

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
The Honorable Brian M. Gibbons, Circuit Court Judge

RECEIVED

OCT 16 2019

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

v

SUZANNA BROWN SIMPSON,

PETITIONER.

Appellate Case No. 2019-000500

BRIEF OF RESPONDENT

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General
SC Bar No. 68383

P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

W. WALTER WILKINS, III
Solicitor, Thirteenth Circuit
305 East North Street
Greenville, SC 29601
(864) 467-8282

ATTORNEYS FOR RESPONDENT

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PETITIONER'S QUESTION PRESENTED

The trial court erred in excluding testimony of the defense expert as to statements made by the Petitioner's treating physician (state expert) during a personal interview.

RESPONDENT'S COUNTER STATEMENT OF QUESTION PRESENTED

The trial court properly excluded the defense expert's hearsay testimony that the treating psychiatrist "agreed with his opinion," when the purported agreement was not used as a basis for the expert's opinion of Simpson's sanity, the purported agreement was used to bolster his own opinion, and the purported agreement was misrepresented to the jury.

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Petitioner, Suzanna Brown Simpson, in February of 2014, for two counts of murder, possession of a weapon during the commission of a violent crime, and attempted murder. (App. pp. 867-876.) On June 20, 2016, Simpson's case proceeded to trial before the Honorable Brian M. Gibbons and a jury. (App. p. 139.) John Mauldin, Esq., Teal Johnson, Esq., and Jacob Goldstein, Esq. represented Simpson. (App. p. 139.) Solicitor W. Walter Wilkins and Deputy Solicitor Betty Strom represented the State. (App. p. 139.) At the conclusion of the trial, the jury returned a verdict of guilty on all charges. (App. p. 859, lines 1-11.) Judge Gibbons sentenced Simpson to consecutive life sentences for the two counts of murder, a consecutive term of thirty years' imprisonment for attempted murder, and a consecutive term of five years' imprisonment for the possession of a weapon during the commission of a violent crime. (App. p. 865, lines 2-18.)

Simpson filed a timely notice of appeal. Following briefing, the Court of Appeals affirmed Simpson's conviction and sentence in published Opinion No. 5619 (Ct. App. January 23, 2019). (App. pp. 3-17.) A Petition for Rehearing followed and was denied on February 12, 2019, (App. p. 1.)

Simpson next timely sought a Petition for Writ of Certiorari, to which Respondent made its Return. On August 6, 2019, this Court granted the petition on Petitioner's Question D, which is her claim of trial court error in excluding a comment by a defense expert that the treating physician concurred in his analysis. Petitioner filed his Brief of Petitioner on September 16, 2019. This Brief of Respondent follows.

STATEMENT OF FACTS

The Court of Appeals summarized the general facts of the crime as follows:

On May 14, 2013, a neighbor of Suzanna and Michael Simpson heard a noise in his yard and found Suzanna Simpson's truck in a ditch near some downed trees. When the neighbor approached the truck, Simpson told him her back hurt. The neighbor repeatedly asked Simpson where her husband and children were, and Simpson only responded "I don't know" and "Am I going to be okay?" According to the neighbor, Simpson was coherent, and he had no trouble communicating with her.

Simpson was transported to the hospital for treatment. According to a nurse who treated Simpson, Simpson told him, "I shot my husband and kids . . . [a]nd then I had an accident." When the nurse asked Simpson why she shot her family, she responded, "because it's an awful world." When the nurse asked why Simpson did not kill herself instead, she replied, "I thought about it and tried, but I couldn't do it." According to the nurse, Simpson was alert, knew where she was, and spoke clearly. Simpson refused to talk to the police at the hospital.

While Simpson was receiving treatment, police went to the Simpson home and found the bodies of Simpson's five-year-old son and seven-year-old daughter in their bedrooms, both with gunshots to the head. Michael Simpson was also shot and found still breathing on the floor of the master bedroom. Police later found a .40 caliber handgun at the scene of Simpson's wreck.

(App. p. 4.) The testimony at trial was comprised of both expert and lay witnesses, who detailed Petitioner's actions in the months preceding the murders.

