors
24 if they would know these witnesses in any way because then
25 if they do have any knowledge of the witnesses, I'll have

1 witnesses ought to be here even if they don't have them --
2 for no other reason, they ought to be here at that time and
3 be prepared at that that time and there's no reason that
4 the State should not have the social security numbers so
5 that they can run NCIC background checks on them prior to
6 their testimony.

7 All right. Now, Mr. Madsen, have you had an
8 opportunity to confer with your client regarding his Fifth
9 Amendment rights?

10 MR. MADSEN: I have, Your Honor.

11 THE COURT: In your opinion, does he understand
12 those things?

13 MR. MADSEN: Your Honor, given -- I mean, the
14 Court's ruling within the realm of competency, I would say
15 yes, although I still do not believe he's competent.

16 THE COURT: All right. All right. Mr. Curry,
17 would you stand, please?

18 (WHEREUPON the defendant and his attorney stood.)

19 THE COURT: Have you had a chance to talk with your
20 lawyer about whether you should or should not testify in
21 this case?

22 THE DEFENDANT: I talked to him.

23 THE COURT: All right. Have you understood your
24 talks with Mr. Madsen?

25 THE DEFENDANT: Yes, sir.

1 **THE COURT:** All right. And do you understand your
2 Fifth Amendment rights?

3 **THE DEFENDANT:** Yes.

4 **THE COURT:** And do you have any questions that you
5 want to ask either him or me regarding your Fifth Amendment
6 rights?

7 **THE DEFENDANT:** No.

8 **THE COURT:** Have you made a decision as to whether
9 you do or do not wish to testify in this case?

10 **THE DEFENDANT:** I want to testify.

11 **THE COURT:** You do wish the testify?

12 **THE DEFENDANT:** Yes, I do.

13 **THE COURT:** All right. And is this decision on
14 your part freely and voluntarily made?

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** All right. All right. The Court will
17 respect that decision and allow you to testify in this
18 case. I will tell you, Mr. Curry, that I am going to
19 require that the testimony that you offer in this case be
20 confined to the issues involved in this case and I'm not
21 going to allow you to get way off on tangential issues or
22 matters that are not relevant and so I may stop you if I
23 feel that you're getting too far afield and not relevant to
24 the issues in this case, which is the -- basically what
25 happened out there, of course, at the detention center with

1 regard to the charges here and any background on you that
2 you wish to offer that you think would go to the defenses
3 that you have raised in this case. Those are the matters
4 that I'm going to confine the testimony to. And if I think
5 you're getting too far afield, I may slow you down and make
6 you stick to the issues. You understand?

7 THE DEFENDANT: Yeah.

8 THE COURT: All right. Anything else before we
9 bring the jury in, Ms. Patterson?

10 MS. PATTERSON: No, sir, Your Honor.

11 THE COURT: Mr. Madsen?

12 MR. MADSEN: Judge, actually, I've not made any
13 motions.

14 THE COURT: Oh, all right. That's right. Well,
15 the State hasn't rested yet, but she did tell me that she
16 made the statement a few minutes ago that she was not going
17 to call the witnesses she had anticipated calling until
18 perhaps in reply and we'll take up the issue at that time
19 as to whether it's proper reply, so it would be the
20 position of the State that the current posture is that the
21 State has rested; is that correct?

22 MS. PATTERSON: Yes, sir, Your Honor.

23 THE COURT: All right. That being the case, I
24 would be glad to hear from you with regard to motions,
25 Mr. Madsen.

1 The State may proceed with your next witness,
2 Ms. Patterson.

3 MS. PATTERSON: Thank you Your Honor, the State
4 rests at this time.

5 THE COURT: All right. The State has rested. That
6 means that you have heard all of the testimony that you
7 will hear from the State at this time; and the defense will
8 now have the right to present any evidence or testimony to
9 you that they wish to present.

10 Mr. Madsen?

11 MR. MADSEN: Your Honor, the defense calls Wayne
12 Curry.

13 THE COURT: All right. Mr. Curry come around,
14 please.

15 WAYNE CURRY,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat, please. Once you're
18 seated, I need you to speak up loud and clear stating your
19 full name, spelling your last, please.

20 THE WITNESS: All right. My name is Wayne S.
21 Curry.

22 I just want to say that --

23 MR. MADSEN: Wayne --

24 THE COURT: No, sir.

25 MR. MADSEN: I've got to ask you questions.

Wayne Curry - Direct Examination by Mr. Madsen

1 THE COURT: I'm not going to allow you to say
2 whatever you want to say. You can answer the questions put
3 to you by your lawyer and by the State's lawyer.

4 All right. Mr. Madsen?

5 DIRECT EXAMINATION

6 BY MR. MADSEN:

7 Q Wayne, tell the jury, how old are you?

8 A I'm 53.

9 Q Where did you grow up?

10 A In Aiken County.

11 Q And what kind of classes did you go to in school?

12 A I went to Paul Knox.

13 Q And do you remember what grade you quit going
14 there?

15 A I don't even remember.

16 Q Did you graduate?

17 A No.

18 Q Did you even make it to high school?

19 A No, I didn't.

20 Q Even make it to middle school?

21 A No, I didn't.

22 Q What kind of work have you done in the past, Wayne?

23 A I ain't never had a job.

24 Q And when you were living in Aiken County, who were
25 you living with?

Wayne Curry - Direct Examination by Mr. Madsen

1 A I lived by myself.

2 THE COURT: You can back off just a little bit.
3 You don't need to be up that close.

4 THE WITNESS: I was living by myself.

5 BY MR. MADSEN:

6 Q At some point in time, have you ever lived with
7 your mother?

8 A Yes, I did.

9 Q And when you say you lived by yourself, did your
10 mother have, I guess, another house beside her house? Did
11 you live in there?

12 A Yes.

13 Q How about your niece, have you lived with your
14 niece, Jenny, before?

15 A No, I haven't.

16 Q How long ago has it been since you lived with your
17 mother?

18 A I don't remember.

19 Q And Wayne, do you receive SSI disability benefits?

20 A Yes, I did at one time.

21 Q And do you know what that was for?

22 A Mental illness.

23 Q How long were you receiving those?

24 A I don't even remember.

25 Q Who was the payee on your SSI disability?

Wayne Curry - Direct Examination by Mr. Madsen

1 A Ms. Ella Mae Walker.

2 Q And when you say Ella Mae Walker, that's your
3 mother?

4 A Right.

5 Q What --

6 A My stepmother. That's not my real mother.

7 Q It's your stepmother?

8 A That's right.

9 Q What happened to your real mother?

10 A She stays in New York.

11 Q And when you say stepmother, was Ms. Walker your
12 father's, I guess, new wife?

13 A No.

14 Q How is she your stepmother?

15 A Can I talk about my constitutional rights.

16 THE COURT: No, sir, you just answer the questions,
17 please, sir.

18 THE WITNESS: I want to talk about my
19 constitutional rights being in violation since I've been in
20 jail. That's what I want to talk about.

21 MR. MADSEN: We're going to talk about that --

22 THE COURT: Sir, let me tell you, whether or not
23 your constitutional rights were violated or not, that's not
24 a matter for this jury's determination. It's a matter for
25 the Court's determination. That is a matter of law and

Wayne Curry - Direct Examination by Mr. Madsen

1 that is not an issue before this Court. The issue before
2 this Court are the issues that have been raised in the
3 indictment and any defenses that you might have to the
4 indictment and I'm going to require that the issues -- that
5 the testimony be limited to those issues.

6 All right. Mr. Madsen?

7 BY MR. MADSEN:

8 Q Wayne, have you gone to the Aiken Barnwell Mental
9 Health Center in the past?

10 A Yes, I have.

11 Q And you've also gone to, I guess, a separate place,
12 which is Aiken Mental Health? Do you recall that?

13 A Yes, I have.

14 Q And I believe at the Aiken Mental Health you
15 received -- or you saw Dr. Smith. Do you remember him?

16 A Yes, I have.

17 Q Do you remember what you were diagnosed with?

18 A No, I don't.

19 Q But ultimately, they saw you at both of those
20 places for mental health problems, correct?

21 A That's correct.

22 Q Did they ever prescribe you medication?

23 A No.

24 Q They never ever prescribed you any medication?

25 A No, they didn't.

Wayne Curry - Direct Examination by Mr. Madsen

1 Q Have you been to Gilliam Psychiatric Hospital?

2 A Where?

3 Q Gilliam Psychiatric Hospital?

4 A Yes, I have.

5 Q Quite a few times, correct?

6 A When I was in prison, yes.

7 Q How about Just Care? Have you been there?

8 A Yes, I have. Since I've been in the Lexington
9 County Jail. And I've been in the Lexington County Jail
10 three years, three whole years.

11 THE COURT: All right. Back off just a little bit.
12 You don't need to be quite that close. That's good.

13 BY MR. MADSEN:

14 Q Wayne, when you get too close to the microphone --

15 A That's unconstitutional.

16 Q -- it's just hard for people to hear you, Wayne.

17 When you've been at Lexington County Jail, what
18 cell have you been in?

19 A Cell 5.

20 Q Is that on the --

21 A I was in cell 5 one time then they moved me to cell
22 1, No. 1.

23 Q Is that in the first floor on the B Wing?

24 A First floor, yes, it is on the first floor.

25 Q And while you were there have you seen Dr. Means

Wayne Curry - Direct Examination by Mr. Madsen

1 and Dr. Cherry?

2 A Yes, I have.

3 Q Have they prescribed you medication?

4 A Yes, they did.

5 Q Do you take that medication?

6 A No, I don't.

7 Q Why don't you take the medication?

8 A I just don't.

9 Q Do you know what medication they have prescribed
10 for you?

11 A I forgot what it was.

12 Q But it's stuff to help you with your mental health,
13 isn't it?

14 A Maybe.

15 Q Now, Wayne can you just tell the jury what do you
16 do -- what's your normal day like in your cell?

17 A I don't even know.

18 Q Well, do you talk to anyone?

19 A Y'all won't let me say what I want to say. I want
20 to say what I want to say to the jury. I want to talk
21 about my constitutional rights. I don't want to talk about
22 that jail. I want to talk about my constitutional rights.
23 That's what I want to talk about.

24 THE COURT: Mr. Curry, I've told you already, the
25 matter of constitutional rights is a matter of law for the

Wayne Curry - Direct Examination by Mr. Madsen

1 Court's determination and it is not a matter for the jury's
2 determination and so I'm not going to allow that testimony
3 before this jury.

4 BY MR. MADSEN:

5 Q Wayne, again --

6 A What?

7 Q -- what are you -- in your cell, is there anyone
8 else beside you?

9 A No, I'm in a cell by myself.

10 Q When you go out on rec, do you rec with the other
11 inmates?

12 A No, I don't.

13 Q You had said that --

14 A I used to, but I'm on protective custody.

15 Q Why are you on protective custody?

16 A I just is because they hit me in the head with a
17 sledge hammer since I've been in the Lexington County Jail.
18 I've got a knot on my head to prove it. You want to see
19 it jury? See that knot right there, they put that knot on
20 my head in the Lexington County Jail --

21 MS. PATTERSON: Objection, Your Honor.

22 THE COURT: All right, Mr. Curry --

23 THE WITNESS: -- with a sledge hammer.

24 THE COURT: Mr. Curry --

25 THE WITNESS: The officers did that to me.

Wayne Curry - Direct Examination by Mr. Madsen

1 **THE COURT:** Mr. Curry, I'm going to stop your
2 testimony and we're going to excuse this jury if you don't
3 abide by the rules or the rulings of this Court. That is
4 not the relevant issue here and this relevant issue here is
5 as to what happened there at the jail. You have the right
6 to explain that all you want to and the right to explain
7 any defenses that you have raised in this case. But I'm
8 not going to allow you to get into matters regarding your
9 constitutional rights. That is a matter for the Court's
10 determination and I will consider those matters at the
11 appropriate time.

12 All right, Mr. Madsen.

13 BY MR. MADSEN:

14 Q Wayne, do you talk with your mother very often?

15 A No, I don't.

16 Q Do you talk with your daughter?

17 A No.

18 Q Anyone in your family?

19 A No, I don't.

20 Q When --

21 A I got a visit one time since I've been locked up in
22 the Lexington County Jail.

23 Q When you -- before you were in Lexington County --

24 A My stepmother came to see me and my -- and my
25 daughter came to see me.

Wayne Curry - Direct Examination by Mr. Madsen

- 1 Q And they came and saw you once?
- 2 A Once.
- 3 Q How about when you weren't incarcerated and lived
- 4 in Aiken, did you see them a lot then?
- 5 A No, I didn't.
- 6 Q And where were you living then?
- 7 A In Aiken.
- 8 Q But did you have a house that you lived at?
- 9 A Yes, I did.
- 10 Q Where was that at?
- 11 A I lived in two different houses in Aiken County. I
- 12 lived on Madison Road at one and I lived on Euclid Street
- 13 one time.
- 14 Q Madison Road?
- 15 A Yes, I did.
- 16 Q And Euclid Street?
- 17 A Yes, I did.
- 18 Q For those people who aren't familiar with Aiken,
- 19 where are those houses in Aiken itself? Is that in Aiken
- 20 city? Is that in Aiken County?
- 21 A Aiken County.
- 22 Q It's out in the County?
- 23 A Yes.
- 24 Q Did anyone live in those houses are you?
- 25 A Yes, they did.

Wayne Curry - Direct Examination by Mr. Madsen

1 Q Who was that? Do you remember?

2 THE COURT: All right. The question, Mr. Curry,
3 was did anyone live in those houses with you.

4 THE WITNESS: Yes, they did.

5 THE COURT: And the next question was who was that.

6 THE WITNESS: My sister.

7 BY MR. MADSEN:

8 Q What was your sister's name?

9 A Valerie.

10 Q And I believe you're one of six children, correct?

11 A That's right.

12 Q And at the jail, you haven't been taking any
13 medicine that they've prescribed you, have you?

14 A No, I haven't.

15 Q At some point in time, I guess, they would give you
16 pills and you wouldn't take those?

17 A Yes, yes.

18 Q And at some point in time, they gave you shots,
19 correct?

20 A Yeah, yes.

21 Q And at some point in time, I guess, they mandated
22 that you take the shots, but they don't do that anymore, do
23 they?

24 A No, they don't.

25 Q And you've always refused that medication?

Wayne Curry - Direct Examination by Mr. Madsen

1 A That's right.

2 Q If that medication would help you why wouldn't you
3 take it?

4 A I don't know why I wouldn't take it.

5 Q Do you think that you have a mental problem?

6 A Maybe. I don't know, I can't determine that. I
7 ain't no doctor. I ain't no psychiatrist or no
8 psychologist. I don't know if I got a mental problem or
9 not.

10 Q So if the doctor determined that you did and
11 prescribed you medicine don't you think it would help you
12 to take that?

13 A Maybe you right.

14 Q So kind of getting back to the jail, do you read
15 books?

16 A No, I don't.

17 Q Do you play cards?

18 A No, I don't. I'm in a cell by myself. I can't
19 play anything.

20 Q And so what do you do during day to pass the time
21 in this cell by yourself?

22 A Sleep.

23 Q How much do you sleep during a day?

24 A I don't even know.

25 Q Do you watch TV?

Wayne Curry - Cross-Examination by Ms. Patterson

- 1 A No -- sometimes when they let me go in the TV room.
- 2 Q What do you like to watch on TV?
- 3 A I don't even know.
- 4 Q Do you have any favorite programs?
- 5 A No, I don't.
- 6 Q When you get to go out on rec, how often is that?
- 7 A Every day.
- 8 Q How long are you allowed --
- 9 A If I clean up my room.
- 10 Q If you clean up your room?
- 11 A That's right.
- 12 Q How long are you allowed out on rec?
- 13 A One hour.
- 14 Q Do you get to go outside?
- 15 A No. I ain't been outside since I've been locked up
- 16 three years.
- 17 MR. MADSEN: That's all the questions I have.
- 18 THE COURT: Cross-examination -- no, sir, keep your
- 19 seat.
- 20 Cross-examination, Ms. Patterson.
- 21 **CROSS-EXAMINATION**
- 22 BY MS. PATTERSON:
- 23 Q Mr. Curry, do you remember throwing feces on
- 24 Officer Hopkins?
- 25 A No, I don't.

Wayne Curry - Cross-Examination by Ms. Patterson

1 Q Do you know why you're here today?

2 A Yes, I do.

3 Q Why are you here today?

4 A For throwing bodily fluids on Officer Hopkins.

5 Q So you do remember doing that?

6 A I ain't saying I remember nothing. I ain't saying
7 I did nothing. I take the fifth. I ain't going to answer
8 no question like that.

9 THE COURT: No, you've given up your right to take
10 the Fifth Amendment by taking the stand. You have to
11 answer the questions, Mr. Curry.

12 BY MS. PATTERSON:

13 Q You threw feces on Officer Hopkins, didn't you?

14 A Maybe I did, maybe I didn't. I don't know.

15 Q You were upset with Officer Hopkins because he
16 didn't allow a conjugal visit?

17 A No. You know what I'm upset about? Being in jail
18 three whole years. My constitutional rights being
19 violated.

20 THE COURT: All right, sir. I've already told you
21 about that. It's a matter of law for the Court to
22 determine.

23 THE WITNESS: That's what I'm upset about. Been in
24 jail three years.

25 THE COURT: Mr. Curry, Mr. Curry, I'm going to hold

Wayne Curry - Cross-Examination by Ms. Patterson

1 you in contempt.

2 Now, you behave yourself and answer the questions
3 put to you by this lady. She's got the right to ask you
4 these questions. You voluntarily took the stand, but I
5 told you you're going to have to testify as to matters that
6 were relevant in this case.

7 Proceed.

8 BY MS. PATTERSON:

9 Q On August 18, 2010, you threw feces on Officer
10 Hopkins, didn't you?

11 THE COURT: Put it in the form of a question.

12 BY MS. PATTERSON:

13 Q Didn't you -- you threw feces on Officer Hopkins,
14 didn't you?

15 A I don't know. I don't remember that.

16 Q Do you remember requesting a conjugal visit from
17 Officer Hopkins?

18 A No.

19 Q Do you remember --

20 A Yes, I do. I wrote a request to Officer Hopkins
21 and asked him if I could get a conjugal visit with the
22 females on the third floor.

23 Q And he denied that question, didn't he?

24 A Yes, he did.

25 Q And you were upset about it, weren't you?

Wayne Curry - Cross-Examination by Ms. Patterson

1 A No, no, I wasn't.

2 Q And you remember having to be cleaned because you
3 had feces all over you?

4 A Say what? Say that again.

5 Q You had feces all over you. You had to be cleaned
6 by the doctors and staff of the Lexington Detention Center,
7 didn't you?

8 (WHEREUPON there was a pause in the proceedings.)

9 THE COURT: All right. The question was, Did you
10 have to be cleaned by doctors and staff at the Lexington
11 Medical Center -- I mean the Lexington Detention Center.
12 If you remember.

13 THE WITNESS: I don't remember that.

14 BY MS. PATTERSON:

15 Q Do you remember having to eat neutraloaf?

16 A I ate neutraloaf several times since I've been
17 locked up.

18 Q And you got -- you had to eat that neutraloaf
19 because you were behaving improperly, wasn't you?

20 A They gave me neutraloaf one time for throwing feces
21 on the walls of the cell.

22 Q So you do three feces?

23 A I trashed the whole cell.

24 Q So you do throw feces, right?

25 A I put it on the walls. I don't remember putting it

Wayne Curry - Cross-Examination by Ms. Patterson

1 on Officer Hopkins, but I remember putting it on the walls
2 more than once. Several times.

3 Q And you remember wanting that conjugal --

4 A They shocked me for doing that with them shock
5 guns.

6 Q And you remember wanting that conjugal visit too,
7 don't you?

8 A Yes, I did ask for that. They got it documented.

9 Q And they also have it documented that you threw
10 feces, don't they? On Officer Hopkins, right?

11 A I don't know.

12 Q It's that you're choosing to just tell this jury
13 you don't remember, but you remember, don't you?

14 THE COURT: All right. The question has been asked
15 and answered move onto something else.

16 BY MS. PATTERSON:

17 Q And why don't you take your medicine?

18 A I don't know.

19 Q And you said you also don't know if you have a
20 mental problem?

21 A No, I don't.

22 Q Have you been --

23 A I might have some type of mental health problem
24 because I've been locked up for a long time. I might be
25 having a nervous -- I might have a nervous break down at

1 times.

2 Q And why don't you talk to your family very much?

3 A They only been to see me one time. They sent me
4 some money, but they won't let me -- they won't even let me
5 receive it. They keep it up front and don't let me receive
6 it. I received money from my family twice, but the last
7 time they sent me some money, the police, the officers
8 would not let me receive that money. So me and my family
9 don't have no good relationship right now.

10 MS. PATTERSON: No further questions, Your Honor.

11 THE COURT: Redirect?

12 MR. MADSEN: No, Your Honor.

13 THE COURT: All right. Thank you, Mr. Curry, you
14 may step down.

15 All right. Anything else this afternoon,
16 Mr. Madsen?

17 MR. MADSEN: No, Your Honor.

18 THE COURT: All right. Ladies and gentlemen, it's
19 about five minutes to five, so we are going to recess for
20 the afternoon and allow you to go about your business and
21 go to your families and ask you to be back in the morning,
22 please, at 9:30. If at all possible, if you would try
23 to -- if you desire to vote, try to go before that time and
24 be here at 9:30 so that we can go forward. I think that we
25 will finish this matter early enough this afternoon -- or

1 **THE COURT:** All right.

2 **MR. MADSEN:** She says it's the exact same thing.

3 **THE COURT:** All right. Let the record reflect then
4 that the State intends to call Dr. Casandra Means and Dr.
5 Cherry, both of whom are employees of the State of South
6 Carolina. They have been subpoenaed to come, I believe
7 that's correct, is that right? To bring with them the
8 records of Mr. Curry and that Section 44-22-200 or 100 of
9 the Code of Laws provides that they shall not disclose any
10 information unless ordered to do so by the Court.
11 Specifically Section 44-22-100 subparagraph 2 prevents the
12 disclosure of information about a patient or former patient
13 of the Department of Mental Health or person for whom
14 commitment has been sought until the Court directs that
15 that disclosure is necessary for the proceedings.

16 In this case, since the defense have raised the
17 issue of an insanity defense and also -- well, an insanity
18 defense and it is incumbent upon him to prove that, first
19 of all, Mr. Madsen does your client object to the two
20 doctors from the Department of Mental Health from
21 disclosing the information that you seek in this case?

