

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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APR 08 2019

S.C. SUPREME COURT

Appeal from Pickens County, Court of General Sessions
The Hon. Brian M. Gibbons, Circuit Court Judge
Appellate Case No.: 2019-000500

The State, ... Respondent,

v.

Suzanna Brown Simpson, ... Petitioner.

APPENDIX VOL. I

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ATTORNEYS FOR RESPONDENT

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The South Carolina Court of Appeals

The State, Respondent,

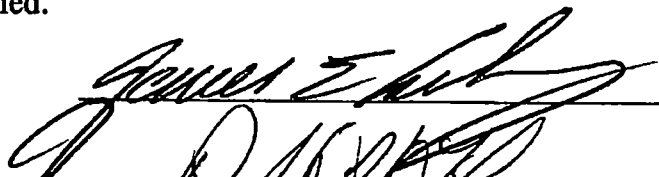
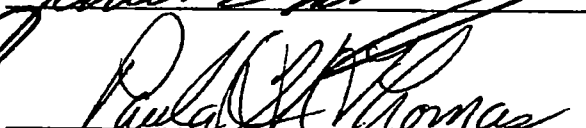
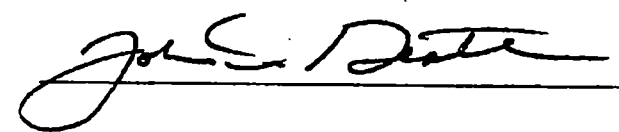
v.

Suzanna Brown Simpson, Appellant.

Appellate Case No. 2016-001387

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.

 C.J.
 J.
 J.

Columbia, South Carolina

FILED

cc:

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February 21, 2019

Melody Jane Brown, Esquire
The Honorable Brian M. Gibbons

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Suzanna Brown Simpson, Appellant.

Appellate Case No. 2016-001387

Appeal From Pickens County
Brian M. Gibbons, Circuit Court Judge

Opinion No. 5619
Submitted September 19, 2018 – Filed January 23, 2019

AFFIRMED

J. Falkner Wilkes, of Greenville, for Appellant.

Attorney General Alan McCrory Wilson, Deputy
Attorney General Donald J. Zelenka, Senior Assistant
Deputy Attorney General Melody Jane Brown, and
Assistant Attorney General Susannah Rawl Cole, all of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, all for Respondent.

LOCKEMY, C.J.: Suzanna Simpson appeals her convictions for murder, attempted murder, and possession of a weapon during the commission of a violent crime. Simpson argues the trial court erred in (1) admitting forensic expert testimony, (2) excluding expert testimony, and (3) denying her motion for a directed verdict. We affirm.

FACTS/PROCEDURAL BACKGROUND

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

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

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

In February 2014, Simpson was indicted by the Pickens County Grand Jury for two counts of murder, one count of attempted murder, and possession of a weapon during the commission of a violent crime. A jury trial was held on June 20-23, 2016.

During pre-trial motions, Simpson moved for a directed verdict, arguing that after she informed the State she intended to plead not guilty by reason of insanity, the State was required to put her on notice of any expert witnesses to rebut her insanity claim. Because the State had not given Simpson notice of its intention to call an expert witness, she argued the State would not meet its burden of proof. The State argued the motion for a directed verdict was not appropriate as a pre-trial motion because the defense of insanity is an affirmative defense requiring Simpson to present some evidence. The State also asserted it was not obligated to give Simpson notice of an expert witness and an expert witness was not required to combat the affirmative defense of insanity. The trial court denied Simpson's

motion for a directed verdict.

Simpson also sought to limit the opinion testimony of lay witnesses, again arguing the State could not prove she was sane without expert testimony. The State countered they could prove their case with lay witnesses. The trial court denied Simpson's motion. Simpson then asserted the State could not prove through lay witnesses that she had a mental impairment, and, thus, could not conform her conduct to the requirements of the law. The trial court denied Simpson's motion to limit witness testimony.