The Events Leading to the Shootings

On the day before the shooting, a friend of the couple, Nathan Stegall, stopped by the Simpsons' house to borrow Michael's truck. (App. p. 409, lines 5-13.) Simpson could not find the key, so Stegall waited for Michael to return home with the spare key. (App. p. 410, lines 2-12.) While he waited, Stegall tried to initiate conversation with Simpson, but noticed she seemed angry. (App. p. 410, lines 15-25.) Stegall believed Simpson and her husband were arguing. (App. p. 411, line 22 – p. 412, line 2.) Stegall borrowed the truck, ran some errands, and returned the truck to Michael at the end of the day. (App. p. 413, line 9 – p. 414, line 15.) Later that evening,

Stegall received a text message from Simpson that read, “Hell on earth?” (App. p. 415, lines 3-5.)

At the Simpson children’s school, another parent saw Simpson in the school office the day before the shootings. (App. p. 420, lines 9-17.) The parent was checking his child out from school and walked in behind Simpson, who was withdrawing her daughter. (App. p. 421, lines 1-3.) When asked for the reason, Simpson said she was getting her daughter because her son was sick, and she was afraid her daughter might be sick, too. (App. p. 422, lines 11-16.) The little boy, who was with Simpson, said, “I’m not sick, Mom.” (App. p. 421, lines 3-6; p. 422, lines 9-16.) The parent noticed Simpson pacing back and forth and growing impatient. (App. p. 423, lines 1-8.) When the parent suggested the child probably needed to collect her backpack, Simpson replied, “Where she’s going to go, she don’t need no backpack.” (App. p. 423, lines 10-21.) Simpson also appeared angry and snapped at the parent as they left the building with their children. (App. p. 424, lines 4-14.)

Simpson’s mother in law, Allison, recalled an unusual conversation the day before the shootings in which Simpson asked her why her mother and father-in-law did not come to visit them much anymore. (App. p. 434, lines 1-3.) Simpson’s mother testified Simpson asked her if her parents really wanted her. (App. p. 445, lines 1-14.) Later that day, Simpson called again and asked her mother if various relatives who were deceased were better off in heaven. (App. p. 445, line 19 – p. 446, line 4.) In another call, Simpson spoke to her mother about the evils of the world and how you could not protect your children from those evils. (App. p. 446, lines 14-18.) When Simpson called her again that evening, her mother said Simpson sounded happy, saying she and her husband were going to seek marital counseling. (App. p. 446, line 23 – p. 447, line 5.) Later that evening, however, Simpson called her mother and said, “Mike’s through with me.

He thinks I can't take care of the children." (App. p. 447, lines 23-25; p. 460, lines 14-17.) Simpson told her mother the couple was not seeking counseling. (App. p. 448, lines 1-10.) Simpson told her mother she loved her and said she needed to go put the kids to bed. (App. p. 448, lines 7-10.)

Simpson's mother testified about an episode the previous year in which Simpson appeared to have a psychotic, paranoid break from reality following a trip to Ashville, North Carolina. (App. p. 451, line 2 – p. 453, line 10.) Simpson was hospitalized for five days after this episode. (App. p. 453, lines 5-13.) Simpson then transferred to the Carolina Center for Behavioral Health, where she remained for three more days. (App. p. 453, line 4 – p. 454, line 18.) Simpson's mother recalled several instances in which her daughter told her she believed the family was being watched. (App. p. 455, line 13 – p. 456, line 17.)

The Defense Presents Its Case

Dr. Leonard William Mulbry, one of the defense's experts, testified he met with Petitioner three times and examined her medical records prior to the shootings. (App. p. 519, line 10 – p. 520, line 10.) Dr. Mulbry diagnosed Petitioner with schizoaffective disorder bipolar type. (App. p. 522, lines 19-20.) Dr. Mulbry outlined her medical treatment in the years before the shooting, beginning with some mild depression in college, followed by episodes of post-partum depression. (App. pp. 525-527.) In 2010, Petitioner began seeing Dr. Smith, a local psychiatrist, who treated Petitioner with several medications in an effort to control her symptoms. (App. p. 528, line 15 – p. 529, line 12.)

According to her medical records and Dr. Smith's notes, Dr. Mulbry explained Petitioner's moods began cycling through depression, sleeplessness, confusion, and paranoia. (App. p. 529, line 16 – p. 530, line 1.) Dr. Mulbry opined Petitioner was unable to distinguish