22 **MR. MADSEN:** No, sir, Your Honor, and he has signed
23 in the past to initially get the records. He has signed
24 waivers.

25 **THE COURT:** A consent, okay. So he's actually

1 signed a consent or a waiver and allowed the information to
2 be disclosed. That being the case, I would direct that
3 disclosure is necessary for the conduct of these
4 proceedings and that failure to make a disclosure is
5 contrary to the public interest. Okay.

6 That would be as to both doctors.

7 All right. Anything else, Mr. Madsen?

8 **MR. MADSEN:** No, Your Honor.

9 **THE COURT:** All right. Bring the jury in, please.

10 (WHEREUPON the jury entered the courtroom at 9:46
11 p.m.)

12 **THE COURT:** All right. Good morning, ladies and
13 gentlemen, and thank you for your promptness in being back
14 here. We did have a few matters that we needed to attend
15 to before we could get started so we're a few minutes late
16 getting started, but we have been working since around 9:15
17 or so. Before we go forward this morning, I do need to ask
18 all of you if anybody has contacted you or attempted to
19 contact you with regard to this case in any manner
20 whatsoever, I would need to know about it now.

21 Negative response and that's good.

22 All right. Now I would ask -- you're Mr. Pettit,
23 is that correct.

24 **THE FOREPERSON:** Yes, sir.

25 **THE COURT:** All right. Mr. Pettit, Juror No. 192,

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 **THE COURT:** Okay. Merrie Cherry. Also Ella
2 Walker, Dominique Curry, Jenny Curry and Wallis Alvez,
3 A-l-v-e-z. Is any member of the petit jury related directly
4 or by marriage to any of the proposed witnesses? If so,
5 please signify by raising your right hand.

6 (WHEREUPON there was no answer.)

7 **THE COURT:** Does any member of the jury know any of
8 those proposed witnesses or have any dealings whatsoever
9 with any of those proposed six witnesses? If so, signify
10 by raising your hand.

11 (WHEREUPON there was no answer.)

12 **THE COURT:** All right. Thank you.

13 All right. You may proceed.

14 **MR. MADSEN:** Thank you, Your Honor. Dr. Cherry --
15 excuse me Dr. Means.

16 CASANDRA MEANS,
17 having been duly sworn, testified as follows:

18 **THE CLERK:** Have a seat, please, ma'am. Once
19 you're seated, speak up loud and clear, stating your full
20 name, Doctor, spelling your last on the record, please.

21 **THE WITNESS:** Casandra Means, C-a-s-a-n-d-r-a
22 M-e-a-n-s.

23 **DIRECT EXAMINATION**

24 **BY MR. MADSEN:**

25 **Q** Dr. Means, where are you employed?

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 A I'm with the Department of -- South Carolina
2 Department of Mental Health.

3 Q And how long have you been with them?

4 A Fourteen years.

5 Q And prior to that, did you work in the same field
6 for an additional, I guess, three years?

7 A Yes, in the State of West Virginia.

8 Q And can you tell me what is your current job?

9 A I am a triage counselor at the Lexington County
10 Detention Center.

11 Q Could you tell the jury a little bit about your
12 educational background?

13 A Yes, I received a bachelor's degree in psychology
14 with sociology and biology minors from West Virginia State
15 University. I received a master's degree in agency
16 counseling from Marshall University and I have a PhD in
17 educational psychology from Capela University.

18 Q And are you an LPC?

19 A Yes, I'm a licensed professional counselor here in
20 the State of South Carolina.

21 Q And is that the job that you do now as far as a
22 psychologist?

23 A No, I am a mental health professional, is my title.

24 Q And you've worked for DMH for how long?

25 A Fourteen years.

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 Q And how do you come that you end up working at the
2 Lexington Detention Center through the Department of Mental
3 Health?

4 A I started my career with the Department of Mental
5 Health in 1998 whenever I worked for Bedman Mental Health.
6 Transferred From there to Lexington County Community
7 Health, it's school based. Then transferred from school
8 base to what they call the -- a contracted position between
9 Lexington County Community Health and Lexington County
10 Detention Center which is a triage counselor.

11 MR. MADSEN: At this point in time, Judge, we would
12 offer Dr. Means as an expert in psychology.

13 THE COURT: Any objection?

14 MS. PATTERSON: No, sir, your Your Honor.

15 THE COURT: All right. Ladies and gentlemen -- the
16 Court will qualify Dr. Means as an expert in this field of
17 psychology. Ladies and gentlemen of the jury, let me tell
18 you what that means. Ordinarily if a witness is not
19 testifying as an expert, the witnesses testimony in the
20 form of opinions or inferences is limited to those opinions
21 or inferences which are within the perception of the
22 witness and do not require special knowledge, skill,
23 experience or training. However, if scientific, technical
24 or other specialized knowledge will assist the trier of
25 fact, and that's you in this case, to understand the

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 evidence or to determine a fact in issue, a witness
2 qualified as an expert by knowledge, skill, experience,
3 training or education may testify in the form of an
4 opinion. So basically the difference between an expert
5 witness and a nonexpert witness is that an expert witness
6 is allowed to give an opinion and normally a nonexpert
7 witness is not allowed to give an opinion.

8 I have qualified Dr. Means as an expert in the
9 field of psychology.

10 All right. You may proceed, Mr. Madsen.

11 BY MR. MADSEN:

12 Q And you mentioned something about working at the
13 Lexington County Detention Center, I guess in triage or
14 risk assessment?

15 A Yes.

16 Q Can you explain to the jury what that means?

17 A Basically what that means is that when an inmate
18 comes in and is deemed to have either abnormal behavior or
19 something that either the medical personnel or the
20 correctional officers deem as maybe something going on they
21 may refer them to us, mental health. And then we do a risk
22 assessment. Basically we go and we assess for risk of
23 self-harm as well as harm to others, during which time, we
24 also get the background information: Is there a mental
25 illness, is there a family history of mental illness, in

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 order to get an understanding as to how at risk is this
2 person.

3 Q And specifically what are some of the things that
4 in doing that risk assessment or triage that you do
5 specifically with the inmate?

6 A What I do specifically with the inmate is I sit and
7 I ask questions, specifically, I mean very direct
8 questions. Are you suicidal, are you homicidal, have you
9 ever attempted, you know, to commit suicide or have you
10 ever attempted to kill someone else. Are you thinking
11 about it; have you ever had plan.

12 Also I ask about in regards to self-mutilation
13 behaviors. All those, you know, will increase the risk of
14 self-harm and harm by others. I also go down in order to
15 assess for psychosis: Are you hearing things, seeing
16 things that aren't there. I ask about sleep, appetite, as
17 well as history, you know, have you ever been seen by a
18 mental health professional. That could be through DMH or a
19 private psychiatrist, psychologist, or counselor.

20 Q And ultimately, when you see those inmates, are
21 they out in the pods or on the first floor, B Wing or is it
22 just all over the jail?

23 A It's pretty much all over the jail. They can be on
24 the first floor or they could be already out in general
25 population in the pods.

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 Q And ultimately, if you find that the person has
2 some mental problems, can you make a recommendation where
3 they go down to the first floor B Wing or how does that
4 occur?

5 A Yes, I can. When -- and it doesn't necessarily
6 have to be me. It can also be -- you know, medical can
7 make that call as well as the correctional officers can
8 make that call.

9 Q And did you -- have you come into contact with
10 Wayne Curry since he has been in the Lexington County
11 Detention Center?

12 A Yes.

13 Q Could you tell the jury about that, please?

14 A My first initial contact was through, you know, a
15 recommendation or a referral.

16 Q By whom?

17 A I cannot recall that at this point. But I do
18 recall that it was from a referral and I went and did a
19 risk assessment. Mr. Curry had a history of mental illness
20 and from there I obtained records and then presented to Dr.
21 Cherry, who is the psychiatrist.

22 Q And can you tell me a little bit more specifically
23 about that as far as what kind history you were able to
24 ascertain or records?

25 A I was able to obtain records from out patient

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 treatment through DMH as well as inpatient records.

2 Q And ultimately, I guess, he was placed down on the
3 first floor, B Wing?

4 A Yes.

5 Q And can you tell me a little bit, what is being
6 placed on the first floor B Wing, what does that generally
7 mean?

8 A Basically you're either on what they call mental
9 health observation or MHO or max watch. Usually max watch
10 is for those who are actively either symptomatic and
11 they're presenting a danger to themselves or others; or
12 they are actively suicidal or homicidal. With mental
13 health observation, they may be symptomatic, but not really
14 posing a danger directly to themselves at that point,
15 however, their symptoms may be such that, you know, they
16 could easily, you know, get to the level of being
17 self-harmful or they may be unable to maintain within
18 general population without someone else doing harm to them.

19 Q Can you describe to the jury as far as your general
20 contact with Wayne or his general mannerisms?

21 A I know that at first, he would interact with me,
22 but as time has went on, his level of interaction as
23 decreased. He has isolated now. He does not talk, he does
24 not engage. He will look at you, but he will not answer
25 questions.

1 Q How about initially when you met with him, how was
2 his eye contact?

3 A Fair to poor.

4 Q And when you say fair to poor, what would you --

5 A In other words, he might glance at you, but he
6 wouldn't make direct eye contact. And poor would be that
7 he would sometimes situate himself to where his back was
8 like this and he would look this way, but he would never
9 look at me.

10 Q And how about his affect?

11 A His affect was always flat.

12 Q What do you mean by that?

13 A Just there's no expression, no emotion.

14 Q How about conversation with him?

15 A To engage him at times, was difficult. At other
16 times, he would engage easily. I mean, it would fluctuate.
17 And now, as recently, I cannot get eye -- I've not been
18 successful to engage him in any kind of conversation.

19 Q And have you attempted to try to do that?

20 A Yes.

21 Q And can you tell the jury how?

22 A Usually either I'm walking through and he may be on
23 rec and I'll say hi to him; he'll just look at me and just
24 continue on, he will not say anything. I have as recent as
25 October 15th went and tried to do an assessment in order to

Dr. Casandra Means - Direct Examination by Mr. Madsen

1 talk to him about medication noncompliance and he would not
2 say anything. He would not respond to any questions that I
3 asked.

4 Q And so -- I mean even at the best, Wayne's not a
5 conversationalist, is he?

6 A No.

7 Q And at his worse, he would not communicate with you
8 or anyone else for long periods of time, I guess?

9 A Correct.

10 Q And generally, during that entire span that he has
11 been within the Lexington Detention Center, have you ever
12 found where he has acted out of character in that he's
13 different when he acts around you as to when other people
14 aren't paying attention to him, or is it generally his
15 being consistent in his mannerisms?

16 A He's been consistent.

17 Q Okay. Now, ultimately, I guess, you work with Dr.
18 Cherry, correct?

19 A Correct.

20 Q Can you kind of tell the jury kind of how your
21 interaction with Dr. Cherry -- if I understand correctly,
22 Dr. Cherry is a psychiatrist?

23 A Correct.

24 Q Could you explain that -- kind of how your job and
25 her job and interaction between the two.

1 A Okay. As a mental health professional, I'm
2 basically the front line. In other words, I'm the one who
3 gets the initial referrals and everything. And I go and I
4 do the initial assessments. And then it is my job in order
5 to obtain records and so forth for her to understand what
6 is the history and what needs to happen -- what's going on
7 now. And basically, I staff with her, Okay, this is what
8 I've seen, these are the symptoms that I have observed,
9 these are the records that I've gotten and we will then
10 staff the case and she will determine the course of
11 treatment at that point as the M.D.

12 Q And generally, though, you would see Wayne more
13 often than Dr. Cherry, correct?

14 A Correct.

15 Q Could you give the jury an idea of general how
16 often you would see him?

17 A We try to go around to see him once a week, whereas
18 Dr. Cherry may see him, you know, one to three months --
19 every -- once a month to once every three months. It
20 really depends on, you know, his level of care and his
21 symptoms. If he's more symptomatic, she'll definitely get
22 to him, you know, more often than if he's stabilized;
23 whereas we will see him being an inmate -- we will see him
24 once a week just to kind of keep tabs on him.

25 Q So you -- over the years he's been in there, you've

1 kind of -- you've seen him pretty often?

2 A Yeah.

3 Q Okay. Back in August of 2010, would you have seen
4 him around about that time?

5 A Yes.

6 Q Could you tell the jury about your interaction with
7 him then?

8 A I cannot recall at this point.

9 Q Do you have records that you could take a look at
10 that might help you?

11 A Not with me.

12 Q Was he ultimately diagnosed with anything within
13 your facility?

14 A Yes, he was diagnosed with --

15 THE COURT: Well, wait a minute, did she make the
16 diagnosis.

17 THE WITNESS: No, I did not.

18 BY MR. MADSEN:

19 Q Did someone make a diagnosis on him?

20 A Yes.

21 Q Who would that have been?

22 A That would have been Dr. Cherry.

23 Q Okay. And ultimately -- I don't believe you
24 prescribe medication, correct?

25 A No, I cannot.

1 Q Who can do that?

2 A Dr. Cherry.

3 Q And do you have a part in that process as far as
4 the administering or staffing of medication?

5 A No. That would be Correct Care Solutions. That
6 would be the medical personnel who would administer the
7 medications.

8 Q Do you check as far as medication compliance? Do
9 you have a role in that?

10 A No. That -- CCS, who is separate from us has their
11 own checks and balances; however, now, when an inmate is
12 noncompliant, they will notify us and then we followup with
13 the inmate to kind of find out, you know, are you having
14 side effects to it, is that why you're not taking it.

15 Q And have you done that with Wayne?

16 A Yes.

17 Q Can you tell the jury about that?

18 A Yeah, my last contact with him on noncompliance was
19 October 15th, during which time he would not acknowledge or
20 respond to any questions that I said.

21 Q All right. And during the time that Wayne has been
22 in the Lexington Detention Center, he has been sent to Just
23 Care, I believe, a couple of times, correct?

24 A Correct.

25 Q Can you tell the jury a little bit about what Just

1 Care is?

2 A Just Care is basically a psychiatric hospital for
3 those inmates who have felony charges and basically how
4 they get there is if they're symptomatic and they're
5 presenting a danger to themselves or others or their
6 symptoms are just not successfully being controlled there
7 at the jail, then we present it to Dr. Cherry or even
8 another doctor, who will then determine the course of
9 treatment -- whether or not, you know, yes, they meet the
10 qualifications in order to be committed or not.

11 Q And ultimately, Wayne was sent there a couple of
12 different times during his incarceration?

13 A Yes.

14 Q Who makes that decision?

15 A The ultimate decision to commit lies on the M.D.
16 and that would be Dr. Cherry.

17 Q Do you have any role in that decision making?

18 A The role that I play would be the assessment that I
19 do, both bringing forth this guy is symptomatic, you know,
20 he's noncompliant or she's not taking her medications; and,
21 you know, they need to decompensate and become sick and,
22 you know, I present basically, here's the facts, here's
23 what's going on and then the M.D., whoever that may be will
24 determine yay or nay, whether or not, yeah they're
25 committable.

1 Q And have you had a problem with Wayne's compliance
2 with medication?

3 A Yes.

4 Q Could you describe that to the jury, please?

5 A Mr. Curry has not been always compliant with his
6 medications. He'll take them for a while and then he'll
7 decide he doesn't want to take them.

8 Q Is that unusual with inmates?

9 A It is not unusual for individuals with mental
10 illnesses to decide, I don't want to take my medications.

11 Q They don't think they need medications, do they?

12 A In many instances, yes.

13 Q Are you aware of what medications Wayne was
14 prescribed?

15 A I know currently he is prescribed Haldol Decanoate,
16 as well as Lamictal.

17 Q Can you explain to me what Haldol Decanoate is?

18 A Haldol Decanoate is an actual shot. It's an
19 antipsychotic and it's long acting; and Lamictal is an
20 anticonvulsant that is often used with bipolar disorder.

21 Q Okay. Are those the same medications that he has
22 been prescribed the entire time he has been incarcerated?

23 A No, not the entire time. Those are the most
24 recent.

25 Q What were some of the other ones?

Dr. Casandra Means - Cross-Examination by Ms. Patterson

1 A I do not know.

2 MR. MADSEN: That's all the questions I have for
3 Dr. Means.

4 THE COURT: Cross-examination?

5 CROSS-EXAMINATION

6 BY MS. PATTERSON:

7 Q Dr. Means, do you remember the first time you did a
8 risk assessment on Wayne Curry?

9 A I don't recall it, no.

10 Q Do you remember if you did one on him in August of
11 2010?

12 A I don't feel comfortable to say yes without looking
13 at the chart.

14 Q Are you familiar with the incident that he's on
15 trial for?

16 A Yes.

17 Q Do you remember seeing him at all during that time
18 that the incident took place?

19 A I recall being involved and seeing him, but to tell
20 you specific dates, I'm unable to do so.

21 Q Did you see him on the day that it happened?

22 A I don't recall that.

23 Q And do you counsel Mr. Curry?

24 A We do not provide psychotherapy. We provide triage
25 services there at the detention center. We may do

Dr. Casandra Means - Cross-Examination by Ms. Patterson

1 supportive counseling and we may sit and listen to them,
2 but as far as doing psychotherapy, which is more in-depth,
3 we do not.

4 Q Okay. And you said he's not very compliant with
5 his medication?

6 A Correct.

7 Q And has he ever complained to you about any side
8 affects he's having with his medication?

9 A At of late, he's not answered any of my questions
10 when I pose questions to him. In the past, he would
11 communicate that and then I would communicate that back to
12 Dr. Cherry who would then determine, you know, what would
13 need to happen; but as of late, he has not answered any
14 questions that I pose to him.

15 Q And did he ever talk to you about that August 18th
16 incident which he's on trial for?

17 A No, he did not.

18 Q So you don't really know what was going on with him
19 mentally on that date, do you?

20 A I do recall that the symptoms that he was
21 presenting is consistent with mania.

22 Q And what is mania?

23 A Mania is part of bipolar and it is a high energy
24 state that they get into. They can become hyper-social,
25 they can become suicidal homicidal. They go, go, go, go,

Dr. Casandra Means - Cross-Examination by Ms. Patterson

1 go, like the energizer bunny. It's kind of like what
2 cocaine does to people. It's -- their on this natural high
3 and they go without sleep for at least three days if not
4 longer, agitated, irritability is also common during those
5 states. Irrational thinking, grandiosity.

6 Q And you said that he was experiencing that on this
7 August 18, 2010 date?

8 A Correct.

9 Q And when did you become aware that he was
10 experiencing mania?

11 A We had been suspecting because of his noncompliance
12 with his medications, which that is not unheard of when
13 someone with bipolar disorder stops their medications, they
14 can and often do go into a manic episode. Not always, but
15 they can.

16 Q And you had said they're very energetic?

17 A Yes.

18 Q They go without sleep?

19 A Uh-huh.

20 Q Are they usually talkative?

21 A Some can be, yes.

22 Q Are they -- is it easy to calm them down?

23 A Not without medications.

24 MS. PATTERSON: Beg the Court's indulgence, please.

25 (WHEREUPON there was a pause in the proceedings.)

Dr. Casandra Means - Redirect Examination by Mr. Madsen

1 MS. PATTERSON: No further questions.

2 THE COURT: Redirect?

3 MR. MADSEN: Yes, Your Honor.

4 REDIRECT EXAMINATION

5 BY MR. MADSEN:

6 Q So, Dr. Means, I guess what you had told the
7 solicitor is that there was a sense in, I guess, around
8 that time beforehand that this mania was kind of building
9 in him that y'all were kind of worried about that?

10 A Yes.

11 Q And ultimately -- well, you're familiar obviously
12 with bipolar disorder, correct?

13 A Yes.

14 Q Can you just explain that to the jury since the
15 solicitor had asked you about having mania.

16 A Okay. Bipolar disorder is a chronic mental illness
17 and it's a chronic mental illness, meaning it gets worse
18 with time, with age. It is genetic. It is characterized
19 by symptoms of the two polars, being mania and depression
20 that the individual can get into. Mood ability is one of
21 them, agitation. With mania according to the DSM IV, you
22 have to be in that state for at least three days if not
23 longer. That's where you have high energy, may be
24 agitated, irritable, go without sleep, hypersexual, may go
25 out and start spending money, irrational decisions,

1 homicidal, suicidal ideations.

2 Then they go to the other polar opposite which is
3 depression where again for three or more days you have
4 to -- you know, you're apathetic, you have no interest in
5 anything. You sleep all the time. No energy. Again
6 suicidal, homicidal thoughts may be present.

7 Q You had said something about when someone's in the
8 mania, they've got a lot of energy. How does that play out
9 when they're locked in a cell?

10 A Well, you know, when you have a lot of energy and
11 you're locked into a cell, you know, you're going to be
12 bouncing off the walls.

13 Q And you had said something about one of the things
14 as being hypersexual.

15 A Uh-huh.

16 Q What does that mean?

17 A Hypersexual basically is, you think about sex and
18 you want it and, you know, it's a drive. It's a primitive
19 drive that we all have, but in a hypersexual state, is that
20 you're wanting it more than the average person.

21 Q And obviously within the jail setting, sexual
22 conduct is frowned upon?

23 A Exactly, yes. We don't have conjugal visits, no.

24 Q It would be kind of silly to ask for one, wouldn't
25 it?

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 A (Laughing) well, I mean, you can if you want. Ask
2 for it, but I can't guarantee you'll get your wish.

3 MR. MADSEN: That's all the questions I have.

4 THE COURT: Recross examination?

5 MS. PATTERSON: No, sir, Your Honor.

6 THE COURT: All right. Thank you, Doctor, you may
7 step down.

8 All right. You may call your next witness.

9 MR. MADSEN: Your Honor we would call Dr. Cherry.

10 THE COURT: All right. Come around, please,
11 Doctor.

12 MERRIE CHERRY,

13 having been duly sworn, testified as follows:

14 THE CLERK: Have a seat, please, ma'am. Once
15 you're seated, please speak up loud and clear. State your
16 full name, Doctor, on the record, spelling your last,
17 please.