Simpson next moved to bar the testimony of her treating psychiatrist, Dr. Jeff Smith. Simpson's expert witnesses had consulted Dr. Smith and he was a known witness. The State informed the court it might ask to qualify Dr. Smith as an expert in psychiatry, but it was not sure how it would use his testimony. The trial court decided to rule on any objections to the testimony at the appropriate time.

During trial, several witnesses testified as to Simpson's behavior leading up to the shootings. Nathan Stegall, a friend of the Simpsons, testified he visited the Simpson's home the day before the shootings. Stegall testified that while he waited for Michael, Simpson seemed angry. Stegall believed Simpson and her husband were arguing. Later that evening, Stegall received a text message from Simpson that read, "Hell on earth?"

At Simpson's children's school, another parent testified he saw Simpson in the school office the day before the shootings. The parent observed Simpson withdrawing her daughter from school. When asked for the reason, Simpson said she was picking up her daughter because her son was sick, and she was afraid her daughter might also be sick. Simpson's son, who was with her, said, "I'm not sick, Mom." The parent observed Simpson pacing back and forth and growing impatient while waiting for her daughter. When the parent suggested Simpson's daughter was likely collecting her backpack, Simpson replied "Where she's going to go, she don't need no backpack." Simpson also appeared angry and snapped at the parent as she left the building with her children.

Simpson's mother-in-law, Allison, testified regarding a conversation the night before the shootings in which Simpson asked her why her mother-in-law and father-in-law did not come to visit and help with the kids more often. Allison also recalled another conversation with Simpson the previous year following Simpson's release from a behavioral care center. After Simpson was discharged, Michael left on a hunting trip, and Simpson called Allison asking if she thought Michael would

return home to his family.

Simpson's mother, Susan, testified Simpson called her the day before the shootings and asked her if her parents really wanted her. Later that day, Simpson called again and asked her mother if various relatives who were deceased were better off in heaven. In another call, Simpson spoke to Susan about the evils of the world and how you could not protect your children from those evils. When Simpson called again that evening, Susan testified Simpson sounded happy, saying she and her husband were going to seek marital counseling. Later that evening, however, Simpson called Susan again and said, "Mike's through with me. He thinks I can't take care of the children." When Susan pressed her for details, Simpson said Michael told her she stares into space all the time. Susan also testified Simpson had what appeared to be a psychotic episode in 2012. Simpson was hospitalized for five days after this episode and was then transferred to a behavioral health center where she remained for three days. Susan recalled several instances in which her daughter told her she believed the family was being watched.

At the close of the State's case, Simpson renewed her motion for a directed verdict, arguing the State had failed to give the defense notice of their intent to call an expert witness. The State argued the law presumes the defendant is sane and an affirmative defense requires the defense to prove by a preponderance of the evidence that Simpson was insane at the time of the shootings. The trial court asked the State if it intended to call an expert witness, and the State said it could not be sure without knowing how Simpson would present her case, but if it did call a witness, it would be Dr. Smith. The trial court again denied Simpson's motion for a directed verdict.

Simpson presented three expert witnesses at trial. Dr. Leonard Mulbry testified he met with Simpson three times after the shootings and examined her medical records. Dr. Mulbry diagnosed Simpson with schizoaffective disorder bipolar type. Dr. Mulbry outlined her medical treatment in the years before the shooting, beginning with mild depression in college, followed by episodes of post-partum depression. He further noted that in 2010 Simpson began seeing Dr. Smith who treated Simpson with several medications in an effort to control her symptoms. After a review of Simpson's medical records and Dr. Smith's notes, Dr. Mulbry explained that Simpson's moods cycled through depression, sleeplessness, confusion, and paranoia. Dr. Mulbry opined Simpson was unable to distinguish legal and moral right from wrong at the time of the shootings.