right from wrong at the time of the shootings. (App. p. 532, line 21 – p. 533, line 6.) On cross examination, Dr. Mulbry said he examined Petitioner nine months after the shootings and determined that at the time of his meetings with her, Petitioner did know right from wrong. (App. p. 550, lines 1-11.) Dr. Mulbry also acknowledged he never consulted with Petitioner’s treating psychiatrist, Dr. Smith, instead, relying on Smith’s notes for the basis of his opinion. (App. p. 550, line 12 – p. 551, line 7.) Dr. Mulbry said Petitioner’s prominent delusion around the time of her admission to the treatment facility in 2012 was that her mother in law was grooming the children to be victims of sexual molestation. App. p. 552, lines 3-20.) Dr. Mulbry noted Petitioner received treatment for her bipolar disorder at the Behavior Health facility, and she improved. (App. p. 553, line 5 – p. 554, line 17.) Petitioner was also educated about her bipolar disorder and attended group sessions, where she would have been taught how to manage her medications and talk to her family about her symptoms. (App. p. 555, line 2 – p. 556, line 8.) In fact, when Petitioner was discharged from the facility, her mood was improved, she had no hallucinations, no mention of concerns for the children, and no suicidal or homicidal ideations. (App. p. 559, lines 3-21.) In contrast with Dr. Mulbry’s opinion, when Petitioner was discharged in 2013, she was not diagnosed with schizoaffective disorder. (App. p. 560, lines 1-5.)

Dr. Mulbry admitted that during the period he believed she suffered from schizoaffective disorder in the hours before the shooting, he could not opine whether Petitioner knew right from wrong when she lied to the officials at the children’s school, interacted with the neighbor for about thirty minutes shootings, and had several conversations with her mother and mother in law. (App. p. 560, line 19 – p. 563, line 22.)

Petitioner’s second expert, Dr. David Price, also evaluated Petitioner’s “criminal responsibility” by reviewing her extensive medical records. (App. p. 578, line 15 – p. 579, line

16.) Dr. Price met with Dr. Smith, who first diagnosed Petitioner as bipolar, having Attention Deficit Disorder (ADD), and another unspecified anxiety disorder. (App. p. 584, line 24 – p. 585, line 4.) Dr. Price testified he discussed Petitioner’s diagnosis with Dr. Smith and, “as part of reaching [his] opinion ... Dr. Smith agreed with [his] opinion.” (App. p. 585, lines 8-12.) Dr. Price also acknowledged Petitioner was a patient of Dr. Smith when the shootings occurred. (App. p. 586, lines 6-14.) Dr. Price said Petitioner told him about her paranoid ideations after the shootings occurred, but these paranoid thoughts were not documented in Dr. Smith’s notes at the time Petitioner supposedly suffered from the delusions. (App. p. 595, line 8 – p. 596 line 3.)

Dr. Frierson, the court appointed psychiatrist, also diagnosed Petitioner with Schizoaffective disorder, bipolar type. Dr. Frierson explained Petitioner suffered from episodes or mania and depression, and also had bouts of delusional or paranoid thinking. (App. pp. 612-615.) These moods and abnormal thought processes could coincide or appear at different times. (App. p. 614, lines 10-18.) Dr. Frierson opined Petitioner could not distinguish right from wrong at the time of the shootings. (App. p. 635, lines 16-19.)

On cross examination, Dr. Frierson agreed Petitioner told the treating emergency room physician she did not tell her husband about her delusions because she was afraid he would “lock her up.” (App. p. 637, lines 1-9.) Petitioner admitted to Frierson she did not tell Michael about the paranoid thoughts because it would upset him. (App. p. 637, lines 22-24.) Petitioner also told Dr. Frierson she would take excessive amounts of her prescribed Adderall when she had an “important task to complete.” (App. p. 640, lines 14-16.) Dr. Frierson said he was surprised Dr. Smith’s records did not reflect Petitioner’s extensive paranoid delusions. (App. p. 644, lines 16-24.)

Dr. Smith's Testimony

Dr. Smith began treating Petitioner in March of 2010. Over the course of his treatment, he saw Petitioner as a patient thirty-four times. (App. p. 730, lines 4-17.) At times over the years, Petitioner's condition appeared stable, and at other times Dr. Smith would adjust her medications to treat her three separate conditions: bipolar disorder, ADD, and anxiety. (App. p. 726, lines 7-17; p. 730, line 21 – p. 731, line 3.) Dr. Smith said these three conditions were "tricky" to manage because the medications for ADD could enhance the symptoms of bipolar disorder if the patient were not taking the mood stabilizer to manage the mood disorder. (App. p. 731, lines 1-8.) In fact, in one of three instances in which Petitioner admitted having paranoia, she also told Dr. Smith she had stopped taking her mood stabilizer. (App. p. 731, lines 11-17.) Dr. Smith said Petitioner's decision to continue taking the stimulant medication for ADD without the stabilizer would significantly contribute to her psychosis. (App. p. 733, lines 1-4.)