18 THE WITNESS: My name is doctor Merrie, M-e-r-r-i-e
19 Vonna, Cherry, C-h-e-r-r-y.

20 DIRECT EXAMINATION

21 BY MR. MADSEN:

22 Q Dr. Cherry, how are you doing?

23 A Doing fine, thank you.

24 Q Can you tell the jury a little bit about where
25 you're employed?

- 1 A Sure. I've been employed with the Department of
2 Mental Health in Lexington County since August of 2004.
- 3 Q And what is your position?
- 4 A I'm a senior psychiatrist there.
- 5 Q And you said with Lexington Mental Health?
- 6 A Yes, Department of Mental Health, Lexington County.
- 7 Q And does your job there with Lexington County
8 Mental Health have you going to the detention center?
- 9 A It does.
- 10 Q Can you explain to the jury how that kind of comes
11 about. What's -- what set up is there that --
- 12 A The detention center contracts with the Department
13 of Mental Health for three full time mental health
14 professionals and also eight hours per week of psychiatry
15 time. So I'm there eight hours per week.
- 16 Q And you're the psychiatrist?
- 17 A Right.
- 18 Q And the other two individuals of those three, they
19 are not psychiatrists, they are psychologists, correct?
- 20 A They're -- we say mental health professionals.
21 They have varying backgrounds. But Dr. Means is one.
- 22 Q And could you tell the jury a little bit about your
23 educational background?
- 24 A Sure. I went to Butler University, where I majored
25 in pharmacy and then I worked for a little while and then I

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 went to Indiana University, where I got my medical degree
2 and then I did my residency at the University of North
3 Carolina and since then I've worked at mental health
4 centers and in private practice; and then as I said before,
5 Lexington Mental Health since August of 2004.

6 Q And, I guess -- you're a psychiatrist?

7 A Yes.

8 Q So you have a -- not only a medical degree, but
9 something above and beyond that?

10 A Yes, after getting the medical degree, I went four
11 years to the University of North Carolina to specialize in
12 psychiatry.

13 MR. MADSEN: Your Honor, at this point in time, we
14 would offer Dr. Cherry as an expert in psychiatry.

15 THE COURT: Any voir dire regarding qualifications,
16 Ms. Patterson?

17 MS. PATTERSON: No, sir, Your Honor.

18 THE COURT: All right. The State (sic) will
19 qualify Dr. Cherry as an expert in the field of psychiatry.

20 Ladies and gentlemen of the jury, you'll recall I
21 told you a while ago that the answer who has testified --
22 or a witness who is qualified by the Court as an expert in
23 a particular field may give an opinion regarding that field
24 if the scientific, technical or other specialized knowledge
25 will assist you to understand the evidence or determine the

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 fact in issue. And I have qualified Dr. Cherry as an
2 expert in the field of psychiatry and she may be allowed to
3 give her opinion.

4 All right.

5 BY MR. MADSEN:

6 Q Now, you have explained, I guess, the three mental
7 health professionals and the eight hours that you provide,
8 can you kind of describe to the jury, I guess, what your
9 interaction is or how your job intersects with the other
10 mental health professionals at the detention center?

11 A Yes. The three full time mental health
12 professionals as Dr. Means discussed earlier, they will
13 screen a large portion of the inmates that come into the
14 detention center, anyone that's been flagged for whatever
15 reasons; if they have a past history of mental illness or
16 they have any drug or alcohol problems or if they're high
17 risk based on their age or due to their charges or often
18 due to their sentencing; and sometimes if someone is just
19 acting a little strange, they may get referred to us, but
20 they're screened by the mental health professionals. And
21 anyone on medications or has a significant mental illness
22 based on past records, I'm given the records and the
23 information to review and I will try as much as possible to
24 get them on form Larry equivalence of the medications
25 they're on in order to continue their treatment; and then

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 we will schedule them to be seen at a later date or seen
2 immediately, depending on their symptoms at the time.

3 Q And have you had contact with Wayne?

4 A Yes, I have.

5 Q Could you describe that to the jury, please.

6 A Yes. Unfortunately, when I asked for my records to
7 be given to me, I only have records since April of 2011,
8 but I have seen him -- I did see him shortly after he got
9 to the detention center in November of 2009, I think. Is
10 that the date he originally got there.

11 Q Yes, ma'am.

12 A I just don't have his records. But I have been
13 seeing him fairly regularly since he is someone that is,
14 you know, on the first floor and that's had a significant
15 mental illness. I have been seeing him regularly since
16 he's been there.

17 Q And where is he housed?

18 A First floor. That's just where a lot of the
19 inmates that are either mental health obs, max watch,
20 protective custody are -- you know, maybe for medical
21 reasons needing to be observed more closely.

22 Q And when you've had the interaction with Wayne over
23 those couple of years, could you just describe to the jury
24 kind of his mannerisms with you?

25 A Yes. He's never been one to give a lot of

1 information. For the most part, he'll answer the questions
2 asked, but he doesn't elaborate. He doesn't go into any
3 details. More recently, he has refused to answer
4 questions, so we don't have a lot of information from him
5 to have a good idea of what he's thinking at this point in
6 time, but actions in the past have been -- primarily, if
7 he's more depressed or he's more manic because that's when
8 I'm going to be called in to evaluate him and he's going to
9 be a higher priority to be seen at those times. But when
10 he's depressed, he isolates more. He usually is in his
11 room, not wanting to come out. He'll still usually answer
12 the questions, but he'll be cocooned in his, you know, in
13 his sheets and his blankets and just kind of laying on the
14 floor. His affect is very flat where he doesn't have any
15 expression. That's when he's more in his depressed phases.

16 And when he's more in his manic phases, I'll also
17 be called in and that is when he has symptoms of mania,
18 including agitation, you know, increased psychomotor
19 activity where he'll be pacing around. He's more
20 impulsive. He has been hypersexual in the past, although
21 that isn't always the case with him. And he will have --
22 whereas normally he gives very little expressions, when
23 he's manic, he starts to have some kind of inappropriate
24 loud laughter, that sort of thing.

25 Q And given your interaction with him, were you able

1 to make a diagnosis on him?

2 A My understanding is he's been given several
3 diagnoses from different individuals. My professional
4 opinion, based on the interactions that I have with him is
5 that his diagnosis bipolar affective disorder 1.

6 Q And what is bipolar affective disorder 1 mean? How
7 is that -- is that different from somehow other bipolars?

8 A Yes. Right now there's a bipolar 2 and a bipolar
9 1. Bipolar 1 is a form of bipolar or manic depression that
10 is -- it has a stronger genetic component to it and it also
11 is more severe. It's more defined by the episodes of
12 mania. When it's bipolar 1, the episodes of mania are more
13 severe. They last longer. And if you have any psychotic
14 symptoms whatsoever during the manic phase, it's considered
15 a bipolar 1.

16 Q And you had said something about it has a genetic
17 component, can bipolar 1 get worse with age?

18 A Yes. It can, especially if gone untreated, that is
19 one of the illnesses that if it's untreated, not in every
20 case, but in a lot of cases, there's a greater chance of it
21 getting more severe, with time, the episodes getting more
22 severe and being harder to treat, the episodes occurring
23 more often.

24 Q And you had mentioned, I guess bipolar 1 is more
25 severe than the other types of bipolar?

1 A It's considered to be more severe, yes.

2 Q And with bipolar 1, is that considered a major
3 mental illness?

4 A Yes, it is.

5 Q And you had mentioned something about other or
6 previous diagnoses, you're aware that he had been diagnosed
7 in the past as, I guess, schizophrenic or -- schizophrenic
8 paranoid type of delusional disorder. Could you explain
9 kind of why your diagnosis differs from those?

10 A Yes.

11 Q And that might start with just explaining
12 schizophrenia to them and why that's different.

13 A With schizophrenia, you have -- which is also a
14 strongly genetic -- very strongly genetic disorder, it's a
15 major mental illness, but with schizophrenia, you have --
16 often have hallucinations where you hear and see things
17 that aren't there. You'll have delusions, false beliefs,
18 paranoia is very common. You can -- not always, but you
19 can have some disorganization, where your thoughts are
20 disorganized and with bipolar disorder, it's more typical
21 where you'll have periods of depression and then you'll
22 have periods of mania and then you have -- you may have
23 periods in between where you're stable and with bipolar
24 disorder, you can cycle even without medications. With
25 schizophrenia, if it's gone untreated, you're not going to

1 be cycling. You're usually, for the most part, going to
2 stay psychotic. So schizoaffective disorder is kind of a
3 combination of the two. You have some symptoms of
4 schizophrenia, some symptoms of bipolar. It's
5 differentiated from bipolar based on the fact that with
6 schizoaffective, you have psychotic symptoms outside your
7 depressed or manic mood, whereas bipolar disorder, if
8 you're psychotic, you're only psychotic when you're either
9 manic or depressed.

10 Q I guess at times he's been diagnosed as
11 schizoaffective also, correct?

12 A Correct.

13 Q And you had mentioned to the jury something about
14 manic in the bipolar phase. Could you just explain that a
15 little bit more to the jury? What do you mean by mania.
16 How does that -- what does that mean and how does it
17 manifest itself potentially?

18 A I think I explained the symptoms already, but mania
19 can be, I guess in general, it's a high energy state.
20 Usually -- most always, there's a decreased need for sleep.
21 It's not just not being able to sleep and being tired, but
22 you actually have lots of energy. You feel like sleep is a
23 waste of time. You have a lot -- so there's a decreased
24 need for sleep.

25 Sometimes there's rapid -- your speech can be very

- 1 rapid, which means it's very hard to interrupt the person.
- 2 Now, with Mr. Curry, he's pretty nonverbal. He may have
- 3 expressions that, you know, showing that his mood is
- 4 labile, but he's not real talkative at any time. But
- 5 sometimes with mania, you could have rapid speech. Then
- 6 there's always increased impulsivity. Sometimes you can be
- 7 hypersexual. You often don't have a good -- well, almost
- 8 always, you don't have a good sense for boundaries, so you
- 9 may get -- your personal space is not the same. You may
- 10 get closer to someone, you may, you know, be more likely to
- 11 touch them or get in their personal space and when people
- 12 are manic, people around them tend to know. It's a very
- 13 different personality than what their baseline is.
- 14 Q And with your interaction with Wayne, what is his
- 15 insight into his condition?
- 16 A I have never -- I don't know for sure because he's
- 17 not real communicative, but he's never expressed anything
- 18 to make me feel that he has a full understanding that he
- 19 has a mental illness that he needs to take medications for.
- 20 Q Is that -- is that unusual with people who have
- 21 mental illness, having poor insight into their condition?
- 22 A I would say it's not uncommon, especially with
- 23 schizophrenia and sometimes bipolar disorder, yes.
- 24 Q How about his commitment to a medicine regimen?
- 25 A He's considered a highly noncompliant patient.

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 Q Meaning he just won't take the medication?

2 A He will at times, but it's -- a lot of my
3 interactions with him are because in any staffings with him
4 are because he's not taking medications.

5 Q And you had mentioned with the bipolar, I guess,
6 it's got the phases of the mania and stable and then the
7 depression. During the time can you tell me a little bit
8 about the situations where you've actually seen Wayne
9 stable and how often that generally is?

10 A Since he's not real communicative, it's hard for me
11 to get a feel for his personality when he's stable. But
12 when he's stable, I guess I determine it more so based on
13 the fact that he's not depressed and not manic. But it's
14 still very often just walking in the room, because he
15 usually prefers to stay in his room rather than come see
16 me, so I go to him; and asking him questions, he says he's
17 doing fine and I just document that. It's -- so I don't
18 have a real good feel for what his personality is like when
19 he's stable.

20 Q Would the fact that he's in a cell and that there's
21 very little stimulation, can that somehow affect the
22 bipolar?

23 A I don't know whether it would. I don't know the
24 answer to that question. It certainly affects a person's
25 mood even without a mental illness when you're in a cell

1 with very little stimulation, no.

2 Q And Wayne has been to Just Care a couple of
3 different times?

4 A Correct.

5 Q And were you the one who ultimately made that
6 decision?

7 A I believe that I did the part two both times.
8 Occasionally if I'm -- since I'm only there eight hours,
9 occasionally someone else -- a medical doctor will, but I
10 do believe I did part two both times.

11 Q When you say part two, what do you mean?

12 A Just there's -- there's a part one and a part two.
13 The psychiatrist has to do the part two in order for him to
14 be involuntarily committed to the hospital.

15 Q Can you describe to the jury why you did that?

16 A It's done when an inmate is considered a danger to
17 themselves or others. And the first time there is just --
18 I don't have those notes unfortunately, but my recollection
19 is that there was -- he was -- there's a lot of agitation
20 and his symptoms had escalated to the point that he was
21 needing a lot of supervision and care in the jail and it
22 was felt that it could not be -- he could not be managed in
23 that setting.

24 Q And so he's sent there and ultimately what is their
25 job?

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 A Their job is to restabilize him on medications and
2 then send him back.

3 Q And you had mentioned medications, do you prescribe
4 him medications?

5 A I do.

6 Q Can you describe what those are to the jury?

7 A Currently he's on Haldol Decanoate and he's getting
8 100 milligrams every three weeks. This is a long acting
9 injection; and he's given this because of his
10 noncompliance. He'll have days where he'll agree to take
11 medications and days when he will not. So given that it --
12 you know, with an injection, you only have to get him to
13 take it once every three weeks, whereas a pill, you have to
14 actually get him to take it every day. He's also on
15 Lamictal and the Lamictal is at a very low dose simply
16 because he's -- it's not something he can start on a high
17 dose and he's very noncompliant, so we have to keep him at
18 a low dose and it's a 25 milligram per day dose. Lamictal
19 is used for depression. We have used Paxil in the past,
20 which is also an antidepressant, but in some cases Paxil
21 can cause a person to get more manic; and at one point in
22 time he was on Paxil, when he was starting to get more
23 manic, so we pulled him off of Paxil and put him on the
24 Lamictal. So Lamictal is a mood stabilizer, but it works
25 more for the depression and Haldol works more for the mania

1 and the psychotic symptoms.

2 Q And back around the incident date of August 18th,
3 2010, he would have been under your care then, correct?

4 A Yes.

5 Q And do you --

6 A Unless he was in the hospital. I don't recall.

7 Q Did you have contact with him back during the
8 incident that's alleged here?

9 A I don't have that -- those dates with me. I am
10 sure that I was involved somehow, either by staffing or
11 contact in order to -- if he was hospitalized at that time
12 then I would have had to have contact with him to send him
13 to the hospital, but I don't have a recollection of exactly
14 what happened.

15 Q With mania, as far as either putting feces on walls
16 or yourself or other things, can that somehow be a symptom
17 of mania?

18 A It can be. It doesn't have to be, but it can be.
19 It's -- you know, it's more of a -- when you're manic, you
20 often do things that may seem cute or fun at the time, but
21 it's often things that a person would not do when they're
22 stable. It would be considered an inappropriate thing when
23 they're stable.

24 Q So if someone's in a manic stage, they would do
25 stuff that otherwise they wouldn't normally do?

Dr. Merrie Cherry - Direct Examination by Mr. Madsen

1 A They can.

2 Q They would understand that -- Hey, this is wrong, I
3 shouldn't do it, but when they're in a manic state, that
4 just kind of escapes them?

5 A I think you're getting into -- is he getting into
6 forensics. I can't really attest to whether he was -- I
7 don't know. I think you're getting a little into
8 forensics. I didn't evaluate him for forensic purposes at
9 that time.

10 Q Ultimately, I guess, your job there is just a role
11 in treatment for him?

12 A Yes, I'm the treating physician.

13 Q And you've seen him, I guess, for the last few
14 years?

15 A Since he's been in there, yes.

16 MR. MADSEN: That's all the questions I have.

17 THE COURT: Cross-examination?

18 MS. PATTERSON: Beg the Court's indulgence, Your
19 Honor.

20 (WHEREUPON there was a pause in the proceedings.)

21 MS. PATTERSON: No questions, Your Honor.

22 THE COURT: All right. Doctor, thank you, you may
23 step down.

24 THE WITNESS: Thank you.

25 THE COURT: Would you like to have these two

Ella Walker - Direct Examination by Mr. Madsen

1 witnesses excused?

2 MR. MADSEN: I believe so, Your Honor.

3 THE COURT: Any objections?

4 MS. PATTERSON: No, sir, Your Honor.

5 THE COURT: All right. Dr. Cherry is excused as
6 well as Dr. Means. Thank you for coming, Doctors. I
7 appreciate you being here.

8 All right. Mr. Madsen, you may call your next
9 witness.

10 MR. MADSEN: Your Honor, the defense would call
11 Ella Walker.

12 THE COURT: All right. Come around, please,
13 Ms. Walker.

14 ELLA WALKER,
15 having been duly sworn, testified as follows:

16 THE CLERK: Thank you, ma'am. Have a seat up
17 there, please, ma'am. Once you're seated, I need you to
18 speak up loud and clear, state your full name and spell
19 your last on the record, please.

20 THE WITNESS: My name is Ella Mae Walker,
21 W-a-l-k-e-r.

22 DIRECT EXAMINATION

23 BY MR. MADSEN:

24 Q How are you doing today, Ms. Walker?

25 A Fine.

Ella Walker - Direct Examination by Mr. Madsen

1 Q Ms. Walker, where do you live?

2 A North Augusta, South Carolina.

3 Q Is that in Aiken County?

4 A Yes, sir.

5 Q And you know my client, don't you?

6 A Yes, that's my son.

7 Q And I guess one of the questions, is that your son
8 or is that your stepson?

9 A That's my son. I had him November

10 Q So you physically gave birth to him, you're not his
11 stepmother?

12 A I am his mother.

13 Q And could you tell the jury a little bit about when
14 Wayne grew up, kind of his schooling initially. What kind
15 of classes did he go to?

16 A Well, he went to the regular school and then when
17 he got in the -- I think in the fifth, sixth grade, he went
18 to special school, Kalmia Hill in Aiken, South Carolina.

19 Q Why did he go to the special school?

20 A He wouldn't behave himself at school.

21 Q And ultimately, did they diagnose him as a learning
22 disability?

23 A He was very smart, but he just wouldn't -- I don't
24 know. I can't explain it. He just wouldn't be still. He
25 wouldn't, he just wouldn't do right.

Ella Walker - Direct Examination by Mr. Madsen

- 1 Q Ultimately, did he drop out of school?
- 2 A Yes, when he was twelve, he went to John G.
3 Richardson in Columbia, South Carolina.
- 4 Q And then --
- 5 A He stayed until he was sixteen.
- 6 Q Ultimately, at some point in time, was he put on
7 SSI disability?
- 8 A Yes.
- 9 Q Could you tell the jury what that was for?
- 10 A A mental disability.
- 11 Q Who was the payee on his check?
- 12 A I was the payee and I got so I couldn't handle it
13 so I gave it to -- I let my daughter handle it.
- 14 Q At some point in time did he want you not to be the
15 payee?
- 16 A Yes.
- 17 Q And I guess that's because he didn't trust you?
- 18 A Yes.
- 19 Q Tell the jury a little bit about -- has -- I guess,
20 for a period of time, Wayne lived with you?
- 21 A Yes.
- 22 Q And then I think you had a mother who had died and
23 he lived at a house next to yours?
- 24 A Yes, see I used to live and she
25 lived and when she died -- well, I had given my house

Ella Walker - Direct Examination by Mr. Madsen

1 to my daughter and he lived -- I let him live in my
2 mother's house. He tore up my mother's house and he sold
3 all of her antiques.

4 Q When you say tore up, did he bust --

5 A He knocked out all of the walls. I had just
6 remodeled the house. He tore out all of the walls and
7 everything in the house.

8 Q Why was he busting out the walls?

9 A He said he saw a bald headed Mexican.

10 Q A what?

11 A Bald headed Mexican.

12 Q In the walls?

13 A Yeah.

14 Q And that's what he was trying to get?

15 A Yeah, he said he saw somebody running through the
16 house and he was trying to get them or something.

17 Q How about, was there a time that he had shown up at
18 your house hungry and you had made him some soup?

19 A Yeah.

20 Q Can you tell the jury about that?

21 A I made him some soup. I made him a pot of soup and
22 I said, Come on Wayne, the soup is ready. I made him a
23 bowl of soup. I went in the kitchen and he was rinsing the
24 soup out.

25 Q Why was he doing that?

Ella Walker - Direct Examination by Mr. Madsen

1 A He said nobody was going to poison him.

2 Q So he thought you were trying to poison him?

3 A Yes.

4 Q How about, will you talk a little bit about -- has
5 he ever mentioned about people being cloned or himself?

6 A Yes.

7 Q Tell the jury a little bit about that?

8 A He just say he was -- he went to jail in Aiken.
9 When he came back he had a little scar right there and he
10 said he had been cloned. And he would wear sheets around
11 his waist and aluminum foil around his waist.

12 Q Why would he do that?

13 A He said he was cloned, to keep the clone people
14 from bothering him or something, I don't know.

15 Q Has he ever -- when you've been around, has he ever
16 talked about hearing voices or seeing things?

17 A Oh, yes. He just said he heard voices. He said,
18 You heard that person talking. I said, I didn't hear --
19 Oh, yes, you did, you heard him.

20 Q How about seeing things?

21 A Oh, he would never sit with his back to the door.
22 He would always have to sit like I'm sitting so he could
23 see the door and he'd say, You saw that bald-headed Mexican
24 run around that corner. I said, No, Wayne, I didn't. You
25 telling a lie. You couldn't -- I say Wayne, I can't see

Ella Walker - Cross-Examination by Ms. Patterson

1 what you see. I said I didn't see it. I'm sorry, I didn't
2 see it.

3 Q Did those things that were happening with him or
4 that he was seeing, did those seem to get worse over time?

5 A Yes, it got worse.

6 Q And you haven't had a lot of contact with him over
7 the last few years, have you?

8 A No.

9 MR. MADSEN: That's all the questions I have, Your
10 Honor.

11 THE COURT: Cross-examination?

12 CROSS-EXAMINATION

13 BY MS PATTERSON:

14 Q Good morning, Ms. Walker?

15 A Good morning.

16 Q And you said you're Wayne's biological mother,
17 correct?

18 A Yes.

19 Q When Wayne began acting out like you have described
20 to us today, were you concerned?

21 A Yes, I was concerned.

22 Q Did you ever try to get him any help?

23 A He was going to Hartzog Center in North Augusta.
24 When I could get him to go. He wouldn't go.

25 Q Okay. And you haven't had a lot of contact with

Ella Walker - Cross-Examination by Ms. Patterson

1 him since he's been in Lexington County Detention Center,
2 have you?