On cross examination, Dr. Mulbry testified he examined Simpson nine months after the shootings. Dr. Mulbry also acknowledged he never consulted with Dr. Smith and relied only on Dr. Smith's notes in forming his opinion. Dr. Mulbry noted that after Simpson received treatment for her bipolar disorder at the treatment facility in 2012, her mood improved, she had no hallucinations or homicidal thoughts, and she didn't mention any concerns for her children. Dr. Mulbry also noted Simpson had not been diagnosed with schizoaffective disorder prior to the shootings. Dr. Mulbry admitted that during the period he believed Simpson suffered from schizoaffective disorder in the hours before the shooting, he could not opine whether Simpson knew right from wrong when she spoke to the officials at the children's school, interacted with Nate Stegall and her neighbor, and had several conversations with her mother and mother-in-law.

Simpson's second expert witness, Dr. David Price, evaluated Simpson by meeting with her and Dr. Smith and reviewing Simpson's extensive medical records. Dr. Price also diagnosed Simpson with schizoaffective disorder bipolar type and opined Simpson was not able to distinguish between right and wrong at the time of the shootings. Dr. Price testified there was "no question" about Simpson's psychosis, delusions, and paranoia on the night of the shootings. Dr. Price testified Dr. Smith agreed with his opinion, and the State objected based on hearsay. The trial court sustained the objection.

Dr. Richard Frierson, a court appointed psychiatrist, also diagnosed Simpson with schizoaffective disorder bipolar type. Dr. Frierson testified Simpson suffered from episodes of mania, depression, and delusional or paranoid thinking. Dr. Frierson opined Simpson could not distinguish right from wrong at the time of the shootings.

At the conclusion of the defense's case, the State informed the court it sought to call Dr. Smith as a reply witness. Simpson renewed her motion for a directed verdict, arguing the State was not entitled to present a rebuttal witness because her due process rights were violated when the State did not present evidence of her sanity beyond a reasonable doubt in its case-in-chief. Simpson further argued she did not consent to Dr. Smith's testimony, nor had she waived her physician/client privilege. The State argued Simpson waived her privilege in accordance with section 44-22-90 of the South Carolina Code (2018) when she released her medical records to her retained experts. The State also argued it was entitled to call Dr. Smith pursuant to Rules 703 and 705, SCRE, because Simpson's experts relied on Dr. Smith's treatment of Simpson in forming their opinions about her diagnosis. The State said Dr. Smith would be qualified as a psychiatrist and as a fact witness

to his treatment of Simpson in the years prior to the shootings. The State informed the court it also expected Dr. Smith to explain that Simpson's remediation within forty-eight hours of the shootings was atypical, and that he would not expect to see that in a patient with a true psychosis.

Simpson argued Dr. Smith should not be permitted to testify whether she knew right from wrong or could conform her behavior. The trial court replied, "Because you say he's not qualified to because he's not a forensic psychiatrist." The court informed Simpson it would make that determination after voir dire. The following day, the State argued Dr. Smith was qualified to testify about Simpson's ability to conform her behavior to the requirements of the law because of his qualifications as a psychiatrist. The State argued any distinction between a treating psychiatrist and a certified forensic psychiatrist would be a matter of weight for the jury to determine. Simpson countered that it would be unethical for the State to call a treating physician to testify "in a forensic manner against his own patient."

The trial court issued several rulings. First, the court found the State was entitled to present reply evidence. The trial court also found Simpson waived her privileged medical information because she released her records to three defense experts. The trial court further ruled it would allow Dr. Smith to testify and he would likely be qualified as an expert in psychiatry, and the court would make its determination of his qualifications as set forth in *State v. Council*¹. The trial court found it was within the purview of the jury to weigh the credibility of the expert's opinion on the matter.

Dr. Smith began treating Simpson in March of 2010. Over the course of his treatment, he saw Simpson as a patient thirty-four times. According to Dr. Smith, Simpson's condition appeared stable at times over the years, and at other times Dr. Smith would adjust her medications to treat her three conditions: bipolar disorder, attention deficit disorder (ADD), and anxiety. Dr. Smith testified these three conditions were "tricky" to manage because the medications for ADD could enhance the symptoms of bipolar disorder if the patient were not taking the mood stabilizer to manage the mood disorder. In fact, in one of three instances in which Simpson admitted having paranoia, she also told Dr. Smith she had stopped taking her mood stabilizer. Dr. Smith stated Simpson's decision to continue taking the stimulant medication for ADD without the stabilizer would significantly contribute to her psychosis.