Dr. Smith reviewed the report of Dr. Frierson, and he spoke to Dr. Price, but told Dr. Price that Petitioner presented entirely differently in the thirty-four visits with Smith than she did during their evaluation. (App. p. 734, line 17 – p. 735, line 3.) Dr. Smith said he told Dr. Frierson, "it was like we were talking about two different individuals." (App. p. 735, lines 11-12.) Dr. Smith explained Petitioner only complained, vaguely, of paranoid thoughts along the lines of "I think people are talking about me." (App. p. 735, lines 17-21.) Smith said the extensive delusions reported by Petitioner and her family were never mentioned to him during the course of his treatment. (App. p. 735, lines 17-25.) Dr. Smith had no recollection of any family members accompanying Simpson to her visits. (App. p. 737, lines 11-13.) Dr. Smith noted the hospital records from the treating emergency room psychiatrist, who saw Petitioner directly after the shootings, did not indicate Petitioner wanted to kill herself or heard any voices.

(App. p. 738, lines 1-23.) Further, the ER psychiatrist's description of her psychosis was not nearly as severe as the forensic psychiatrists' reports. (App. p. 738, line 23 – p. 739, line 2.) Further, Dr. Smith believed Petitioner's rapid resolution of symptoms, both during the earlier admission and during the treatment after the shootings, was an unusual response to a functional psychosis. In other words, typically, a functional psychosis such as schizophrenia, bipolar disorder with psychosis, or depression with psychosis would not react that quickly and positively to medication. (App. p. 739, lines 7-21.)

Dr. Smith also found it unusual for Petitioner's statements to her mother the day before the shootings to sound normal in one call, then psychotic in another. Dr. Smith said it would be unusual for someone who is psychotic to come in and out of psychosis throughout the day. (App. p. 740, lines 3-13.) Dr. Smith also pointed out the comment about her husband being "done with her" and her decision to withdraw the children from school indicated some organized planning on her part. (App. p. 740, line 18 – p. 741, line 5.) Dr. Smith opined Petitioner knew right from wrong but was unable to conform her conduct to the behavior of the law. (App. p. 741, lines 14-17.)

STANDARD OF REVIEW

The admissibility of the testimony of an expert on a fact in issue is largely within the discretion of the trial court. *Hundley ex rel. Hundley v. Rite Aid of S. Carolina, Inc.*, 339 S.C. 285, 295, 529 S.E.2d 45, 50-51 (Ct. App. 2000). "The trial court's decision to admit expert testimony will not be reversed on appeal absent an abuse of discretion. To warrant reversal, any error by the trial court in admitting or excluding expert testimony must result in prejudice." *State v. Cope*, 385 S.C. 274, 287, 684 S.E.2d 177, 184 (Ct. App. 2009). "An abuse of discretion occurs when the [circuit] court's ruling is based on an error of law or, when grounded in factual

conclusions, is without evidentiary support.” *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015).

ARGUMENT

The trial court properly excluded the defense expert’s hearsay testimony that the treating psychiatrist “agreed with his opinion,” when the purported agreement was not used as a basis for the expert’s opinion of Simpson’s sanity, the purported agreement was used to bolster his own opinion, and the purported agreement was misrepresented to the jury.

All of the defense’s expert witnesses relied on Simpson’s medical records during her treatment by Dr. Smith to form their opinions on Simpson’s sanity. To his credit, Dr. Price was the only expert who sought out Dr. Smith to discuss Simpson’s case before testifying at Simpson’s trial. Although he discussed his opinion with Dr. Smith, logic requires Dr. Price to have formed an opinion on Simpson’s mental capacity before Dr. Smith “agreed” with his conclusion. Accordingly, Dr. Smith’s purported agreement provided no basis for Dr. Price’s opinion. The only explanation for Dr. Price’s testimony that Dr. Smith agreed with him was to augment his own credibility before the jury. As the Court of Appeals found, “Dr. Price’s testimony was an impermissible attempt to bolster his credibility before the jury.” (App. p. 15.) Dr. Price’s testimony was thus properly objectionable as not fitting with the hearsay exception for the basis of expert testimony, and the trial court committed no error.