3 A No.

4 Q Did you have any contact with him in August of 2010
5 while he was at the Lexington County Detention Center?

6 A I think we came up to see him once. I don't know
7 when it was.

8 Q Okay. So you don't remember if it was in August --

9 A It was in '11, I think.

10 Q Okay. So you wouldn't have known what kind of
11 mental state he was in in August of 2010?

12 A Well, somebody called me from the --

13 Q But you don't know personally, do you?

14 A No.

15 Q Thank you, Ms. Walker.

16 THE COURT: Redirect?

17 MR. MADSEN: No, Your Honor.

18 Thank you, ma'am, you may step down.

19 All right. Mr. Madsen, you may call your next
20 witness.

21 MR. MADSEN: Your Honor, the defense would call
22 Dominique Curry.

23 THE COURT: All right.

24 DOMINIQUE CURRY,

25 having been duly sworn, testified as follows:

Dominique Curry - Direct Examination by Mr. Madsen

1 THE CLERK: Have a seat, please, ma'am. Once
2 you're seated, please, ma'am, please speak up loud and
3 clear. State your full name, spelling your last, please.

4 THE WITNESS: Dominique Curry. C-u-r-r-y.

5 DIRECT EXAMINATION

6 BY MR. MADSEN:

7 Q Dominique, how old are you?

8 A Twenty-six.

9 Q And where do you live?

10 A In Augusta, Georgia.

11 Q And you know my client, don't you?

12 A Yes, I do.

13 Q Who is that?

14 A That's my dad.

15 Q And could -- could you tell me a little bit -- you
16 heard your mother (sic) testify. Has at any point in time
17 he ever talked about, I guess, little people or people
18 following him? Can you describe that a little bit to the
19 jury?

20 A Yes, from the times where I would come visit, I
21 primarily stayed with my mom, but I used to go visit often,
22 mainly on the weekends and he would come over to my
23 grandmother's house and he would say he was seeing small,
24 little midgets, white people, bald-headed Mexicans running
25 around, but we don't see the people that he see. And he'll

Dominique Curry - Direct Examination by Mr. Madsen

1 outburst, Yeah, y'all see them. Y'all see them. But we
2 don't see nothing that he sees.

3 Q Has he ever talked about clones?

4 A Yes. One time he got out of prison and he said
5 that all of us, the family were clones. We wasn't the
6 people that we were. And we tried to explain to him that
7 we weren't cloned, we was who we were. And he swore up and
8 down that we were clones.

9 Q Did that cause where he didn't trust y'all because
10 he thought y'all were clones?

11 A Right.

12 Q How about poisoning him, did he ever accuse you or
13 any of the rest of your family of trying to poison him?

14 A Well, not me personally because I didn't fix him
15 anything to eat or drink, but he's accused my grandmother
16 of trying to poison him or anyone who was giving him
17 something to eat. He would say that the food is poison and
18 he wasn't going to eat it because he wasn't going to let us
19 poison him.

20 Q There was an incident, I guess, about a house that
21 was next door to your grandmothers and some, I guess, walls
22 being busted open. Could you tell the jury about that?

23 A He stayed in my great grandmother's home after she
24 passed. My grandmother got him to stay there. And once we
25 went in to see how everything was looking, all of the walls

Dominique Curry - Direct Examination by Mr. Madsen

1 were busted down like -- actually tore up and the reason he
2 told us he tore up the walls was because it was people
3 inside the walls trying to get him or kill him and he was
4 trying to protect himself, beating the people out of the
5 walls, according to him.

6 Q How about ever talking about a tracking device on
7 him?

8 A He told us one time he got out of prison or jail,
9 he got a scar on his chest. He said that while he was in
10 jail, the officers came in and put a tracking device in his
11 chest. When he came home, he always wore aluminum foil
12 around his chest of his body saying that the aluminum foil
13 would stop the people from tracking him -- make the
14 tracking device stop working.

15 Q What was he worried about that they were tracking
16 him for?

17 A According to him, he was afraid they was trying to
18 get him and kill him.

19 Q And so generally when -- your interaction with him,
20 he was always odd or weird?

21 A Yes. After I grew up to understand, you know, it
22 was always these odd things going on as he's seeing people
23 or something's always trying to get him that we couldn't
24 see. We could be sitting in the living room and he'll just
25 jump up, fighting the air, saying we saw these people

Dominique Curry - Cross-Examination by Ms. Patterson

1 attacking him. But we don't see the stuff that he sees.

2 Q And you haven't had a lot of contact with him in
3 the last couple of years, have you?

4 A No, not other than the one time I came to visit
5 him.

6 Q It's tough for y'all to get up from Aiken or
7 Augusta up here to Lexington to see him.

8 A Right.

9 Q And during the time that he was out and about, did
10 he seem to get worse as time went on?

11 A Yes. When I was smaller, around like four or five
12 years old, I, you know, really don't remember him acting as
13 strange as he did as I got older, like, eight, nine, ten.
14 As I got older it was getting worse and worse to where he
15 was knocking down walls and damaging property and stuff.

16 Q Because he was worried about someone was out to get
17 him?

18 A Right.

19 MR. MADSEN: That's all the questions I have.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 BY MS. PATTERSON:

23 Q Good morning, Ms. Curry.

24 A Good morning.

25 Q Was Wayne -- was Mr. Curry actually like -- was he

Dominique Curry - Cross-Examination by Ms. Patterson

1 ever a good dad?

2 A Well, to be honest with you, he's been in and out
3 of jail, so I only had like little interaction with him.

4 Q But you're pretty close to his side of the family?

5 A Right.

6 Q Did that side of the family ever have a family
7 meeting to try to get him help or anything?

8 A Well, we've not actually had a meeting, but when we
9 all got together, we decided to talk about it, but as my
10 grandmother would tell us, it's nothing we can do if he's
11 not vol -- you know, willing to go on his own. We couldn't
12 make him go.

13 Q And you visited him once since he's been in the
14 Lexington County Detention Center, right?

15 A Right.

16 Q Was that in 2012?

17 A Right.

18 Q So you hadn't visited him in August of 2010 when
19 this incident happened?

20 A No.

21 Q So you can't say what his state of mind was at that
22 time, can you?

23 A No.

24 Q Thank you, Ms. Curry.

25 THE COURT: Redirect?

Dr. William Miles - Direct Examination by Ms. Patterson

1 MR. MADSEN: None, Your Honor.

2 THE COURT: All right. Thank you, you may step
3 down.

4 All right. Mr. Madsen, you may call your next
5 witness.

6 MR. MADSEN: Your Honor, the defense rests.

7 THE COURT: All right. Anything in reply?

8 MS. PATTERSON: Yes, sir, Your Honor.

9 The State calls Dr. William Miles.

10 THE COURT: All right.

11 DR. WILLIAM MILES,

12 having been duly sworn, testified as follows:

13 THE CLERK: Have a seat, please. Once you're
14 seated, sir, speak up loud and clear, stating your full
15 name on the record, spelling your last.

16 THE WITNESS: Dr. William Miles. Miles.

17 DIRECT EXAMINATION

18 BY MS PATTERSON:

19 Q And, Dr. Miles, where are you employed?

20 A I'm currently employed at the Lexington County
21 Detention Center, and I also have a smaller office downtown
22 in Columbia.

23 Q And how long have you been a doctor at Lexington
24 County Detention Center?

25 A Most recently for the past four years, since

Dr. William Miles - Direct Examination by Ms. Patterson

1 September of 2008, but I was employed there starting the
2 first time November '98 until January 1st of 2000 when I
3 came over a couple of times to substitute for the physician
4 that was there at that time. But most recently, I've been
5 there since -- for four years.

6 Q And what type of doctor are you?

7 A Well, I'm a family practice doctor. I tell people
8 I'm an old-fashioned-country doctor. I talk to people and
9 listen to people.

10 Q And as a family practice doctor, what kind of
11 treatment do you give to patients?

12 A Well, family practice implies the whole family.
13 Once upon a time, I treated children, but I treat regular
14 medical problems, high blood pressure, diabetes, a little
15 anxiety, a little depression, diagnose things, cancer,
16 diabetes, et cetera.

17 Q And were you on duty at Lexington County Detention
18 Center August 18th, 2010?

19 A Let me check my records here. August what date?

20 Q August 18th.

21 A Let's see. Yes, I'm certain I was; yeah.

22 Q And do you remember treating an inmate named Wayne
23 Curry?

24 A Yes, I do.

25 Q And what was the circumstances surrounding you

1 seeing Mr. Curry on this date?

2 A That's the date in which he threw feces on an
3 officer. I recall vividly, I was in the medical department
4 and he came in saying he'd been thrown -- feces had been
5 throne at him, so I helped him to clean himself up.

6 Q And him, you're referring to the officer?

7 A Yes.

8 Q You remember who -- the officer's name or anything?

9 A I see him in here. Officer Hopkins.

10 Q And after you treated Officer Hopkins, did you do
11 anything with Mr. Curry?

12 A Yes, I saw him -- I saw him and examined him.
13 That's basically -- and I think on that date his
14 fingernails were awfully long and I think I cut one side
15 and the nurse cut the other ones. But that's basically all
16 we did that day.

17 Q And you were able to cut his nails?

18 A Yes.

19 Q Did he resist in any way?

20 A No.

21 Q Okay.

22 A We had a good rapport. Believe it or not, we did.

23 Q And when you saw him, do you remember how he was
24 behaving?

25 A Let's see. When I saw him on the 18th around 8:30,

Dr. William Miles - Cross-Examination by Mr. Madsen

1 he had a suicide gown on. He was calm, wasn't agitated.

2 That was it.

3 Q And did he say anything to you about the incident?

4 A No. I don't recall talking about that. I didn't
5 write a note about that one.

6 Q And did you -- was it your professional opinion
7 that he needed any further treatment at that time?

8 A No.

9 Q Thank you, Dr. Miles. Please answer any questions
10 Mr. Madsen has for you.

11 THE COURT: Cross-examination, Mr. Madsen.

12 CROSS-EXAMINATION

13 BY MR. MADSEN:

14 Q So, when you see Wayne, he doesn't have feces on
15 his face or his clothing or anything like that, you see him
16 after they put him, I guess in a turtle suit?

17 A Yes. Correct.

18 Q And the turtle suit is some kind of -- can you
19 explain to the jury what that is?

20 A Well, it's antisuicide gown, so it's a woven --
21 it's like a quilt. It has arms in it and has, I guess, it
22 has a front, like a big slip and the whole idea is they
23 can't use it to harm themselves.

24 Q And so he -- that's on him so he doesn't do
25 something to himself?

Dr. William Miles - Redirect Examination by Ms. Patterson

1 A Right. Absolutely.

2 Q And so you see him, obviously, if he had had feces
3 on his hands, face or that -- he's cleaned up by the time
4 he comes to you?

5 A Correct, yes.

6 Q But I guess you said he had abnormally long
7 fingernails?

8 A Yes. And the whole idea -- we don't want
9 fingernails in the jail because of the danger to the staff
10 of those fingers; plus fingernails are not very clean at
11 times. But he will let us cut his fingernails without any
12 problem.

13 Q And ultimately, I guess, your job there as the
14 medical doctor is to kind of take care of any problems
15 people have, but there's another section that deals with
16 psychiatric or mental health, correct?

17 A Correct.

18 Q And that's, I guess, in part, Dr. Cherry and Dr.
19 Means?

20 A Yes.

21 MR. MADSEN: That's all the questions I have.

22 THE COURT: Ms. Patterson.

23 REDIRECT EXAMINATION

24 BY MS. PATTERSON:

25 Q Dr. Miles, when you were treating Mr. Curry, if you

Dr. William Miles - Redirect Examination by Ms. Patterson

1 would have thought that he needed to be seen by Dr. Means
2 or Dr. Cherry --

3 MR. MADSEN: Judge, I don't believe that's within
4 the scope of --

5 THE COURT: That's overruled. I believe it is in
6 response.

7 BY MS. PATTERSON:

8 Q What would you have done as a doctor?

9 A I would have asked them to see him.

10 MS. PATTERSON: Thank you, Your Honor -- thank you,
11 Doctor.

12 THE COURT: Anything further, Mr. Madsen?

13 MR. MADSEN: No, Your Honor.

14 THE COURT: All right. Thank you, Doctor. You may
15 step down.

16 MS. PATTERSON: Your Honor, may Dr. Miles be
17 excused?

18 THE COURT: Any objection?

19 MR. MADSEN: No, Your Honor.

20 THE COURT: All right. You are excused, Doctor,
21 thank you for coming.

22 All right. Ms. Patterson, anything else in reply?

23 MS. PATTERSON: Yes, sir, Your Honor. The state
24 calls Ms. Hope Frick.

25 ///

Hope Frick - Direct Examination by Ms. Patterson

1 HOPE FRICK,

2 having been duly sworn, testified as follows:

3 THE COURT: Have a seat, please, ma'am, give your
4 name to the court reporter, spell your last name.

5 THE WITNESS: My name is Hope Frick, F-r-i-c-k.

6 DIRECT EXAMINATION

7 BY MS. PATTERSON:

8 Q Ms. Frick, where are you employed?

9 A The Lexington County Clerk of Court's office.

10 Q And what's your position at the Lexington County
11 Clerk of Court's Office?

12 A I'm deputy clerk of court for general sessions.

13 Q And as the deputy clerk of court for general
14 sessions, what are some of your duties?

15 A I supervise all personnel that work in the criminal
16 division. I'm responsible for all criminal records, for
17 general sessions court as far as disposing, coming in,
18 being sent back out to agencies, responsible for staffing
19 court, running court, the jurors, bringing jurors in and
20 answering different problems or questions from Department
21 of Corrections, all law enforcement agencies including
22 inner poll, FBI, and immigrations.

23 Q And would you explain to the jury a little bit
24 about the filing system of charges when they come into the
25 clerk of court's office?

Hope Frick - Direct Examination by Ms. Patterson

1 A Sure. Arrest warrants or tickets, when they are an
2 offense for general sessions court, they are --

3 THE COURT: Excuse me just a minute. Come up,
4 please.

5 (WHEREUPON, there was a bench conference out of the
6 hearing of the jury and the Court Reporter.)

7 BY MS. PATTERSON:

8 Q So the -- so does every criminal case have -- do
9 they get a file when it comes in your office?

10 A Yes, any and all charges. They get a file
11 associated to the person by name. Not by numbers, but it's
12 by there name.

13 Q Okay.

14 (WHEREUPON State's Exhibit No. 4 was marked for
15 identification.)

16 MS. PATTERSON: Your Honor, may I approach,
17 Ms. Frick, please?

18 THE COURT: Yes, ma'am.

19 BY MS. PATTERSON:

20 Q Ms. Frick, I'm going to show you what's been marked
21 as State's Exhibit 4 for identification purposes only and
22 ask you to take a look at that.

23 A Yes, ma'am.

24 Q Are you able to recognize what that document is?

25 A Yes, ma'am.

Hope Frick - Direct Examination by Ms. Patterson

1 Q And is that -- did that document come into the
2 possession of the Lexington County Clerk of Court's Office?

3 A Yes, ma'am.

4 Q And does it fairly and accurately represent the
5 consents of that document when it came into your office?

6 A Yes, ma'am.

7 Q Has it been changed in any way?

8 A No, ma'am.

9 MS. PATTERSON: Your Honor, I would move that
10 State's Exhibit 4 be admitted into evidence.

11 THE COURT: Any objection?

12 MR. MADSEN: No, Your Honor.

13 THE COURT: State's 4 admitted without objection.

14 (WHEREUPON State's Exhibit No. 4 was admitted into
15 evidence.)

16 BY MS. PATTERSON:

17 Q And, Ms. Hope, what is that document?

18 A This is a letter that came in. It states it's from
19 Mr. Wayne S. Curry at , Lexington Detention
20 Center. It's an envelope that was received at the clerk of
21 court's office with a letter inside written requesting an
22 attorney to be appointed to his criminal case and it's
23 signed by person, Wayne S. Curry; and attached to that
24 letter upon our receiving letters from inmates requesting
25 counsel, if counsel has not been provided, we automatically

Hope Frick - Direct Examination by Ms. Patterson

1 do an order appointing the Lexington County Public
2 Defender's Office, not assigning an attorney, but that the
3 public defender's office will provide counsel for the
4 defendant.

5 Q Thank you.

6 (WHEREUPON State's Exhibit No. 5 was marked for
7 identification.)

8 BY MS PATTERSON:

9 Q And I'm going to show you what's been marked as
10 State's Exhibit No. 5 for identification purposes only.
11 And ask you to take a look at that document.

12 A Yes, ma'am.

13 Q And is that a document that came into the
14 possession of the Lexington County Clerk of Court's Office?

15 A Yes, ma'am.

16 Q And does that document fairly and accurately
17 represent the document when it was received in your office?

18 A Yes, ma'am.

19 Q Has it been altered in any way?

20 A No, ma'am.

21 MS. PATTERSON: Your Honor, at this time, I'd move
22 that State's Exhibit No. 5 be admitted into evidence.

23 THE COURT: Any objection?

24 MR. MADSEN: No, Your Honor.

25 THE COURT: Admitted without objection.

Hope Frick - Cross-Examination by Mr. Madsen

1 (WHEREUPON State's Exhibit No. 5 was admitted into
2 evidence.)

3 BY MS. PATTERSON:

4 Q And Ms. Frick, what is that document?

5 A It is also a letter that's been received. It's a
6 handwritten motion, notice of motion and motion for relief
7 of counsel and it is clocked in by my department November
8 17 of 2010.

9 Q Okay. And who is it from?

10 A It's from Wayne Curry and it was written to the
11 chief judge.

12 Q Thank you, Ms. Frick.

13 MS. PATTERSON: Your Honor, no further questions.
14 Please answer any questions Mr. Madsen has.

15 THE COURT: Cross-examination, Mr. Madsen?

16 CROSS-EXAMINATION

17 BY MR. MADSEN:

18 Q Ms. Frick, you know I'm probably the envy of every
19 Lexington lawyer to have you on the stand.

20 Just to kind of give the jury a little bit more
21 background, you've worked for the clerk of court how long?

22 A I've been with the clerk of court's office for
23 thirty years this coming April.

24 Q And how long have you done criminal within the
25 clerk of court's office?

Hope Frick - Cross-Examination by Mr. Madsen

1 A Thirty years this coming April.

2 Q And you have kind of something -- before that prior
3 to coming to the clerk of court, you had some experience as
4 a law enforcement officer?

5 A Yes, sir, I was a police officer.

6 Q For how long?

7 A Five and a half years.

8 Q Where was that at?

9 A City of Columbia.

10 Q And so you left there and ended up coming here?

11 A I left there and went to the Lexington County
12 Sheriff's Department where I was a telecommunications
13 operator and from there I came to the clerk's office.

14 Q And ultimately, you've seen a lot of trials in this
15 courtroom?

16 A Yes.

17 Q A lot of trials in the old courtroom across the
18 street, correct?

19 A Yes, sir.

20 Q Have a lot of knowledge about kind of the criminal
21 system, don't you?

22 A Yes, sir.

23 Q And generally, when someone is arrested, they go in
24 front of a magistrate and counsel is appointed, correct?
25 If they're indigent?

Hope Frick - Cross-Examination by Mr. Madsen

1 A Now, yes. That's the procedure that's been
2 implemented in the last, I think, four years.

3 Q So within four years they go in front of a judge
4 and if they don't have a job, they don't have property,
5 they're appointed to counsel, correct?

6 A Correct.

7 Q And there's a mechanism that if for some reason the
8 magistrate denies them counsel that they can go through
9 your office to get counsel if they're still in jail; isn't
10 that correct?

11 A The letter. They have to write us.

12 Q They have to write you a letter?

13 A Correct.

14 Q So someone like Wayne who doesn't have a job, for
15 some reason if he's denied counsel initially, he's got to
16 take some kind of step to get you, correct?

17 A Yes, sir. We don't have any other way of knowing
18 they're there.

19 Q And ultimately, you end up getting a letter, I
20 guess, is that 5/20 of '10; is that correct?

21 A Yes, sir. That's -- our policy and procedure is we
22 date it and we initial it the date we get it and the date
23 that the order is drafted, which is May 20, 2010.

24 Q And that's -- and so then you appointed our office
25 and it ultimately became my case because of that letter,

Hope Frick - Cross-Examination by Mr. Madsen

1 correct?

2 A Yes, sir.

3 Q And it's unusual, generally, for an inmate to sit
4 in jail five or six months before requesting counsel; isn't
5 it?

6 A No, no, sir.

7 Q They will usually sit there for a long period of
8 time?

9 A I've had them be there -- because they are -- I've
10 had them -- the family is going to hire them an attorney or
11 they told bond court they have an attorney and nothing ever
12 comes of it and then we'll eventually get some kind of
13 notification. Either a member of the family will call and
14 say, you know, Has he got an attorney or a court date; and
15 we tell them that, well, according to what he told the
16 judge at bond court this or whatever and they go, No,
17 that's not true. - And at that time, we try to make the
18 wheels turn, as Judge Baggett used to say, and try to get
19 the cases moving by we'll go ahead and do the order and
20 then let them figure it out later.

21 Q And on State's Exhibit 4, that's neat handwriting,
22 isn't it?

23 A Sort of, yes, sir.

24 Q He's --

25 A The grammar is not good.

Hope Frick - Cross-Examination by Mr. Madsen

- 1 Q It is easy read?
- 2 A Yes, sir.
- 3 Q And I guess that's written in, I guess, print,
4 normal lower case, capital where appropriate, for the most
5 part?
- 6 A Yes, sir.
- 7 Q And then, let me show you State's Exhibit No. 5.
8 That's kind of written in all caps, isn't it?
- 9 A Yes, sir, it is.
- 10 Q So it's a different style of writing than in
11 State's Exhibit 4, isn't it?
- 12 A Yes, sir, it is.
- 13 Q And given -- with you being at the clerk of court's
14 office, you've had situations in the past where inmates
15 that can't do something have relied on other inmates to
16 write for them?
- 17 A Yes, sir, definitely.
- 18 Q Could you tell the jury a little bit about that?
- 19 A We call them jailhouse lawyers. They will -- for
20 some reason, they'll draft up forms for motions to fire
21 their attorney, to get an attorney, for discovery, wanting
22 a bond or whatever and we'll get the letters and it's all
23 written in the same handwriting, everything is identical
24 except the signature of the defendant and you know good and
25 well that person didn't write it and you know you've got

Hope Frick - Cross-Examination by Mr. Madsen

1 somebody over there practicing law without a license.

2 Q And there can be situations where a certain -- or
3 some inmates will kind of want to help out or take pity on
4 other inmates so they'll write stuff for them?

5 A Yes, sir.

6 Q I think that even maybe happens with non-English
7 speaking inmates sometimes where you'll get an English
8 letter?

9 A Oh, definitely. That happens a lot.

10 Q And in this second one, State's Exhibit No. 5, this
11 one here, that's legible?

12 A Yes, sir.

13 Q You can read -- that's pretty good penmanship for
14 the most part?

15 A Yes, sir.

16 Q And you were in here earlier when you heard Deputy
17 Hopkins testify that he had received a note from my client
18 that was barely readable, correct?

19 A Yes.

20 Q And ultimately, if the State wanted, they could
21 have someone check on whether or not someone wrote a
22 letter --

23 MS. PATTERSON: Objection, Your Honor.

24 THE COURT: What's the objection?

25 MS. PATTERSON: She doesn't -- he's asking her what

Hope Frick - Cross-Examination by Mr. Madsen

1 the State can do.

2 THE COURT: If she knows. She may not be qualified
3 to answer it, but she may not know. That will be up to
4 her. The question is not improper. Objection is
5 overruled.

6 BY MR. MADSEN:

7 Q You're aware that the State can do handwriting
8 analysis, can't you?

9 A Yes, sir.

10 Q And they can tell whether someone has written a
11 letter or not?

12 A Yes, sir.

13 Q And again, I guess State's 4 and 5, one's written
14 in all capitals and one's written in a different type of
15 font?

16 A Majority of capitals.

17 Q Majority of capitals on State's, I think 5?

18 A No. 5.

19 Q And that's not the way that State's Exhibit No. 4
20 is written, is it?

21 A No, sir.

22 MR. MADSEN: That's all the questions I have.

23 THE COURT: Anything further of this witness,
24 Ms. Patterson?

25 MS. PATTERSON: No, sir.

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 gentlemen and we are now ready to proceed. And the State
2 is continuing to present testimony in reply. The State has
3 called Dr. Marla Domino.

4 Dr. Domino, for the record, if you would, state
5 your name into the record and spell your last name, please.

6 And Ms. Patterson, you may proceed.

7 **THE WITNESS:** Marla Domino, D-o-m-i-n-o.

8 **DIRECT EXAMINATION**

9 **BY MS. PATTERSON:**

10 Q And Dr. Domino, where are you employed?

11 A At the South Carolina Department of Mental Health.

12 Q And what's your position at the Department of
13 Mental Health?

14 A I am a chief psychologist in the forensic
15 evaluation service unit.

16 Q And can you tell the jury a little bit about your
17 education?

18 A Sure. I have a bachelor's degree in psychology
19 from the University of California, Santa Cruz. I have a
20 master's degree in criminal justice from Northeastern
21 University in Boston. I then went onto get a PhD in
22 clinical psychology from the University of Alabama in a
23 program that specializes in psychology and law. My degree
24 is in clinical psychology. And during that time, I did a
25 one year internship at the federal medical center in

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 Butner, North Carolina, along with the University of North
2 Carolina hospitals. After that, I did a one year
3 fellowship and clinical in forensic psychology at the
4 University of Massachusetts.

5 Q And can you tell us just a little bit about your
6 professional experience?

7 A Yes. After I finished the post op in
8 Massachusetts, then I came to South Carolina where I've
9 been for the past ten years conducting court ordered
10 evaluations.

11 In addition, I am an assistant professor at the
12 University of South Carolina in Columbia. I have typically
13 taught abnormal psychology, but I have also taught classes
14 in forensics, such as I taught -- co-taught a class on the
15 insanity defense. I have several published articles, as
16 well as co-authored a book on psychological testing and I
17 frequently do lectures and am an invited speaker to various
18 forums, typically in Columbia.

19 Q Do you have any professional certifications?

20 A Yes, I am a licensed clinical psychologist here in
21 South Carolina.

22 Q And have you testified before?

23 A Yes.

24 Q And what types of court have you testified in?

25 A I've testified in federal court, in various state's

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 courts such as Massachusetts, criminal and civil, North
2 Carolina, and then here in South Carolina criminal court.

3 Q About how many times have you testified before?

4 A About a total of sixty times.

5 Q Have you ever been qualified as an expert?

6 A Yes, I have.

7 Q In what areas or area have you been qualified as an
8 expert?

9 A In clinical and forensic psychology.

10 MS. PATTERSON: Your Honor, at this time, I would
11 move that Dr. Domino be admitted as an expert in clinical
12 and forensic psychology.

13 THE COURT: Voir dire with regard to
14 qualifications, Mr. Madsen?

15 MR. MADSEN: None, Your Honor.

16 THE COURT: Any objection to being qualified as an
17 expert nor the fields of clinical and forensic psychology?

18 MR. MADSEN: No, Your Honor.

19 THE COURT: All right. The Court will qualify Dr.
20 Domino as an expert in the fields of clinical and forensic
21 psychiatry? Psychiatry?

22 THE WITNESS: Psychology.

23 THE COURT: Psychology. Okay.

24 Ladies and gentlemen, again, you will recall that I
25 told you that a witness who is qualified as an expert in a

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 particular field can give testimony in that field if it
2 will aid the trier of fact to determine a fact in issue and
3 may testify in the form of an opinion where as normally a
4 lay witness would not be entitled to give an opinion. And
5 I have qualified Dr. Domino as an expert in the fields that
6 we have mentioned.

7 All right. You may proceed.

8 MS. PATTERSON: Thank you, Your Honor.

9 BY MS. PATTERSON:

10 Q Dr. Domino, did you receive a court order to
11 examine the defendant, Wayne Curry?

12 A Yes, I did.

13 Q Do you remember when you received that order?

14 A My unit received it on September 24th, 2010.

15 Q And did you, in fact, examine him?

16 A I did. I saw him on December 7th, 2010.

17 Q And what information did you receive prior to that
18 examination?

19 A We received quite a bit of information. And let me
20 preface that by saying this was -- I had seen Mr. Curry a
21 number of times for forensic evaluation since 2006. So
22 we've had a number of records since that time about
23 Mr. Curry and those records included information about his
24 current charges. They also included psychiatric records,
25 some of his medical records, jail records, previous

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 forensic reports that I had written, but also other
2 forensic examiners have written, psychological testing that
3 I had done in the past with Mr. Curry and also telephone
4 collaterals.

5 So the second examiner that examined Mr. Curry had
6 spoken with me had spoken to Mr. Curry's mother before we
7 saw him.

8 Q So someone else in addition to you evaluated
9 Mr. Curry?

10 A Yes.

11 Q And where was that evaluation conducted?

12 A It was conducted at the Department of Mental
13 Health's Forensic Evaluation Service in Columbia.

14 Q And how much time did you spend with Mr. Curry?

15 A One hour and 35 minutes.

16 Q And did you evaluate Mr. Curry for criminal
17 responsibility?

18 A Yes, I did.

19 Q Did you evaluate him for capacity to conform?

20 A Yes, I did.

21 Q And can you explain to the jury what is meant by
22 criminal responsibility?

23 A Sure. So when someone is charged with a crime,
24 there are different ways that you can plead. Some of the
25 more common ones are guilty or not guilty. There's another

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 plea that's available to people called not guilty by reason
2 of insanity. And you may have heard of this as termed the
3 insanity defense. And different states define the insanity
4 defense differently.

5 Here in South Carolina, it essentially means that
6 because of a mental illness, the person was unable to
7 distinguish right from wrong at the time. And this has to
8 be related to the criminal act that is being charged. So
9 because of a mental illness, you didn't know that what you
10 were doing was wrong at the time.

11 Q And just because a person has a mental illness,
12 does that mean that they cannot determine between right and
13 wrong at the time?

14 A No, and in fact, we see a number of people who have
15 significant mental illnesses who are actually mentally ill
16 at the time they committed a crime, but are still
17 criminally responsible. So it's very important that the
18 symptoms of their mental illness are directly connected to
19 the crime they've been accused of doing.

20 So just as an example, if you heard a voice saying
21 to rob a bank and you go burn your neighbor's yard, even
22 though you might have been mentally ill at the time,
23 because you're being accused of burning your neighbor's
24 yard, you're still criminally responsible. Your symptoms
25 had nothing to do with burning the yard.

Dr. Marla Domino - Direct Examination by Ms. Patterson

1 MS. PATTERSON: Beg the Court's indulgence.

2 (WHEREUPON there was a pause in the proceedings.)

3 BY MS. PATTERSON:

4 Q And so what are some of -- in addition to all the
5 information that you gathered before the interview, what
6 are some of the other things that you used to determine
7 Mr. Curry's criminal responsibility?

8 A I spoke directly to the alleged victim, Officer
9 Hopkins. I had his statement about what had happened and
10 the witness's statement. But oftentimes a victim's and
11 witness's statements are missing information that I need
12 and so I spoke with Officer Hopkins directly about what
13 happened and what Mr. Curry's mental state was at the time.

14 Q And so what was your professional opinion about
15 Mr. Curry's criminal responsibility?

16 A It was my opinion that he did not lack the capacity
17 to distinguish right from wrong at the time and typically
18 how I approach these evaluations is I first try to
19 establish whether or not the individual was experiencing
20 symptoms at the time. And so it was my professional
21 opinion that Mr. Curry was not experiencing symptoms of a
22 mental illness at the time he committed this act. So the
23 question for us sort of ends there.

24 But it was my professional opinion that he was not
25 experiencing symptoms of a mental illness at the time, and

1 therefore, could distinguish right from wrong.

2 Q And was Mr. Curry able to conform to the
3 requirements -- conform his conduct to the requirements of
4 law?

5 A It is my professional opinion that he was, yes.

6 Q And how were you able to come to that opinion?

7 A Well, again, I had all of the records that were
8 generated because of the alleged offense. I spoke to
9 Officer Hopkins at the time who described Mr. Curry as
10 acting very calm and cooperative and, in fact, I believe he
11 called -- he described Mr. Curry as being docile right
12 after the incident, following all instructions. Mr. Curry,
13 himself, described to me his behavior at the time, which
14 was very consistent with the description Officer Hopkins
15 gave me. They both said he was calm, cooperative and so I
16 took the totality of the information and came upon that
17 assessment and, again, it did not seem in my professional
18 opinion that at the moment that the alleged crime happened,
19 it did not appear to me he was experiencing symptoms of a
20 mental illness.

21 Q And again, just because someone has a mental
22 illness are they unable to conform their conduct to the
23 requirements of the law?

24 A It does not necessarily mean just because someone
25 has mental illness they can't conform their conduct; that

Dr. Marla Domino - Cross-Examination by Mr. Madsen

1 is correct.

2 MS. PATTERSON: Beg the Court's indulgence.

3 (WHEREUPON there was a pause in the proceedings.)

4 MS. PATTERSON: Dr. Domino, please answer any
5 questions Mr. Madsen has.

6 THE COURT: Cross-examination, Mr. Madsen.

7 CROSS-EXAMINATION

8 BY MR. MADSEN:

9 Q Dr. Domino, good morning.

10 A Good morning.

11 Q How are you?

12 A I'm good, thank you.

13 Q So you've seen Wayne, back December 7th for about
14 an hour and a half, correct?

15 A That's correct.

16 Q And that's, I guess over in Richland County,
17 Columbia?

18 A Yes.

19 Q And as part of your evaluation, you get background
20 information on him from a bunch of different courses,
21 correct?

22 A That is correct.

23 Q And you were able to determine from that that you
24 know that he had had a learning disability?

25 A Yes.

Dr. Marla Domino - Cross-Examination by Mr. Madsen

1 Q That he was -- I guess sort of emotionally
2 handicapped as a youth?

3 A Yes. I believe he had a lot of behavioral problems
4 in school.

5 Q That he'd gone to a special school?

6 A Yes.

7 Q That ultimately, I guess, he ended up dropping out,
8 and I guess he said because the school's too hard?

9 A Yes, there are varying accounts of why he dropped
10 out, but, yes.

11 Q And you were able to determine that he was on SSI
12 disability for schizophrenia?

13 A Well, that's what he and his mother said.

14 Q And I guess she told you that she was his payee,
15 but at some point in time, he switched it because he didn't
16 trust her?

17 A That's what she told us, yes.

18 Q And you were able to ascertain that he really had
19 very limited if any kind of work history?

20 A That's correct, yes.

21 Q And I guess as part of the evaluation as you've
22 mentioned, someone spoke with his mother; is that true?

23 A Yes, the second examiner, Ms. Sims.

24 Q And she -- I guess the mother had indicated about
25 clones and bald men and hallucinations when he was just out

1 and about on the street?

2 A That's correct.

3 Q And when you talked with him, he actually denied to
4 you ever having any kind of inpatient or outpatient mental
5 health treatment?

6 A He did initially and then we confronted him about
7 that.

8 Q And you had seen him in the past since 2006?

9 A Correct.

10 Q And so -- I mean just from your interaction, you
11 knew that wasn't true?

12 A Right.

13 Q And through the documentation, I guess, he has had
14 at least five commitments to Gilliam Psychiatric Hospital,
15 correct?

16 A That is correct, yes.

17 Q I think a couple of times in '92, a couple of times
18 in '93 and also in 1999?

19 A Yes, that's correct.

20 Q For from weeks to multiple months that he was at
21 Gilliam, correct?

22 A Yes. It looks like some were short, some were
23 longer, yes.

24 Q And ultimately, I guess, that ended up with them
25 diagnosing him in 1999 with schizophrenia paranoid type and

1 delusional disorder?

2 A Yes, that is correct.

3 Q And ultimately, I guess, they prescribed some
4 medication to him?

5 A Yes.

6 Q And that was Haldol and Zyprexa, which deal with, I
7 guess, some of these mental problems?

8 A Yes, they're both called antipsychotics so they
9 primarily treat psychosis or hearing voices.

10 Q And then he's ultimately given, I guess, Cogentin,
11 but if I understand correctly, Cogentin generally is just
12 dealing with some side effects from those antipsychotic
13 medications, correct?

14 A Yes, that's correct.

15 Q And you were able to receive records from Aiken
16 Mental Health?

17 A Yes.

18 Q And it looks like he was diagnosed there with
19 schizophrenia paranoid type and delusional disorder,
20 correct?

21 A That is correct, yes.

22 Q And it looks like they saw him from 1993 to 2003,
23 kind of on a sporadic basis?

24 A Yes, that's correct.

25 Q And I guess some of the things there were people---

Dr. Marla Domino - Cross-Examination by Mr. Madsen

1 or he was -- people spying on him, someone injected him
2 with AIDS?

3 A Yes, that's what he reported to the staff, the
4 mental health staff.

5 Q And then ultimately, they ended up giving him, I
6 guess, the same medicines, the Haldol and Zyprexa; is that
7 correct?

8 A I believe that's correct, yes.

9 Q And I believe in 2007, Dr. Pam Crawford had found
10 not competent?

11 A Yes, 2007, yes, she had, yes.

12 Q Or acute psychosis?

13 A That's what she assessed him as, yes.

14 Q And he had also seen, I guess, a Dr. Greg Smith at
15 the Aiken Barnwell Mental Health Center in 2008 for
16 schizophrenia, correct?

17 A That is correct, yes.

18 Q And you have kind of seen him on and off since
19 2006; isn't that true?

20 A That is true, yes.

21 Q And generally, he has been uncooperative with you,
22 except maybe even that first time?

23 A Yes, that first time in 2006 was really the only
24 time he cooperated.

25 Q And when you say he doesn't cooperate, he would

1 give weird or kind of nonsensical answers to you?

2 A He has typically done one of two things. He either
3 says pretty much nothing or he will give just completely
4 improbable symptoms, like he'll say he hears the voice of
5 Michael Jackson and the colors of the U.S. flag are brown
6 and green, you know, things that are obviously, what we
7 call, malingering.

8 Q And so he doesn't cooperate with you, that puts you
9 in a tough situation in order to try to figure out how to
10 diagnose him if he's not cooperating, doesn't it?

11 A Right, yes. So that even people who malingering or
12 fabricate symptoms of a mental illness still could truly
13 have a mental illness.

14 Q And without his cooperation, that just puts you in
15 a tough situation, doesn't it?

16 A It does, yes.

17 Q And even though, I guess, you assume that
18 everything that he tells you that's nonsensical and that,
19 you assume that's always intentional or can you really be
20 for sure without his cooperation whether it's a part of his
21 mental illness or he's just messing with you?

22 A Well, the quality of Mr. Curry's responses and
23 their content let me know that they really were
24 intentional. Someone who is truly psychotic may not give
25 correct responses. They may think it's 1886 and, you know,

Dr. Marla Domino - Cross-Examination by Mr. Madsen

1 the colors of the flag might be red and blue, but they have
2 other symptoms of a mental illness when I see them that
3 makes it obvious to me that they actually think it really
4 is 1886.

5 So their -- their speech may be disorganized. It
6 may seem like they're responding to voices. They may have
7 a hard time paying attention and none of these things were
8 true when I saw Mr. Curry. He was able to engage in the
9 regular give and take of conversation. His -- I could
10 understand his responses. They weren't accurate, but
11 they -- I could understand them. They were logical, they
12 were just wrong.

13 Q And so you see him December 7th, which is, I guess,
14 just about four months after the alleged incident, correct?

15 A That's correct.

16 Q And you talked with, I guess, Officer Hopkins or
17 Deputy Hopkins?

18 A Yes.

19 Q Did you get his mental health records from the jail
20 at that point in time?

21 A We had asked for them on multiple occasions and had
22 called them several times asking for it and they never
23 responded.

24 Q And back during that time when you were doing that
25 evaluation, did you ever talk at that point in time to Dr.

Dr. Marla Domino - Redirect Examination by Ms. Patterson

1 Means or Dr. Cherry?

2 A No, I did not.

3 Q And you would agree that ultimately, it would be
4 helpful for you to find out from them what was going on
5 with him back in August as compared to four months later,
6 correct?

7 A That could have been helpful, yes.

8 MR. MADSEN: That's all the questions I have.

9 THE COURT: Redirect?

10 REDIRECT EXAMINATION

11 BY MS. PATTERSON:

12 Q Just a couple more questions. Dr. Domino, even
13 with Mr. Curry fabricating his responses, I think you said
14 malingerer, you were still able to form an opinion about
15 his criminal responsibility on August 18th 2010?

16 A Yes, I was.

17 Q And you said that he was still able to engage in
18 conversation with you?

19 A Yes. And, in fact, I -- part of this evaluation,
20 we obviously ask the defendant what happened at the time
21 and he was able to give me a very coherent, logical
22 explanation for his actions around that time.

23 Q Okay. Thank you. No further questions.

24 THE COURT: Mr. Madsen?

25 MR. MADSEN: No further questions.

1 There is evidence in the record and I would be
2 weighing the testimony were I to grant a directed verdict.
3 So that motion would be respectfully denied.

4 **JURY CHARGE CONFERENCE**

5 **THE COURT:** All right. Ms. Patterson, let me hear
6 from you with regard to request for charge and proposed
7 verdict forms.

8 **MS. PATTERSON:** Your Honor, the State still does
9 not believe -- well, we concede, certainly, there was some
10 testimony about Mr. Curry having some type of mental
11 illness, but I don't think it's been proved that the mental
12 illness caused him to not be able to determine right from
13 wrong on the day of the incident. He certainly has a
14 mental illness, but as our expert testified to, that
15 certainly does not mean that he was not able to distinguish
16 between right and wrong or that he could not conform his
17 conduct to the requirements of the law and we just think it
18 should be guilty or not guilty.

19 **THE COURT:** All right. Mr. Madsen?

20 **MR. MADSEN:** Your Honor, we believe that
21 ultimately, the jury should have the decision, obviously,
22 of guilty, guilty but mentally ill, not guilty by reason of
23 insanity and also not guilty. Obviously, we -- it's a
24 different situation because generally although the State
25 has the burden of proof to prove a case beyond a reasonable

1 doubt, in an insanity defense, there has to be a factual
2 determination by the jury that we have got to prove --

3 THE COURT: But doesn't there have to be some
4 evidence that you have to prove by some evidence for the
5 jury, otherwise, won't the jury be speculating?

6 MR. MADSEN: Your Honor, I think that there is
7 sufficient evidence. I believe Dr. Means had testified
8 that during that time he had become manic or was
9 increasingly manic and that she believed his was manic on
10 that day they described.

11 THE COURT: Well, let me ask you this, Mr. Madsen,
12 do you agree that the case of State versus Lewis, 328 South
13 Carolina 273, 494, Southeastern 2d 115 is the current law
14 on this issue.

15 MR. MADSEN: Judge, I am not familiar off the top
16 of my head with that case.

17 THE COURT: All right. Well, that case stands for
18 the proposition that because the crux of an insanity
19 defense is the inability to distinguish right from wrong,
20 one is not entitled to instructions and if they're not
21 entitled to instructions, they're not entitled to a verdict
22 form on the defense absent evidence of such inability
23 regardless of the extent of lay and expert testimony about
24 other manifestations of mental illness.

25 That's what Lewis stands for. It says that Lewis

1 stands for that unless there is evidence in the record of
2 the defendant's inability to distinguish right from wrong,
3 he is not entitled to instructions on the defense absent
4 evidence of such inability, regardless of the extent of lay
5 and expert testimony about other manifestations of mental
6 illness.

7 MR. MADSEN: Judge, we just believe that there is
8 sufficient evidence in the record to go to the jury.

9 THE COURT: Well, do you have any authority for the
10 fact that Lewis is not the current state of the law.

11 MR. MADSEN: No, sir, like I said, I'm not familiar
12 with that.

13 THE COURT: Well Lewis overruled State versus
14 Camden, C-a-m-d-e-n, which is court of appeals opinion.
15 Lewis is a Supreme Court opinion, 1997, and it overruled
16 State versus Camden, which the Court of Appeals summary and
17 to the extent that Camden authorized insanity defense
18 instructions in the absence of evidence of inability to
19 distinguish right from wrong, Camden was overruled, so it
20 seems like to me that it's pretty clear that the law of
21 this state is that such evidence, whether it be expert
22 testimony or lay testimony of other mental illness is not
23 the test.

24 There has got to be evidence and it has to be put
25 forward by the party having the burden of proof, which is

1 the defense in this case, of the defendant's inability to
2 distinguish right from wrong. There is no testimony in
3 this record from the defense' standpoint of his inability
4 to distinguish right from wrong and, in fact, the only
5 testimony in the record is from the State that he did have
6 the ability to distinguish right from wrong. It seems like
7 to me that it falls squarely within State versus Lewis.

8 It's interesting to note that the insanity defense
9 is well founded in our law. Of course, it goes back to the
10 common law adoption of the M'Naghten case, which was
11 decided in England in 1843 and adopted by the South
12 Carolina Supreme Court in State versus Camden in 1973 or
13 probably adopted before that, but it was at least cited in
14 State versus Camden in 1973 and in the rule of M'Naghten,
15 which has always been the law of this case, the law was to
16 establish a defense on the grounds of insanity, it must be
17 clearly proved that at the time of committing the act, the
18 party accused was laboring under such a defect of reason
19 from disease of the mind as not to know the nature and
20 quality of the act he was doing or if he did know it that
21 he did not know he was doing -- what he was doing was
22 wrong.