Expert witness testimony is a widely-recognized exception to the rule against hearsay testimony. *See U.S. v Williams*, 447 F.2d 1285, 1290 (5th Cir 1971) (“The rationale for this exception to the rule against hearsay is that the expert, because of his professional knowledge and ability, is competent to judge for himself the reliability of the records and statements on which he bases his expert opinion.”); *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432, 436 (1997) (“An expert’s opinion is derived not only from records and data, but from education and from a lifetime of experience. Thus, when the expert witness has consulted numerous sources, and uses

that information, together with his own professional knowledge and experience, *to arrive at his opinion*, that opinion is regarded as evidence in its own right and not as hearsay in disguise.” (emphasis added)).

The trial court allowed Dr. Price to testify to the numerous details about Simpson’s prior treatment. Dr. Price discussed details such as the events that led to Simpson’s prior emergency hospitalization. The contents of the records Dr. Price examined were properly within the hearsay exception enumerated above. However, when Dr. Price tried to suggest Dr. Smith supported his conclusions, Dr. Price’s testimony crossed the line. As the record indicates, Dr. Price had already formed his opinion on Simpson’s sanity when Dr. Smith purportedly agreed with him:

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

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

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

THE COURT: Objection as to hearsay.

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

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

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

MR. WILKINS: It's not in his medical records. It's what he told him.

THE COURT: All right. Objection sustained.

BY MR. MAULDIN:

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

(App. p. 585, line 5 – p. 586, line 5.)

Here, the State objected, appropriately, to Dr. Price's testimony that Dr. Smith agreed with his opinion, which necessarily indicates Price formed his opinion after reviewing Smith's notes, perhaps sometime during his discussion with Smith at the latest, but *before* Smith "agreed with [his] opinion." The Court of Appeals correctly found the statement by Dr. Price was improper. (App. p. 15.)

A witness is not permitted to vouch for the credibility of another witness by offering testimony that bolsters the testimony of another witness. *See State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct.App.2012). The prohibition against bolstering is for the purpose of preventing a witness from testifying whether another witness is telling the truth and to maintain "the assessment of witness credibility ... within the exclusive province of the jury." *Id.* at 464, 725 S.E.2d at 141; *see also Maddox v. State*, 275 Ga.App. 869, 622 S.E.2d 80 (2005) ("improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth, because that is an ultimate issue of fact and the inference to be drawn is not beyond the ken of the average juror."). Further, "[w]hile experts may give an opinion, they are not permitted to offer an opinion as to the credibility of others." *State v. Chavis*, 412 S.C. 101, 109, 771 S.E.2d 336, 340 (2015).

The ultimate issue for the jury in this case was Simpson's sanity at the time she shot her family. Dr. Price testified he reviewed Dr. Smith's notes and discussed his conclusions with Dr. Smith. Dr. Smith had not testified at that time and had not offered an opinion on Simpson's sanity before the jury. Dr. Price improperly sought to do it for him by offering his opinion on the credibility of Dr. Smith's assessment of Simpson, and then taking it a step further by stating the men were in agreement. Dr. Price's testimony another expert agreed with his assessment of her

sanity served no other purpose than to convince the jury he was correct about the ultimate issue of fact for the jury.

The Statement Was Hearsay When It Was Offered

Simpson argues the statement regarding Dr. Smith's agreement with Dr. Price's opinion was not hearsay pursuant to Rule 801(d), SCRE, because Dr. Smith would later testify at trial and the statement was inconsistent with Dr. Smith's testimony. This argument concedes two important points.

First, Simpson objected to the State's efforts to call Dr. Smith in reply. (App. p. 651.) Simpson sought to prohibit Dr. Smith's testimony on the grounds she had not consented to the waiver of physician/patient privilege. (*Id.*) Simpson also argued Dr. Smith was not qualified to give his opinion on Simpson's sanity because he was not qualified as a forensic psychiatrist. (Appx. p. 655.) Lastly, Simpson argued Dr. Smith should not be allowed to testify in reply because there was some dispute over how Simpson's records were obtained by SLED. (Appx. pp. 664-665.) In her Brief of Petitioner, however, Simpson argues, "The defense therefore presumably offered Dr. Price's testimony in anticipation of Dr. Smith changing his opinion when called as a rebuttal witness." (Brief of Petitioner, p. 10.) The record is clear Simpson had no intention of calling Dr. Smith to testify at the time of Dr. Price's testimony, and, in fact, objected to Dr. Smith's rebuttal testimony for several reasons. Simpson's argument Dr. Smith would necessarily testify at trial, so as to disqualify the statement as hearsay, is inconsistent with her actions to prevent that from happening.