23 And then in 1984, the State legislature adopted a
24 statute which changed the insanity defense somewhere --
25 somewhat and there in South Carolina Code Section 17-24-10,

1 the statute reads in part A, it is an affirmative defense
2 to a prosecution for a crime that at the time of the
3 commission of the act constituting the offense, the
4 defendant, as a result of mental disease or defect lacked
5 the capacity to distinguish moral or legal right from wrong
6 or legal wrong or to recognize the particular act charged
7 as morally or legally wrong. And then it goes on to say in
8 subparagraph B that the defendant has the burden of proving
9 the defense of insanity by a preponderance of the evidence
10 and then in subparagraph C, that evidence of mental disease
11 or defect that is manifested only by repeated criminal or
12 other antisocial conduct is not sufficient to establish the
13 defense of insanity.

14 There's no question in this case he's got eccentric
15 behavior or other antisocial conduct, but I have not heard
16 any testimony whatsoever in this record that the defendant
17 did not have the ability to distinguish right from wrong.
18 And as I said, that is what the test of Lewis is. State
19 versus Lewis in 44- and I've given the citation on that,
20 which holds that because the crux of the insanity defense
21 is the inability to distinguish right from wrong, one is
22 not entitled to instructions on the defense of insanity
23 absent evidence of such inability, regardless of the extent
24 of lay or expert evidence about other manifestations of
25 mental illness.

1 It follows that if the defendant is not entitled to
2 an instruction on the insanity defense that the jury should
3 not be given the option of making a decision on guilty but
4 mentally ill or not guilty by reason of insanity. If I
5 don't give them any instructions, which is what Lewis says
6 I can't do, then obviously, they would not have the right
7 to make a decision on guilty but mentally ill or not guilty
8 by reason of insanity. To allow the jury to have those
9 other options would be to allow the jury to speculate on
10 whether he meets the definition of insanity under the law;
11 and, of course, we're talking about on the date of the
12 incident and that's what was crucial here; and there's just
13 absolutely no evidence in the record whatsoever that the
14 defendant was unable to distinguish right from wrong or
15 recognize the act charged was wrong; whichever the Court is
16 not going to charge either of those defenses; that is
17 guilty but mentally ill or not guilty by reason of insanity
18 and neither will the jury be given the option of making
19 that decision. The question will be either guilty or not
20 guilty.

21 All right. Since the State -- since the defense
22 did produce evidence in this case, Ms. Patterson do you
23 wish to argue -- are you going to open on the law?

24 **MS. PATTERSON:** No, sir, Your Honor.

25 **THE COURT:** Okay. You waive opening?

1 treated Mr. Curry afterwards. So you heard what happened
2 August 18th and that is what you are to consider. What
3 happened on this particular date. And we submit to you
4 that Mr. Curry planned his revenge because he was denied,
5 and we just ask that you find him guilty of throwing bodily
6 fluids on a correctional officer. I thank you for your
7 patience, I thank you for your time.

8 **JURY CHARGE**

9 **THE COURT:** All right. Ladies and gentlemen of the
10 jury, if you would give me your attention. You have
11 followed very patiently and listened very attentively to
12 the presentation of the evidence in this case and also to
13 the able arguments made by the solicitor, Ms. Patterson, on
14 behalf of the State and Mr. Madsen, on behalf of the
15 defendant and I thank you for that.

16 It now becomes the duty of the trial judge under
17 the constitution of this State to charge and instruct you
18 on the law applicable to this case. And it is your duty as
19 jurors to accept and apply the law as the Court will now
20 state it to you. And as jurors, it is your exclusive duty
21 to decide all of the issues of fact in this case. And for
22 that purpose to determine the effect, the value, the weight
23 and the truth of the evidence presented.

24 Both the State and the defendant have a right to
25 expect that you will conscientiously consider and evaluate

1 the evidence and apply the law of the case thereto to the
2 end that both the State of South Carolina and the defendant
3 will receive and obtain a fair and impartial trial.

4 Now when you use the word defendant, I refer, of
5 course, to Mr. Wayne Stewart Curry. The State of South
6 Carolina by the bill of indictment in this case charges the
7 defendant with the offense known in the law as throwing
8 bodily fluids on a correctional officer. The indictment
9 reads in part that the defendant, Wayne Stewart Curry did
10 in Lexington County on or about August 18th of 2010 while
11 he was an inmate, detainee or person taken into custody
12 attempt to throw or throw bodily fluids, including but not
13 limited to urine, blood, feces, vomit, saliva or semen on
14 an employee of the state or local correctional facility,
15 such person being officer Frederick Hopkins.

16 To this charge and to this indictment, the
17 defendant has entered a plea of not guilty. This plea of
18 not guilty by the defendant places the burden of proof on
19 the State to prove by evidence the guilt of the defendant
20 beyond a reasonable doubt before you, the jury, can find
21 him guilty. The defendant, Mr. Curry is presumed in the
22 law innocent of the charge contained in the indictment. It
23 is a cardinal and fundamental rule of the law of evidence
24 that a defendant, irrespective of the enormity of the
25 charge against him will always be presumed innocent of the

1 crime for which he is indicted, unless and until the guilt
2 of the defendant has been proven by evidence which
3 satisfies you, the jury, of his guilt beyond a reasonable
4 doubt.

5 The presumption of innocence is not a mere legal
6 theory. It is not just a legal phrase. The presumption of
7 innocence is a substantial right to which every accused is
8 entitled. Your Supreme Court has declared that the
9 presumption of innocence is like a robe of righteousness
10 placed about the shoulders of this defendant and it remains
11 with him and assigns to him that class, the innocent, until
12 that presumptive robe of righteousness has been stripped
13 from his person by evidence satisfying you, the jury of his
14 guilt beyond a reasonable doubt. The presumption of
15 innocence accompanies the defendant from the time of his
16 arraignment and appearance in this courtroom and continues
17 with the defendant after you retire to your jury room to
18 reach a verdict. The presumption of innocence remains with
19 the defendant and continues in existence to his benefit
20 until you, the jury, reach the conclusion that the State
21 has proven the guilt of the defendant beyond a reasonable
22 doubt.

23 Now, the State is not required to prove the guilt
24 of the defendant beyond all doubt or beyond every doubt,
25 but beyond a reasonable doubt. What is a reasonable doubt?

1 It is not an imaginary or fanciful doubt or a weak doubt.
2 It is a substantial doubt. It is a doubt which the words
3 imply, a doubt for which you can give or assign a reason
4 based on the testimony and evidence in this case. A
5 reasonable doubt is not any sort of a doubt. You and I
6 know from every day life experiences that you may have a
7 sort of a doubt about any matter that arises, no matter how
8 trivial it may be or how serious it may be. A reasonable
9 doubt is a doubt which makes an honest, sincere
10 conscientious juror in search of the truth hesitate to act.

11 Proof beyond a reasonable doubt is proof which
12 leaves you firmly convinced of the defendant's guilt. If
13 you have a doubt for which you can give or assign a reason
14 as to the guilt of the defendant, then he is entitled to
15 the verdict of not guilty. Reasonable doubt may arise from
16 evidence which is in the case or from the lack of evidence
17 in the case. You, the jury, must make the determination of
18 whether or not reasonable doubt exists as to the guilt of
19 the defendant. The very fact, however, that the jury
20 engages in a full and free discussion of the issues of
21 guilt or non-guilt in this case with normal conversation
22 ebb and flow on these issues does not automatically mean
23 that reasonable doubt exists in this case or in any other
24 case.

25 I charge you that the defendant is entitled to

1 every reasonable doubt arising in the whole case or arising
2 in any defenses asserted by the defendant. If upon any
3 issue of fact essential to conviction and a verdict of
4 guilt you have a reasonable doubt as to how that issue
5 should be resolved, it would be your duty to resolve that
6 doubt in favor of the defendant.

7 A defendant, ladies and gentlemen, is not required
8 to prove his innocence, but the State is required by law to
9 prove every essential element of the offense charged
10 against the defendant by evidence which satisfies you, the
11 jury, of the guilt of the defendant beyond a reasonable
12 doubt before you can convict the defendant and find him
13 guilty.

14 If then upon the whole case you have a reasonable
15 doubt as to the guilt or innocence of the defendant he is
16 entitled to that reasonable doubt and would be entitled to
17 an acquittal and a verdict of not guilty. But on the other
18 hand, if upon the whole case you find the State has proven
19 by evidence which satisfies you, the jury, of the guilt of
20 the defendant beyond a reasonable doubt, then in such
21 circumstances it would equally be your duty to convict the
22 defendant and find him guilty.

23 Now, I instruct you that the indictment in this
24 case which I hold in any hand, is not evidence and cannot
25 be considered by the jury as evidence in this case. The

1 indictment is simply the formal written instrument which
2 contains the charge against the defendant and it serves as
3 the formal document by which this case is brought to trial.
4 During the trial, each of us, you and I, have certain
5 duties to perform. As the trial judge, it is my
6 responsibility to preside over the trial of this case and I
7 also had the duty to rule upon or pass upon the
8 admissibility of evidence offered during the progress of
9 the trial. You are to consider only the competent evidence
10 before you and you are to disregard or disabuse from your
11 mind any evidence ordered stricken from the record of this
12 case during the progress of the trial, if there be any and
13 you are to consider only the evidence which has been
14 presented from the witness stand together with any exhibits
15 which have been admitted into the record of this case.

16 I have the additional duty to charge you the
17 applicable law in this case. As the presiding judge, I am
18 the sole judge of the law in this case and it is your duty
19 to accept and apply the law as I now state it to you. If
20 you have a preconceived idea as to what the law is or what
21 the law ought to be and it does not agree with what I tell
22 you the law is, you are obligated under your oath to
23 abandon this preconception on your part because you are
24 sworn to accept the law precisely as I state it to you.

25 In every case tried before this Court before a

1 jury, the jury becomes the sole and exclusive judge of the
2 facts of the case. You, the jury, are the judge of the
3 facts in this case. The Court is the judge of the law.
4 The constitution of this state has declared that the trial
5 judge shall not intimate, state, comment upon or make any
6 statement to a trial jury about the facts of a case. Since
7 you are the sole judges of the facts you are not to infer
8 from anything that I have said during the progress of this
9 trial in ruling upon the admissibility of evidence or
10 otherwise or anything that I say to you now that I have any
11 opinion about the facts of this case. I do not. The law
12 does not allow me to have an opinion about the facts. This
13 is a matter solely for you, the jury, to determine.

14 As I have stated, it is your duty to determine the
15 value, the weight and the truth of the evidence presented
16 during the course of this trial. Necessarily, then, you
17 must assess the credibility of the witnesses who have
18 testified in this case. Credibility is simply a legalistic
19 term which means believability. It becomes your duty then
20 to analyze and evaluate the evidence and to determine that
21 evidence which convinces you of its truth. I charge you
22 that in determining the question of credibility or
23 believability of a witness, you may believe one witness as
24 against several witnesses or several witnesses as against
25 one witness. You may believe a part of the testimony of a

1 witness and reject the remaining part of the testimony of
2 that same witness. You may believe the testimony of a
3 witness in its entirety; or reject the testimony of a
4 witness in its entirety. You may consider whether any
5 witness has exhibited any interest, any bias, or any
6 prejudice in the case. You may consider the demeanor of a
7 witness, that is the appearance of a witness from the
8 witness stand. And you may consider the opportunity for
9 knowledge concerning those things about which the witness
10 testified. These consideration you do not exercise
11 arbitrarily, but if in your good judgment there is sound
12 reason in the record for so doing, because your objective,
13 ladies and gentlemen, is to find the truth, whether it
14 comes from a witness or witnesses for the State of South
15 Carolina or a witness or witnesses for the defendant. And
16 in doing so, in exercising your mental processes and in
17 determining what you consider to be true, the law simply
18 requires that you exercise your good judgment, your common
19 sense, your sense of logic and reason and your experiences
20 in life. You then apply these attributes of ability to the
21 evidence and determine what you consider to be the truthful
22 evidence. And to those true state of facts as determined
23 by you, the jury, you take and apply the law as I now state
24 it to you and thus arrive at a true verdict in this case.

25 Now, as I have said, the defendant in this case is

1 charged with the offense of throwing bodily fluids on a
2 correctional officer and I want to define that offense for
3 you. Section 24-13-470 of the Code of Laws of South
4 Carolina provides as follows: An inmate, a detainee, a
5 person taken into custody or a person under arrest who
6 attempts to throw or throws bodily fluids, including, but
7 not limited to urine, blood, feces, vomit, saliva or semen
8 on an employee of a state correctional facility or local
9 detention facility, a state or local law enforcement
10 officer, a visitor of a state correctional facility or
11 local detention facility or any person authorized to be
12 present in a state correctional facility or local detention
13 facility in an official capacity is guilty of a crime known
14 as throwing bodily fluids on a correctional facility
15 employee or certain other person.

16 So the State, of course, must prove that the
17 defendant was a person that is classified in the statute as
18 an inmate, detainee, or person taken into custody or person
19 under arrest. The second element is that they must show
20 that the defendant did throw or attempt to throw bodily
21 fluids as those -- that term is defined in the statute and
22 third they must show that it was upon a State or local
23 correction facility officer or a person authorized to be
24 there.

25 Now, ladies and gentlemen, there are generally two

1 types of evidence presented during a trial: Direct and
2 circumstantial evidence. Direct evidence is the testimony
3 of a person who asserts or claims to have actual knowledge
4 of a fact such as an eyewitness. Circumstantial evidence
5 is proof of a chain of facts or circumstances indicating
6 the existence of a fact. The law makes absolutely no
7 distinction between the weight or the value to be given to
8 either direct or circumstantial evidence. Nor is a greater
9 degree of certainty required of circumstantial evidence
10 than of direct evidence. You should weigh all of the
11 evidence in this case. After weighing all of the evidence
12 if you are not convinced of the guilt of the defendant
13 beyond a reasonable doubt, you would find the defendant not
14 guilty.

15 Now, there has also been testimony in this case of
16 expert witnesses. Although lay witnesses are limited to
17 testifying about facts within their knowledge and are not
18 allowed to give opinions, certain witnesses who by their
19 training, education, experience are considered expert in a
20 particular field may give their opinions in that field
21 based upon the facts of the matter and their conclusions.
22 Their opinions and deductions from the evidence are for
23 you, the jury, to consider as you would any other evidence
24 in this case and you are not required to decide disputed
25 questions after comparison and consideration -- I'm sorry,

1 you are required to decide disputed questions after
2 comparison and consideration of all of the evidence in this
3 case. You should consider expert opinions received in
4 evidence in this case and give it such weight as you feel
5 it deserves. An expert is to be given no greater weight
6 than that of other witnesses simply because the witness is
7 an expert.

8 Now, ladies and gentlemen, I am about finished with
9 my instructions to you, but I will tell you that you are
10 not partisans or advocates for the State of South Carolina
11 or for this defendant. It has been said that you do not
12 serve on the jury to reward your friends or punish your
13 enemies. Obviously such a perverted system of justice
14 would be intolerable. You have been selected by both the
15 State and this defendant as fair and impartial jurors. It
16 is your duty then by your joint deliberations to determine
17 the truth in this case, giving to this defendant the
18 benefit of every reasonable doubt on each and every issue
19 and then to the facts which you determine to be true, you
20 then take and apply the law which has been given to you by
21 the Court and thus arrive at a verdict which does speak the
22 truth. For the word verdict, ladies and gentlemen, has a
23 Latin derivative. It comes from the Latin word, verdict,
24 veredicto, meaning to speak the truth or truth saying. And
25 when you have accomplished these responsibilities, you will

1 have satisfied your oath as jurors, and you will have
2 discharged your duty to this Court.

3 Now, I want to instruct you on the forms of verdict
4 in this case. If the State has failed to prove the guilt
5 of the defendant beyond a reasonable doubt, your verdict
6 would be two words, not guilty. If the State has proven
7 the guilt of the defendant beyond a reasonable doubt, your
8 verdict would be one word, guilty. The verdict that you
9 render in this case must be the verdict of each and every
10 juror. It must be your unanimous verdict. All twelve of
11 you must agree on the verdict which you authorize the
12 foreman to write.

13 Now, Mr. Foreman, I have prepared a verdict form on
14 a sheet of paper and it is written verdict form, and I
15 would tell you that the sequence on which I have stated the
16 possible verdicts -- the possible verdicts in this case or
17 the possible forms of verdicts in the case has absolutely
18 no significance whatsoever and is not suggestive of any
19 verdict on the part of the Court. Of course, when you put
20 something down on paper, I had to put something first and
21 something second, but you should not infer from the order
22 in which the possible verdicts are written on this sheet
23 that I have any opinion as to what your verdict should be.
24 I do not. The law does not allow me to have an opinion
25 about your verdict. That is a matter solely up to you.

1 But across the top up here, we simply have the
2 State and the County and the Court, the name of the case
3 and the indictment number and it says: Verdict: And we,
4 the jury, by unanimous agreement on the charge of throwing
5 bodily fluids on a correctional officer find the defendant,
6 Wayne Stewart Curry either guilty or not guilty and a place
7 for you to sign right here. And you would choose one of
8 those by either putting an X or check mark in one or the
9 other and then sign your name, whether it's a unanimous
10 verdict of the jury, sign your name and date it and notify
11 the bailiff and we will return you to the courtroom.

12 Now, I'm going to send you to your jury room, but I
13 ask that you not begin your deliberations just yet. The
14 law does require that I take up certain matters of law with
15 the attorneys involved. If it is not necessary for me to
16 bring you back into the courtroom for additional
17 instructions, the bailiff will bring you the verdict form,
18 will also bring you the exhibits in this case and instruct
19 you to begin your deliberations.

20 When you have reached a verdict, the--- just knock
21 on the door and we will return you to the courtroom as soon
22 as possible. I will also tell you so that you will not
23 feel pressed and will have plenty of time in which to
24 consider all the aspects of this case, as you know, lunch
25 has been ordered and it should be here any time now, at

1 least by one o'clock if not before. And of course, you can
2 either stop and eat your lunch and then deliberate or
3 continue talking while you're eating your lunch, but lunch
4 will be brought in just as soon as it gets here.

5 With those instructions then, I'm going to ask the
6 jurors, with the exception of the alternate to go to your
7 jury room. Please do not begin your discussions just yet.
8 You will be instructed when to begin your deliberations.
9 Thank you, you may go with the bailiff.

10 (WHEREUPON the jury left the courtroom at 12:40
11 p.m.)

12 THE COURT: Any additions or exceptions on behalf
13 of the State, Ms. Patterson?

14 MS. PATTERSON: No, sir, Your Honor.

15 THE COURT: On behalf of the defendant, Mr. Madsen?

16 MR. MADSEN: None other than I think I'm probably
17 required to just renew my request for the charge on the
18 mental health defense of not guilty by reason of insanity
19 or guilty but mentally ill.

20 THE COURT: The record will reflect that the
21 defendant has timely requested an instruction on not guilty
22 by reason of insanity and also guilty but mentally ill and
23 for the reasons previously put on the record, the Court has
24 declined to instruct the jury on those points and also to
25 give the jury the option of finding those verdicts. But I

1 think that the record is adequately protected. Thank you.

2 All right. Check the exhibits, Counsel, and get
3 the bailiff -- here is the verdict form and tell the jury
4 that they may begin their deliberations.

5 (WHEREUPON deliberations began at 12:43 p.m.)

6 THE COURT: Madame alternate, the law does not
7 allow me to have but twelve jurors. The purpose of drawing
8 an alternate is in the event that somebody is ill or for
9 some other reason cannot serve that the alternate would
10 take that juror's place. But fortunately in this case, the
11 twelve members of the jury have heard all of the testimony
12 and the law does only allow me to have twelve jurors. So
13 even though you've heard all of the testimony in this case.
14 You will not participate in the decision. So I'm going to
15 excuse you from any further responsibilities in connection
16 with this matter.

17 I will tell you that once you've been excused as a
18 juror, it is not illegal for you to talk with anyone about
19 your service on this case. It is not illegal for anyone to
20 talk to you about your service on the case. It is a
21 practice of which I strongly disprove and I strongly
22 discourage, but it's not illegal. You have the right to
23 talk with anyone and you have the right not to talk with
24 anyone and if anybody should want to talk with you about
25 your service on the case and you don't want to talk about

1 Madame Clerk, you may publish the verdict.

2 **VERDICT**

3 **THE CLERK:** Indictment 2011-GS-32-3528, State
4 versus Wayne Stewart Curry, we the jury by unanimous
5 agreement on the charge of throwing bodily fluids on a
6 corrections officer, find the defendant Wayne Stewart Curry
7 guilty. And it is so signed by the foreperson, November 6,
8 2012.

9 Mr. Foreman, ladies and gentlemen of the jury, if
10 this is your verdict, please indicate, each of you, by
11 raising your right hand.

12 All hands are raised, Your Honor.

13 **THE COURT:** Thank you. Thank you, Mr. Madsen, you
14 and your client may be seated.

15 Anything before the jury is discharged, Mr. Madsen.

16 **MR. MADSEN:** Not before they're discharged, Your
17 Honor.

18 **THE COURT:** All right. All right. Ladies and
19 gentlemen, this will conclude your services on this case
20 and I'm going to discharge you from any further service on
21 this case. I will tell you that in my view, the jury's
22 role in the fact finding process is so important that the
23 trial judge should not comment on the verdict of a jury
24 even after the jury has reached a verdict and I make it a
25 practice and policy never to comment on a verdict of a

1 o'clock tonight.

2 (WHEREUPON the jury left the courtroom at 1:46
3 p.m.)

4 THE COURT: All right. Mr. Madsen, I'll be glad to
5 hear from you by way of motions.

6 POST-TRIAL MOTIONS

7 MR. MADSEN: Thank you, Your Honor, we would renew
8 our -- any motions and objections that we made during the
9 trial. Additionally, we would renew the directed verdict
10 trial motion that we made. We would move for a new trial
11 at this point in time. Additionally, Your Honor, we would
12 again move for a new trial -- not guilty only based on the
13 directed verdict but also the Court had declined to allow
14 the jurors to consider the mental health defense, whether
15 guilty and mentally ill or not guilty by reason of
16 insanity.