Second, characterizing the "statement" (Dr. Smith's agreement with Dr. Price) for purposes of Rule 801(d) as inconsistent with Dr. Smith's later testimony concedes the argument Dr. Price mischaracterized Dr. Smith's agreement with his assessment. This is also precisely why

Simpson's argument the testimony is admissible pursuant to Rule 703, SCRE, must fail. Dr. Smith's purported agreement with Dr. Price was not the basis for Dr. Price's opinion, in part, because, as Simpson concedes, the statement would be inconsistent with Dr. Smith's testimony. In short, for the agreement not to be hearsay under Rule 801(d), it cannot be admissible under Rule 703. It was not the basis for Dr. Price's opinion because Dr. Smith did not agree with Dr. Price, as his testimony would later show.

Moreover, Rule 703 allows for the admissibility of underlying "facts or data" upon which the expert basis his opinion. Dr. Smith's agreement with Dr. Price was not a fact or data – it was simply another opinion, consistent or not with Dr. Price's. As argued previously, Dr. Price formed his opinion **before** the alleged agreement from Dr. Smith. Thus, Simpson's argument the agreement was admissible hearsay because it was the basis of Dr. Price's opinion falls short in two respects, both its timing and its content.

Any testimony offered by Dr. Price concerning statements Dr. Smith made to him in agreement was inadmissible hearsay at the time it was offered. Beyond that agreement, Simpson has not clarified what testimony Dr. Price would have offered had he not been limited to the facts and data contained in Dr. Smith's records. Simpson has set forth inconsistent arguments on the admissibility of that evidence and should not benefit from the confusion of the issue before this Court.

There Was No Prejudice in the Limitation of the Testimony

Even if the statement had been admissible, Simpson cannot show she was prejudiced by the trial court's refusal to allow Simpson to question Dr. Price further on Dr. Smith's opinion. First, the jury heard the improper testimony – that Dr. Smith agreed with Dr. Price – and the State did not move to strike that testimony. Second, Simpson did not proffer the testimony Dr.

Price would have given had he been afforded the opportunity, so this Court cannot speculate the harm caused by the limitation on Dr. Price's testimony. Third, Simpson later had the opportunity to question Dr. Smith about any agreement when he took the stand in reply. When Dr. Smith testified, he discussed the meeting he had with Dr. Price, in which Price told Dr. Smith his findings. (App. p. 734, lines 16-21.) Dr. Smith said he told Dr. Price, "Well, based on upon what you were seeing at that time, I can see how you arrived at your decision." (App. p. 734, lines 22-24.) Dr. Smith went on to say he adamantly told Dr. Price Simpson presented entirely differently in the thirty-four visits he had with her, and there was "nothing similar in clinical presentation." (App. p. 735, lines 1-3.) Thus, Dr. Smith explained the underlying circumstances in which he agreed with Dr. Price's conclusion on the basis on what Dr. Price reviewed, but put that agreement within the framework of the larger conversation about Simpson.

Simpson cannot show she was prejudiced by the trial court's refusal to allow Dr. Price to testify about Dr. Smith's opinion, unless she also concedes she sought to distort the context of the agreement before the jury. Petitioner's argument is without merit.

CONCLUSION

For all of the foregoing reasons, Respondent respectfully submits the ruling of the Court of Appeals affirming the judgment, conviction, and sentence of the trial court should likewise be affirmed. The trial judge correctly ruled based upon the controlling legal principles in this State. For all of the foregoing reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA

Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

SUSANNAH R. COLE
Assistant Attorney General

W. WALTER WILKINS, III
Solicitor, Thirteenth Circuit
305 East North Street
Greenville, SC 29601
(864) 467-8282

BY: 
SUSANNAH R. COLE
SC Bar No. 68383

South Carolina Office of Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-0265

ATTORNEY(S) FOR RESPONDENT

October 16, 2019
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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Pickens County
The Honorable Brian M. Gibbons, Circuit Court Judge

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THE STATE,

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SUZANNA BROWN SIMPSON,

PETITIONER

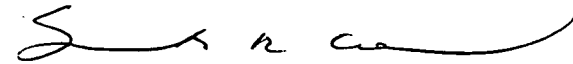
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CERTIFICATE OF SERVICE

I, Susannah R. Cole, certify that I have served the *Brief of Respondent* on Petitioner by depositing two (2) copies in the United States mail, postage prepaid, to her attorney of record, addressed as follows:

J. Falkner Wilkes
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292

This 16th day of October, 2019.



Susannah R. Cole
Assistant Attorney General
S.C. Bar No. 68383