17 We do understand that we did have a burden of proof
18 in that situation that we had to prove by preponderance,
19 kind of felt that the Court was ultimately looking for
20 someone, whether it be an expert or a lay witness, to
21 testify that at that time, at that minute that he did not
22 know the difference between right and wrong or either that
23 he was insane. Obviously --

24 THE COURT: Isn't that the test?

25 MR. MADSEN: Well --

1 **THE COURT:** At the time of the commission of the
2 crime? That the defendant is able to distinguish right
3 from wrong and conform his conduct to the standards of
4 society? Isn't that the test of an insanity defense?

5 **MR. MADSEN:** Yes, Your Honor, but we believe that
6 whether it was the testimony of Dr. Cherry that while he
7 was in the jail he had a major mental illness, bipolar,
8 either his prior diagnosis or even Dr. Means who had
9 testified that he was kind of starting to become manic and
10 that she believed that he was manic at that time or even a
11 hysterical given the fact from his mother or his daughter
12 that that's -- that he's kind of out there even when he's
13 not incarcerated.

14 We believed that that should have been submitted --
15 that that at least presented some type of direct and/or
16 potentially circumstantial evidence of. We certainly
17 understand the ruling of the Court and appreciate that, but
18 just wanted to put that on the record, Your Honor.

19 **THE COURT:** All right, sir. Thank you, Mr. Madsen.
20 I can appreciate that and I will tell you that I gave a lot
21 of thought to this and I even read some of the law
22 regarding the defense of insanity or -- over the evening
23 recess last night and it became very clear in my reading to
24 me that the law is not that there are manifestations of
25 mental illness -- in fact, I think the law is to the effect

1 that even if there are manifestations of mental illness,
2 that is not enough, that there has to be proof of a
3 defendant's inability to distinguish right from wrong and
4 there was no proof in this case whatsoever of his inability
5 to distinguish right from wrong and I think that under
6 State versus Lewis, the proper test was applied and it
7 would have been improper to send to it to jury and they
8 would have simply been allowed to speculate as to whether
9 or not the defense of insanity had been proven by the
10 defendant as is required to do; and I'm satisfied that the
11 Court's ruling on that matter is correct and I would
12 respectfully deny the motions made by the defendant at this
13 time.

14 MR. MADSEN: Thank you, Your Honor.

15 THE COURT: All right. Come on around, please,
16 Mr. Curry and Mr. Madsen.

17 And Madame Solicitor, have you got a sentence
18 sheet?

19 MS. PATTERSON: Yes, sir, Your Honor.

20 SENTENCE

21 THE COURT: All right. Madame Solicitor, anything
22 from the State with regard to prior record?

23 MS. PATTERSON: Beg the Court's indulgence, Your
24 Honor.

25 (WHEREUPON there was a pause in the proceedings.)

1 Ultimately I had discussions with Ms. Alvez. I
2 requested the solicitor at the time, which was not
3 Ms. Patterson, for an evaluation on him almost immediately
4 after I had gotten it. Unfortunately, for some reason,
5 that evaluation, she did not consent to that evaluation for
6 approximately two to three months, but ultimately he got
7 these two or got a throwing bodily fluids charge. Actually
8 there was another count about a week, week and a half
9 later; but Judge Keesley, our administrative judge, had him
10 evaluated and we've kind of been in that situation ever
11 since.

12 I can tell you in my dealings with Wayne, I mean
13 you can see different sides of Wayne, where he's a little
14 bit hyped up and agitated. There are times when you can --
15 Wayne's not a conversationalist, he doesn't speak a lot,
16 but there are times when you can talk with him and then
17 there have been times where he just won't talk over
18 extended periods of time. I clearly believe that this is a
19 fellow that not only has a major mental illness, but
20 obviously, as I think the doctors have said, has kind of
21 poor insight into his problems that have kind of been going
22 on throughout his entire life, Your Honor.

23 **THE COURT:** Okay, sir. Thank you, sir.

24 Well, there is no question in my mind, I agree with
25 you Mr. Madsen that I think Mr. Curry definitely has some

1 mental health issues. I think the testimony is clear on
2 that. I think even the State's witnesses testified to that
3 effect. I do not think that the tests were met that would
4 allow the submission of the two verdict forms guilty but
5 mentally ill or not guilty by reason of insanity. I do not
6 believe that the test as set forth in the case law and
7 statutes of this state were met; and that's why I did not
8 allow those issues to go to the jury.

9 I do think that he needs some treatment and while I
10 cannot order treatment, I'm going to recommend it and hope
11 that maybe while at the South Carolina Department of
12 Corrections he will receive some treatment for his mental
13 health condition.

14 It's also noted by the Court through the entire
15 record that the entire record that was recited by the
16 solicitor's office was, for the most part, minor offenses
17 and nothing of a serious or violent nature, although I do
18 consider the charges in this case pretty serious. The
19 officers at the detention facilities are simply doing their
20 job and should not be subjected to the kind of conduct for
21 which this defendant was convicted of. And the word needs
22 to be clear that anybody that does engage in this type of
23 conduct is going to prison. In fact, I believe if I'm
24 correct, the statute actually provides that if they're
25 serving time on another conviction, that the sentence on

1 the throwing bodily fluids is consecutive, but I don't
2 believe that was the case with him.

3 In any event, I'm not going to give him the
4 maximum, but I am going to give him a substantial prison
5 sentence and, of course, I'll give him credit for the time
6 he's served.

7 Sentence of the Court is the defendant is committed
8 to the State Department of Corrections for a term of eight
9 and a half years. He will be given credit for the time he
10 has served and I'm putting a recommendation on the sentence
11 sheet, recommend mental health treatment while at the South
12 Carolina Department of Corrections.

13 I thought about a split sentence Mr. Madsen, with a
14 term of probation, but I don't believe that he would be
15 able to do probation and I think we would just be setting
16 him up for failure, so --

17 MR. MADSEN: I would not disagree, Your Honor.

18 THE COURT: So the sentence is eight and a half
19 years, credit for time served, recommend mental health
20 treatment while at the South Carolina Department of
21 Corrections.

22 All right. The hearing will be concluded. Before
23 anybody leaves, I would give the jurors who had come in an
24 opportunity to leave now if they would like to leave.

25 (WHEREUPON there was a pause while the jurors left

**SOUTH CAROLINA DEPARTMENT OF MENTAL HEALTH
FORENSIC EVALUATION SERVICE**

Name: CURRY, Wayne (SCDMH#931-5422)

Type of Evaluation: Competence to Stand Trial

Date of Evaluation: 12/07/10

Evaluators: Marla L. Domino, Ph.D. (Presiding)
Cassandra Sims, LMSW (Second)

PERIOD 1-000-001-000	COURT'S	
	EXHIBIT NO.	/
	IDENTIFICATION/EVIDENCE	
	DKT. #	2011-05-3528
	DATE	11-2-2010

Identifying & Referral Data: Mr. Curry was ordered by the Lexington County Court of General Sessions to undergo an evaluation of his competence to stand trial because, "The defendant has a history of mental health treatment and counsel's interaction with Mr. Curry." According to that court order, Mr. Curry is currently charged with Burglary-2nd Degree, Assault and Battery-2nd Degree, and Throwing Bodily Fluids. He is waiting adjudication of these charges at the Lexington County Detention Center.

Sources of Information:

1. Interview with Mr. Curry on 11/02/10 for approximately 1 hour 35 minutes.
2. State of South Carolina, County of Sumter, Court of General Sessions, Order for Competency to Stand Trial Evaluation Pursuant to *State v. Blair* (dated 09/24/10).
3. State of South Carolina, County of Lexington, Order for Criminal Responsibility and Capacity to Conform Evaluation (M'Naughten), received 09/24/10.
4. Review of Mr. Curry's current South Carolina Department of Mental Health (SCDMH) Forensic Evaluation Service outpatient records, including a Psychiatric Social Work Admission Assessment conducted by Gregg Phillips (intern) and Cassandra Sims, LMSW, with Mr. Curry's mother, Ms. Ella Walker.
5. Review of Mr. Curry's past SCDMH outpatient and inpatient charts, including past outpatient, forensic evaluations by the undersigned on (evaluation dates of: 11/28/06, 11/20/07, 01/03/08, 02/06/08, 05/21/08, 08/19/08, and 05/05/09).
6. Information pertaining to Mr. Curry's current charges including:
 - a. Lexington County Sheriff's Department Booking Forms
 - b. Arrest Warrant M-301301
 - c. Incident Nos. 20060556, 20060551, and 20060555 Narratives
 - d. Black and white photocopies of photographs labeled "Curry, Wayne, 08/28/10" (case#20060553)
 - e. Correct Care Solutions, Inc., Physician's Orders (dated 08/28/10)
 - f. State of South Carolina, County of Lexington, Request for Discovery
 - g. Arrest Warrant M-301243
 - h. Lexington County Sheriff's Department Case File Summary and Checklist (case#10076752)
 - i. Incident No. 20060188, 20060185, 20060189 Narratives
 - j. Black and white photocopies of photographs (case#20060189, dated 10/07/10)
 - k. Commitment (dated 10/25/10)
 - l. Lexington County Sheriff's Department Case File Checklist (case#09109903)

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- m. Arrest Warrant J-849838
- n. Lexington County Sheriff's Department Case File, Incident Report, Supplemental Incident Report, and Investigative Report (case#09109903)
- o. Voluntary Statement by Rachel Neese
- 7. Mr. Curry's adult criminal record (NCIC).
- 8. Records from Aiken-Barnwell Mental Health Center (dated 02/04/03, 08/19/03 - 11/13/03, 07/19/06, 04/16/08, 10/14/08 and 04/06/10-04/07/10).
- 9. Records from Aiken Mental Health Center (dated 11/02/93 and 07/18/00).
- 10. Records from the South Carolina Department of Corrections (dated August 1997, November 1998, and April - May 1999), including a medical abstract (dated 04/30/99).
- 11. Gilliam Psychiatric Hospital Discharge Summary (dated 04/08/99 - 05/07/99).
- 12. SCDMH forensic report authored by Scott Lance, M.D. (evaluations conducted on 10/31/00 and 03/21/01).
- 13. SCDMH forensic report authored by Dafferlin Barnard-Dupree, M.D. (evaluation conducted on 01/07/97).
- 14. Southeastern Service Group records (dated 03/16/06, 07/12/06, and 07/19/06).
- 15. Forensic report authored by Pamela Crawford, M.D. (dated 02/09/07).
- 16. Aiken County Doris Gravat Detention Center records (dated 12/22/06 - 10/23/07).
- 17. Psychological testing and report authored by the undersigned and conducted on 01/30/08.

Records from the Lexington County Detention Center have been requested but not received.

Limits on Confidentiality: At the outset of this evaluation, Mr. Curry was notified of these examiners' role, the purpose of this evaluation, and the limits on confidentiality. Upon inquiry, he exhibited a poor understanding of this information, which was assessed to be feigned. For example, he noted this evaluation to be ordered by "the solicitor" to assess, "How I am, am I healthy." He identified this exam as confidential, and stated "the secretary of the solicitor, and the counselor ... the doctor ... psychologist" would receive a copy of the resulting report. He asserted a belief that these examiners' job was to assist him, and was provided corrective information. He declined an offer to telephone his attorney prior to initiating this exam. He voluntarily signed an information form about this exam and indicated a willingness to proceed.

Personal History: The following section is quoted verbatim from two previous evaluations of Mr. Curry with the undersigned:

Mr. Wayne Curry, one of six children, was born in Augusta, Georgia, and raised in Aiken, South Carolina, by his mother. He has never been married and has fathered one child, now in her early 20's. Mr. Curry reportedly has very limited contact with his family. Prior to his recent arrest, he was reportedly living in his mother's home with his mother and niece, where he had been residing for the past 1.5 years; in a recent interview, Mr. Curry's mother denied this assertion.

Regarding his education history, Mr. Curry reportedly dropped out of school in the 5th grade because "it was hard" and endorsed attendance in special education classes for 3rd, 4th, and 5th grade, noting, "They said I was slow." Mr. Curry was reportedly suspended numerous times for fighting and "causing commotion in class," and was expelled at least once. Collateral data *RM*

and Ms. Curry indicate Mr. Curry was expelled and had significant behavioral problems (e.g., stealing money and fighting). His mother also reported to SCDMH Social Worker Elizabeth Whetstone that Mr. Curry was sent to a "special school" in 4th or 5th grade. Collateral sources also note a history of learning disability and placement in emotionally-handicapped classrooms. Available data describe Mr. Curry's adolescence and young adulthood as significant for behavioral problems, aggressiveness (e.g., threatened his mother with a knife, damaging property), and substance abuse. Reportedly, at age 15, Mr. Curry was sent to the Department of Juvenile Justice's John G. Richards substance abuse program/school for approximately two years, subsequent to a marijuana-related charge.

When asked about his work history, Mr. Curry noted, "I ain't had many jobs" barring delivering pizza in the 1980's and working for his uncle, a salesman. Available data also list previous jobs in construction and brickyard work. Per Mr. Curry's report, he has been receiving disability for "paranoid schizophrenia" since approximately 1995 and his mother is his payee; however in a recent conversation with Mr. Curry's mother, she stated that she is no longer his payee as he reportedly does not trust her.

Mr. Curry has a lengthy history of adult criminal charges beginning in 1978, that includes arrests for disorderly conduct, simple assault, public drunkenness, criminal domestic violence, trespassing, driving under suspension, malicious injury to real property, resisting an officer, and forgery. Mr. Curry reported two prison terms, one for "fighting" which lasted 120 days and another for a drug-related charge (per his report, for taking his mother's prescription Librium) for "a little while."

Although Mr. Curry denied any history of injuries, surgeries, hospitalizations or significant medical problems as a child or adult, SCDMH records indicate a head injury at age 11 or 12 secondary to a motor vehicle accident. Records also indicate he was diagnosed with Granulomatous Disease (an immune deficiency disorder) and broke his leg in 1971.

During the current evaluation, Mr. Curry reported a substance use history dissimilar to that reported in collateral data. Specifically, he reportedly began drinking alcohol in his late teens at the rate of one beer per day. He noted consuming approximately one case of beer over the course of six months as an adult, and indicated his last drink to be about 15 months ago. Mr. Curry denied a history of delirium tremens and social problems related to drinking; he did endorse a history of blackouts and one past charge of public drunkenness. Mr. Curry denied any past illicit drug use and reported only the misuse of his mother's prescription of Librium, years ago. Per his account, he has never participated in substance abuse treatment. Available records described Mr. Curry as having a history of significant abuse of both illicit drugs and alcohol, since at least age 14.

When asked about his psychiatric history, Mr. Curry reported hearing "voices" for the past 10 years. Per his account, these "voices" instruct him to kill himself or "they be telling jokes ... to each other and I can hear them; that's why I laugh once in a while." According to Mr. Curry, these voices have occurred every day for the past 10 years and consist of "three to four" men, women, and children. He noted these "voices" to be unfamiliar, different each time, and that they, "comes and goes, comes and goes" throughout the day, noting no particular pattern. He

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also stated, "Sometimes I can see them - black faces with big white lips ... they look sickening." Per his report, there are about "five" faces of "men, women, and children." He denied ever experiencing any other such perceptual disturbances. He likewise denied a history of delusional thoughts or symptoms suggesting mood lability (e.g., depression, mania). In a recent interview, Ms. Walker informed SCDMH Social Worker (Ms. Whetstone) that her son reports seeing a "bald man," frequently looks around corners, and sleeps under the bed.

Regarding his history of psychiatric care, Mr. Curry denied any experience with inpatient or outpatient treatment. When alerted that these examiners had documentation to the contrary, he then acknowledged outpatient treatment "a while ago" and two GPH admissions, the last of which occurred in 1999. Per his report, he has not received any mental health treatment in the past two or three years.

Available records indicate Mr. Curry's first instance of mental health care occurred in 1992, when he was admitted to GPH while incarcerated. A discharge summary from the last of five admissions to GPH indicates treatment periods at this facility of 03/23/92-05/01/92, 09/11/92-09/16/92, 03/04/93-03/23/93, 05/11/93-11/01/93, and 04/08/99-05/07/99. A 1999 GPH discharge summary note these admissions were preceded by paranoia; symptoms of Posttraumatic Stress Disorder; anxiety; mania; possible homicidal ideation; destructive, demanding, and uncooperative behavior; and medication noncompliance. Per that discharge summary, clinicians during those admissions offered diagnoses of substance abuse or dependence; Antisocial Personality Disorder; Schizophrenia, Paranoid Type; Delusional Disorder; Polysubstance Abuse by History; and/or Alcohol Dependence by History. He was prescribed with antipsychotics (Zyprexa, Haldol), and/or Cogentin (for medication side effects).

Per records from Aiken Mental Health Center, Mr. Curry was initially referred for outpatient psychiatric treatment by GPH staff; he was first seen on 11/02/93 where he was diagnosed with Schizophrenia, Paranoid Type, and Delusional Disorder by History. Since that time, Mr. Curry has been seen by Aiken Mental Health Center staff on a sporadic basis from 1993-2003. Those records noted behavioral difficulties with staff and peers in jail; a history of paranoia (e.g., reporting that people were watching and spying on him, that the jail staff was trying to poison him, that a corrections guard had injected him with AIDS); irritability; hostility; rambling speech; variable sleep and appetite; long latencies before responding; uncooperativeness; and a "selective" memory. Those records also indicate Mr. Curry reported auditory (e.g., "good and bad voices," voices instructing him to kill himself and commit illegal acts), and visual hallucinations (e.g., seeing "demons," spirits/people walking through walls, "wolverine"). However, clinicians noted that Mr. Curry's report of such symptoms changed, that he has presented with "questionable hallucinations," and that his problems were "more behavioral than mental." At times he has not been prescribed any medications. When given medications (e.g., Haldol, Zyprexa), collateral data indicate a history of poor compliance, primarily due to side-effects (e.g., impaired sexual functioning). Diagnoses offered included Delusional Disorder, Paranoid Type by History; Schizophrenia, Paranoid Type; Antisocial Personality Disorder; Alcohol Abuse; Alcohol Dependence; Cocaine Abuse; and Malingering (provisional).

Forensic History: Mr. Curry first participated in a forensic exam on 01/07/97 with SCDMH evaluators. In the associated report, the examiner (Dafferlin Barnard-Dupree, M.D.) noted, "...initially he attempts to malingering symptoms but when confronted he changes his responses to give accurate responses." Diagnoses of personality disorder, not otherwise specified, and polysubstance dependence (marijuana, alcohol, cocaine) and were given. Mr. Curry was next evaluated on 10/31/00 and 03/21/01 by Scott Lance, M.D., who offered a diagnosis of malingering (of cognitive and psychotic symptoms). Dr. Lance provided no opinion on the issue of criminal responsibility, but did opine Mr. Curry to be competent to stand trial.

He was next seen by the undersigned on 11/28/06 for an evaluation of his criminal responsibility; it was opined that Mr. Curry was malingering and criminally responsible. He was evaluated by Dr. Pamela Crawford on 02/09/07 who opined Mr. Curry to be incompetent to stand trial secondary to "acute psychosis." He was seen by the undersigned again on 11/20/07, 01/03/08 (followed by a 15-day inpatient observation period), and 02/06/08 when he was assessed to be malingering; due to his non-cooperation, it was opined that there was insufficient data to overcome the presumption of competence (to stand trial). He was subsequently evaluated by Gregory Smith, M.D. at the Aiken-Barnwell Mental Health Center (ABMHC) in April 2008 and was diagnosed with schizophrenia, alcohol dependence and cocaine abuse.

He next participated in an evaluation on 05/21/08 with the undersigned, when Mr. Curry was uncooperative and it was opined that there was insufficient data to overcome the presumption of competence; he was subsequently deemed incompetent to stand trial by the court on 06/16/08 and admitted to SCDMH for competency restoration on 06/19/08. When he was reexamined by the undersigned after that treatment period (on 08/19/08), again Mr. Curry was uncooperative and it was opined that there was insufficient evidence to overcome the presumption of competence at this time. Reportedly, he was adjudicated by the Court as incompetent to stand trial and unlikely to be restored to competence one month later. Mr. Curry next participated in a court-ordered evaluation on 10/14/08 at ABMHC when Dr. Smith assessed him to be malingering and not in need of inpatient treatment. He participated in an evaluation with the undersigned on 05/05/09, when Mr. Curry was again uncooperative and it was opined that there was insufficient evidence to overcome the presumption of competence at this time.

In March 2010, Mr. Curry was emergently admitted to the inpatient, SCDMH forensic unit from jail where he had been "paranoid, hostile, and emotionally labile," per SCDMH records. During that admission, per his inpatient chart, Mr. Curry reported wanting to return to jail (and riot to the community) and admitted "that he acted out in jail because he did not want to be there." The associated discharge summary indicates that no objective signs of psychosis were observed, although Mr. Curry was prescribed Haldol (antipsychotic) due to previous records suggesting genuine mental illness. Final diagnoses of psychotic disorder, not otherwise specified, malingering, and alcohol dependence were offered. Upon discharge (04/06/10 - 04/07/10), he was evaluated by Dr. Smith of ABMHC who rendered diagnoses of malingering and alcohol dependence.

Current Mental Status: A mental status examination performed today revealed a 51-year-old, African-American male who presented with adequate, personal hygiene and clean attire, although was somewhat malodorous. No auditory or visual abnormalities were noted, although Mr. Curry professed to have poor eyesight. His right hand exhibited a visible tremor, which Mr. Curry stated was a side effect of his current medication. He exhibited variable eye contact and his use of mannerisms and gestures was within normal limits. He was uncooperative with much of the evaluation in that he provided intentionally irrelevant or erroneous responses to many questions.

Questions designed to assess Mr. Curry's memory, attention, concentration, fund of knowledge, and abstract thinking would suggest deficits in all areas; however, his answers appeared to be intentionally incorrect and he did not demonstrate similar deficits in any other part of the exam. Examples of responses he rendered include identifying the current U.S. President as "Eisenhower," the colors of the U.S. flag as "brown and green," and the spelling of cat to be "C-O-T." Similarly, he interpreted the proverb, don't cry over spilled milk, to mean "Drink it. It's gonna make you feel better." In addition, he identified the current date as "February 14th, 2010" [12/07/10] and the day of the week as "Monday" [Tuesday]; he accurately identified the approximate time, location, and situation. Mr. Curry's speech was clear, of normal volume, and of average rate. He presented with goal-directed, linear thinking.

When asked, Mr. Curry described his current mood as "bad" and his typical mood as "good." He denied current thoughts of wanting to hurt himself or others. He noted his sleep, energy, appetite, and relationships with jail staff to be "all right." He described poor relationships with peers because "I don't like people." During today's exam, Mr. Curry's affect [observed emotional expression] appeared silly, and he frequently laughed, smiled and/or smirked for no apparent reason; this was assessed to be volitional. He denied current symptoms of mood disturbance (e.g., depression) and no overt signs of such were observed. During today's exam, Mr. Curry asserted, "I'm hearing voices. I'm hearing all sorts of things. I hear voices all the time ... I hear them constantly, all day. I hear them now. You hear them?" Despite this claim, Mr. Curry had no difficulty attending to the interview or to participating in the give and take of conversation; it appeared his report of auditory hallucinations was feigned and there was no overt evidence of psychosis.

Several times during this exam, including during the first few minutes, Mr. Curry asserted "I'm on medication." When given the chance to elaborate, he reported current prescription of several medications "for my mental health" although did not know their names. When asked why it was important for these examiners to know about his medications, he replied "I want you to know that ... I just do." As in previous evaluations, Mr. Curry requested to see the photograph taken by SCDMH security officers.

Diagnostic Impressions: During today's examination, Mr. Curry malingered (fabricated or exaggerated) cognitive deficits and symptoms of psychosis. Mr. Curry's attempt to misrepresent his psychiatric symptoms during this and past evaluations does not necessarily mean he has not experienced genuine symptoms of a mental illness; available records document psychiatric treatment since 1992 for symptoms of schizophrenia. However, Mr. Curry's

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malingering significantly limits the ability of these examiners to offer an accurate diagnosis (e.g., of a psychotic disorder) and, therefore, none will be offered at this time.

Information Relevant to Competence to Stand Trial: Pursuant to S.C. Code Ann. §44-23-410, the legal criteria for determining fitness (competence) to stand trial is as follows: "[a person] ... is not fit to stand trial because the person lacks the capacity to understand the proceedings against him [her] or to assist in his [her] own defense as a result of a lack of mental capacity ..."

Mr. Curry identified his charges as "burglary second" which alleged occurred "about one year ago" and "assault on an officer and one on bodily fluids," which allegedly occurred "three months ago." Per his account, he incurred the former charge because "they say I broke in a store" and the latter charges because he allegedly "threw some feces at an officer." He identified burglary to mean "breakin' into somebody's house, breakin' into somebody's business" and assault and battery to mean "hit somebody." He identified bodily fluids as "feces." He noted his charges to be serious although would not identify why. He identified them as "felonies," but continued to assert that felonies are less serious than misdemeanors even after corrective education. He guessed the maximum penalty for burglary-second to be "15 years" and appeared to be randomly guessing on the maximum penalty for his other charges, even after education. He noted "bank robbery" to be a charge more serious, and "murder" to be a charge less serious, than his own; when confronted about this latter answer, he amended his response to "trespassing."

When asked, Mr. Curry identified the "solicitor, judge, the secretaries" as individuals typically present in the courtroom; he identified "the solicitor" as the defendant, even after education. According to Mr. Curry, "the solicitor" is his advocate whose job it is to "get you out of jail" and represents "the judge"; after confronted about his responses, Mr. Curry then noted the solicitor's job is "to lock you up." Mr. Curry similarly identified his lawyer as against him, although stated his job is "to get me out of jail." Mr. Curry identified his attorney as "Robert Madsen" and stated they have met twice. When asked of his impressions of counsel, Mr. Curry stated, "I think he's rotten to the core ... [he] wants me to fry," and acknowledged that he may attempt to obtain another lawyer; Mr. Curry was unable to provide specific reasons for this assessment of Mr. Madsen. He acknowledged having a good rapport with his former public defender, Ms. Alves. Mr. Curry expects his lawyer to "get me out of jail" and was unable or unwilling to identify ways he can assist counsel. He identified the "judge" as in charge of the courtroom who will "put you in jail" and "release you." Mr. Curry continued to assert that the judge is "on my side," despite corrective efforts.

Should he wish to proceed to trial, Mr. Curry asserted he would have to plead "guilty" which means "you did it"; he was provided correction. When asked to identify the function of a jury, Mr. Curry stated, "I don't know, I'm on medication." When pressed, he stated, "A jury send you to jail ... find you guilty," and continued with similar answers even after education and when asked later in the exam. After education, he noted there to be "12" jurors on a jury and "all of them" must agree on the verdict. If found not guilty in a trial, per his account, he will go to "prison" and if found guilty, he will go "home"; he noted "the judge" typically decides the sentence. He identified probation as a possible penalty and provided several examples of probation conditions (e.g., "report, pay money ... [cannot] leave the State of South Carolina") which an individual will "get thrown in jail" for violating. Per his account, a witness is

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"somebody for you ... talk for you"; however, when asked if the undersigned could be a witness in his cases, Mr. Curry stated, "No, you wasn't there, you don't know the details." He acknowledged that a witness could testify against the defendant, as well. Mr. Curry asserted that the strength of the solicitor's case(s) against him is "not strong," offering no reasons for this belief, and stated he could ask "my attorney" for more information about this. Mr. Curry offered "fingerprints" as an example of evidence.

According to Mr. Curry, a defendant will plead "guilty" to get "less time" in a plea bargain. He reported not knowing why the solicitor would offer such a deal, stated that a defendant must accept any plea bargain offered, and noted that a defendant will have a jury trial when accepting a plea bargain.

Mr. Curry was asked to comment on several hypothetical situations that might arise during the adjudication of his charges. For example, if confused during courtroom proceedings, Mr. Curry stated the defendant should talk to "the judge ... the solicitor [or] your doctor." If a witness lied about him in court, Mr. Curry stated he would inform "the solicitor." Should the solicitor approach him in the absence of his attorney, Mr. Curry stated he would "talk to him." Per Mr. Curry's account, people in court should behave "like you got good sense" or "the judge is gonna lock you up." In discussing his case today, Mr. Curry voiced several plea preferences. Mr. Curry appeared motivated to resolve his charges in that he believes "I been in jail too long."

Clinical Impressions Regarding Competence to Stand Trial: Based on the available data, it appears Mr. Curry does not currently lack the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.

Regarding his capacity to understand the legal proceedings, the current exam revealed a number of deficits in Mr. Curry's factual knowledge of the legal system. While most of the time he did not demonstrate that he benefited from corrective education, this appeared to be intentional and not indicative of psychiatric symptoms. Moreover, there were several times that Mr. Curry did exhibit the capacity to retain newly learned material.

Regarding his capacity to assist in his defense, Mr. Curry'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 (e.g., voicing several plea preferences) and should be able to do so with counsel, if he so chooses. At no time did Mr. Curry demonstrate any delusional beliefs about legal processes and/or members of the Court.

In summary, based on the above data, it is my clinical opinion Mr. Curry does not currently lack the capacity to understand the proceedings against him or to assist in his own defense as a result of a lack of mental capacity.


Maria L. Domino, Ph.D.
Licensed Clinical Psychologist

12-10-10
Date

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STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)
State of South Carolina)
vs.)
Wayne Curry,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS
SECOND JUDICIAL CIRCUIT
Indictment Number 2006-GS-02-1362
2008-GS-02-751 & 752

ORDER

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
JUN 17 2008
Clerk of Court
Seal for Aiken County South Carolina
that the foregoing documents are true and correct
original documents which have been filed in my office this

JUN 17 2008
D. G. Alves
Clerk of Court
Seal for Aiken County South Carolina
that the foregoing documents are true and correct
original documents which have been filed in my office this

By Orders of this Court dated October 18, 2007 & May 2, 2008, the Defendant, Wayne Curry, was evaluated pursuant to section 44-23-410 of the Code of Laws of South Carolina (1976), to determine his competency to stand trial on the criminal charges pending against him. A hearing was held on June 16, 2008 pursuant to section 44-23-430 of the Code of Laws of South Carolina (1976). Present at the hearing were the Defendant and his attorney, Wallis Alves. Also present were Assistant Solicitor Brenda Brisbin and Dr. Marla Domino of the South Carolina Department of Mental Health ("SCDMH").

In April 2006, the Defendant was arrested for Burglary 2nd degree. He was evaluated for criminal responsibility by Dr. Domino on November 28, 2006. At that time, Dr. Domino determined "there is a lack of evidence to overcome the presumption of sanity and likewise a lack of data to suggest Mr. Curry did not have 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, as a result of mental disease or defect." In regards to the capacity to conform, Dr. Domino stated "the available data suggests that, at the time of the alleged offense, Mr. Curry may have lacked sufficient capacity to conform his conduct to the requirements of the law, as a result of mental disease or defect."

The Defendant was evaluated on November 20, 2007 and January 3, 2008 by Dr. Domino to determine competency to stand trial. During these evaluations, the Defendant refused to communicate with the doctor. Pursuant to Section 44-23-410(2), he was committed to SCDMH for a fifteen day examination and observation period. He was diagnosed with Malingering and Anti-Social Personality Disorder and subsequently re-evaluated by Dr. Domino on February 6, 2008 and diagnosed as Malingering. The report of Dr. Domino states "there is insufficient data to overcome the presumption of competence, especially given Mr. Curry is not currently presenting with symptoms or signs indicating the presence of a genuine mental illness and has recently malingered both psychotic and cognitive

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COURT'S	
EXHIBIT NO.	2
IDENTIFICATION/EVIDENCE	
DKT. #	2011-GS-3528
DATE:	11-5-2011

symptoms." The report also notes that in the past, the Defendant was diagnosed with substance abuse, Schizophrenia, Paranoid Type and Delusional Disorder.

In March 2008, the Defendant received two new charges for Throwing Bodily Fluids on a Correctional Officer. Evaluations to determine competency to stand trial and criminal responsibility were requested. An examination to determine competency was done on May 21, 2008 by Dr. Domino. At that time the Defendant refused to communicate with the doctor and the diagnosis was deferred. The doctor noted "a review of past psychiatric records indicate a history of exaggerating and fabricating (malingering) psychiatric symptoms, as well as a history of inpatient and outpatient psychiatric treatment since 1992 for symptoms frequently diagnosed as indicative of Schizophrenia." Due to the non-cooperation, no evaluation for criminal responsibility was performed.

Prior to the June 16, 2008 hearing, Dr. Domino again attempted to evaluate the Defendant. His only communication with her was "silly" and non-responsive to her questions. During the hearing, the Court attempted to question the Defendant about his understanding of the charges against him and the legal system. The Defendant did not respond appropriately to questions and his demeanor and behavior were inappropriate for the courtroom setting.

The Court was advised that the Defendant has a long history of mental illness and has refused to speak with his attorney to assist with the preparations for the trial. The Court was further advised that the Defendant has been prescribed Haldol for the treatment of Schizophrenia. The Defendant often refuses to accept his medication from the detention center nurses and the detention center had several reports of the Defendant hoarding medication in his cell.

Dr. Domino testified that non-compliance with medication could result in symptoms of mental illness and she stated that in addition to Haldol, there are several medications which can successfully treat symptoms of Schizophrenia. She did state that if the Defendant were hospitalized and properly medicated, symptoms of Schizophrenia might be controlled and lessened. However, she could not state to a reasonable degree of medical certainty whether the Defendant is currently suffering from symptoms of Schizophrenia or any other mental disease or defect due to his failure to communicate with her and gave no opinion regarding competency to stand trial.

Based on the testimony and information available, the Defendant's lack of communication with his attorney, the Court's observations of the Defendant's behavior and demeanor in Court and the reports of SCDMH, this Court finds that the Defendant is unfit to stand trial but may likely become fit in

the foreseeable future. Now therefore, pursuant to section 44-23-430(3) of the Code of Laws of South Carolina (1976),

IT IS THEREFORE ORDERED that the Defendant be hospitalized for a 60 day period, when a bed becomes available in an appropriate facility for treatment, for the purpose of examination as to his mental condition and his competency to stand trial.

If, at the conclusion of this 60 day period, the Defendant is still deemed unfit to stand trial, then judicial admission proceedings pursuant to sections 44-17-510 through 44-17-610 of the Code of Laws of South Carolina (1976) shall be initiated by the solicitor within 14 days. The Defendant shall remain hospitalized during this time.

If the Defendant shall be deemed to be mentally competent to stand trial, he shall be returned to the custody of the Aiken County Detention Center unless he has been released on bond.

During this hospitalization and subject to section 44-23-460 of the Code of Laws of South Carolina (1976), the Defendant shall have all of the rights and privileges of other involuntarily hospitalized patients.

DONE this 16th day of June 2008 in Aiken, South Carolina.



Doyet A. Early
Presiding Judge

State v. Wayne S. Curry
2006-GS-02-1362
2008-GS-02-751 & 752

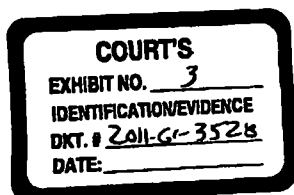
STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Indictment Number 2006-GS-02-1362
	)	2008-GS-02-751 & 752
State of South Carolina	)	
	)	
vs.	)	ORDER
	)	
Wayne Curry,	)	
Defendant.	)	
	)	

By Order of this Court dated June 16, 2008, the Defendant, Wayne Curry, was evaluated pursuant to section 44-23-410 of the Code of Laws of South Carolina (1976), to determine his competency to stand trial on the criminal charges pending against him.

The Defendant was evaluated on November 20, 2007 and January 3, 2008 by Dr. Domino to determine competency to stand trial. During these evaluations, the Defendant refused to communicate with the doctor. Pursuant to Section 44-23-410(2), he was committed to SCDMH for a fifteen day examination and observation period. He was diagnosed with Malingering and Anti-Social Personality Disorder and subsequently re-evaluated by Dr. Domino on February 6, 2008 and diagnosed as Malingering. The report of Dr. Domino states "there is insufficient data to overcome the presumption of competence, especially given Mr. Curry is not currently presenting with symptoms or signs indicating the presence of a genuine mental illness and has recently malingered both psychotic and cognitive symptoms." The report also notes that in the past, the Defendant was diagnosed with substance abuse, Schizophrenia, Paranoid Type and Delusional Disorder.

In March 2008, the Defendant received two new charges for Throwing Bodily Fluids on a Correctional Officer. An evaluation to determine competency to stand trial was requested. An examination to determine competency was done on May 21, 2008 by Dr. Domino. At that time the Defendant refused to communicate with the doctor and the diagnosis was deferred. The doctor noted "a review of past psychiatric records indicate a history of exaggerating and fabricating (malingered) psychiatric symptoms, as well as a history of inpatient and outpatient psychiatric treatment since 1992 for symptoms frequently diagnosed as indicative of Schizophrenia."

On June 16, 2008, the Defendant was before the Court for a hearing to determine competency. Dr. Domino testified but could not give an opinion to a reasonable degree of medical certainty regarding the Defendant's competency to stand trial. At that time the Defendant was found to be not competent



CW
172

and he was ordered to undergo a 60 day evaluation at SCDMH to determine whether he could become fit to stand trial.

On August 19, 2008, the Defendant was again evaluated by Dr. Marla Domino. In the report from this evaluation, Dr. Domino again deferred an opinion regarding competency.

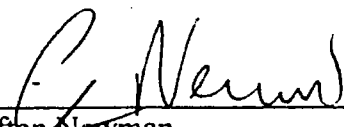
A hearing was held on September 17, 2008 pursuant to section 44-23-430 of the Code of Laws of South Carolina (1976). Present at the hearing were the Defendant and his attorney, Wallis Alves. Also present were Assistant Solicitor Brenda Brisbin.

During the hearing, the Court observed the Defendant and attempted to question the Defendant about his understanding of the charges against him, the legal system and numerous other matters. The Defendant did not respond appropriately to the questions.

Based on the reports from SCDMH, the Defendant's interaction with the Court and the Court's observations of the Defendant and all other information before the Court, this Court finds that the Defendant lacks the capacity to understand the charges against him or to assist in his own defense and is unlikely to become fit in the foreseeable future. Now therefore, pursuant to section 44-23-430(2) of the Code of Laws of South Carolina (1976),

IT IS THEREFORE ORDERED that judicial admission proceedings in the Aiken County Probate Court pursuant to sections 44-17-510 through 44-17-610 of the Code of Laws of South Carolina (1976) shall be initiated by the solicitor within 14 days from the date of this Order. The Defendant shall remain incarcerated at the Aiken County Detention Center during this time.

DONE this 18th day of September 2008 in Aiken, South Carolina.



Clifton Newman
Presiding Judge

THE STATE OF SOUTH CAROLINA)
)
 COUNTY OF AIKEN)

IN THE COURT OF GENERAL SESSIONS
 SECOND JUDICIAL CIRCUIT

THE STATE OF SOUTH CAROLINA)

VS.)

Order for Competency Hearing

WAYNE CURRY,)

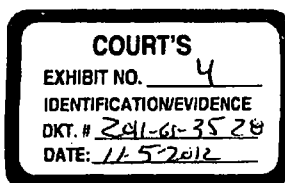
) Indictment #2006-GS-02-1362 & 1446
) 2008-GS-02-751 & 752
)

Defendant)

This matter comes before the Court upon the Motion of defense attorney Wallis Alves, requesting the release from custody of the Defendant, Wayne Curry. The Defendant was arrested on April 17, 2006 and has been in custody since that date. He has been indicted for Burglary 2nd Degree, Resisting Arrest, and two counts of Throwing Bodily Fluids on a Correctional Officer. The State was represented in this matter by Brenda Brisbin, Assistant Solicitor. The Defendant has had numerous evaluations at the Department of Mental Health over the past three years, the latest taking place in May of this year. He was also evaluated through Probate proceedings in October of 2008. In each of these evaluations he was found to be malingering and exaggerating or feigning mental illness. The Probate Court found that he was not in need of hospitalization. In the latest evaluation he refused to participate in the exam. In her written report, Dr. Marla Domino opined that the Defendant's behavior appeared to be volitional and his presentation provided no evidence that his non-cooperation was due to a mental illness. She found that "there is insufficient evidence to overcome the presumption of competence at this time."

STATE OF SOUTH CAROLINA

I, Liz O'Leary, Clerk of Court of General Sessions and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original document as it has been filed in my office this



JUN 13 2009

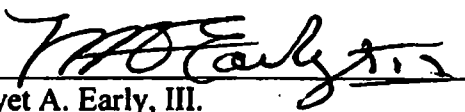
CLERK OF COURT, SOUTH CAROLINA

Deputy Clerk

Having considered the findings of the DMH psychologists and the Probate Court, I find that Mr. Curry should have a competency hearing scheduled for September 17, 2009, to determine his fitness to stand trial. If he is found competent he is to stand trial at that time. He is to remain in custody pending trial.

And it is so ordered.

This 18 day of June, 2009.


Doyet A. Early, III.
Chief Administrative Judge
Second Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Throwing Bodily Fluids on Corrections Officer

§ 24-13-0470

At a Court of General Sessions, convened on November 2011, the Grand Jurors of Lexington County present upon their oath:

That **Wayne Stewart Curry** did in Lexington County, South Carolina, on or about August 18, 2010, while he was an inmate, detainee, a person taken into custody, or person under arrest, who attempts to throw or throws body fluids including but not limited to; urine, blood, feces, vomit, saliva, or semen, on an employee of a state or local correctional facility, such person being Officer Frederick Hopkins, occurring at Lexington County Detention Center, in violation of §24-13-470 of the Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

F Hopkins

Law Enforcement Case #: 20060189

RWP

ARREST WARRANT NUMBER

M301243

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 11/7/11

VERDICT

Guilty

Foreperson of Petit Jury

Date: 11/6/2012

DOCKET NO. 2011GS3203528

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

NOVEMBER TERM 2011

THE STATE

vs.

Wayne Stewart Curry

CDR #: 2526

Indictment for

Throwing Bodily Fluids on Corrections
Officer

§ 24-13-0470

DONALD V. MYERS, SOLICITOR

A TRUE COPY

Lex. Co. C.C.P., G.S. & E.C.



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1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS:
Wayne Stewart Curry

AKA: _____

Race: _____ Sex: M Age: _____DOB: 1 SS#: _____

Address: _____

City, State, Zip: North Augusta, SC 29841

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law enforcement officer, corrections empl

in violation of § 24-13-0470 of the S.C. Code of Laws, bearing CDR Code # 2526
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

RWD
Solicitor13969
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 8 1/2 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$
TOTAL		\$130.00

Clerk of Court/ Deputy Clerk L. J. ParryCourt Reporter: S. J. J. J.

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

328

INDICTMENT/CASE#: 2011GS3203528A/W#: M301301 m301243Date of Offense: 8/18/2010S.C. Code § : 24-13-0470CDR Code #: 2526

SENTENCE SHEET

☒ CONVICTED OF: or ☐ PLEADS

TO: Prisoners / Throwing of bodily fluids by prisoner, detainee on state corrections or local law enforcement officer, corrections empl

in violation of § 24-13-0470 of the S.C. Code of Laws, bearing CDR Code # 2526
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
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RWD
Solicitor13969
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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3% to County (if paid in installments)		\$
TOTAL		\$130.00

Clerk of Court/ Deputy Clerk L. J. ParryCourt Reporter: S. J. J. J.

SCCA/217 (03/2011)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling ☒ Tex. Co. C.C.P., C.S. & F.C.Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

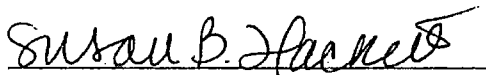
\$ _____ paid to Public Defender Fund

Other: Recommend mental health treatment w/b at SC Dept of Corrections☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Presiding Judge Howard P. KingJudge Code: 2107Sentence Date: Nov 6, 2012

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 17, 2014



Susan B. Hackett
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

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

THE STATE,

Petitioner,

vs.

WAYNE STEWART CURRY,

Respondent.

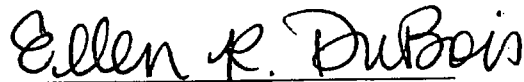
PROOF OF SERVICE

I, Ellen R. DuBois, certify that I have served the within Appendix on Respondent by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record,

Susan B. Hackett, Esquire
South Carolina Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11549
Columbia, SC 29211-1549

I further certify that all parties required by Rule to be served have been served.

This 20th day of October, 2014.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

On Writ of Certiorari
To the Court of Appeals

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

THE STATE,

Petitioner,

vs.

WAYNE STEWART CURRY,

Respondent.

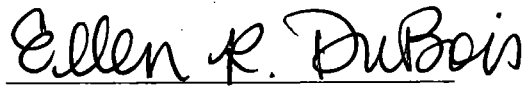
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Columbia, SC 29211-1549

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This 20th day of October, 2014.



ELLEN R. DuBOIS
Legal Assistant

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
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