¹ 335 S.C. 1, 515 S.E.2d 508 (1999).

Dr. Smith reviewed the report of Dr. Frierson and spoke to Dr. Price. Dr. Smith testified he told Dr. Price that Simpson presented entirely differently in the thirty-four visits with Dr. Smith than she did during their evaluation. Dr. Smith stated he told Dr. Frierson, "it was like we were talking about two different individuals." Dr. Smith explained Simpson only complained vaguely of paranoid thoughts along the lines of "I think people are talking about me." Dr. Smith testified the delusions reported by Simpson and her family were never mentioned to him during the course of his treatment. Dr. Smith noted the hospital records from the treating emergency room psychiatrist, who saw Simpson directly after the shootings, did not indicate Simpson wanted to kill herself or heard any voices. Further, the emergency room psychiatrist's description of Simpson's psychosis was not nearly as severe as the forensic psychiatrists' reports. Dr. Smith believed Simpson's rapid resolution of symptoms, both during the earlier admission and during the treatment after the shootings, was an unusual response to a functional psychosis. Dr. Smith testified that typically a functional psychosis such as schizophrenia, bipolar disorder with psychosis, or depression with psychosis would not react that quickly and positively to medication.

Dr. Smith also found it unusual for Simpson's statements to her mother the day before the shootings to sound normal in one call and psychotic in another. Dr. Smith stated it would be unusual for someone who is psychotic to come in and out of psychosis throughout the day. Dr. Smith also pointed out Simpson's comment about her husband being "done with her" and her decision to withdraw the children from school indicated some organized planning on her part. Dr. Smith opined Simpson knew right from wrong at the time of the shootings.

At the conclusion of trial, the jury returned a verdict of guilty on all charges and the court sentenced Simpson to consecutive life sentences for the two counts of murder, a consecutive term of thirty years' imprisonment for attempted murder, and a consecutive term of five years' imprisonment for possession of a weapon during the commission of a violent crime.

STANDARD OF REVIEW

"In criminal cases, the appellate court sits to review errors of law only." *State v. Jenkins*, 412 S.C. 643, 650, 773 S.E.2d 906, 909 (2015).

LAW/ANALYSIS

I. Dr. Smith

A. Qualification of Dr. Smith

Simpson argues the trial court erred in allowing Dr. Smith to give forensic testimony and offer his opinion on sanity where he was not qualified as an expert in forensic psychiatry. We disagree.

"If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Rule 702, SCRE. However, "[b]efore a witness is qualified as an expert, the trial court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) . . . the expert's testimony is reliable." *State v. Martin*, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). "The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion." *Id.* "An abuse of discretion occurs when the trial court's ruling is based on an error of law or a factual conclusion that is without evidentiary support." *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). While an expert's qualification generally goes to weight of his testimony and not its admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012).

Here, the trial court qualified Dr. Smith as an expert in psychiatry. On appeal, Simpson argues the determination as to whether she knew right from wrong at the time of the shootings is a determination that can only be made by experts qualified in *forensic* psychiatry. Simpson contends that while Dr. Smith was qualified to testify as to her condition during his treatment, he was not qualified to testify as to his forensic opinion of her condition at the time of the shootings. Simpson argues Dr. Smith's opinion was based on a review of the case, including records previously unseen by Dr. Smith; thus, Dr. Smith prepared for and testified to his opinions based on a forensic evaluation of the case.

We find the trial court did not abuse its discretion in qualifying Dr. Smith as an expert in psychiatry and allowing him to testify as to Simpson's ability to distinguish between right and wrong. First, we note Simpson failed to cite any case law supporting her argument that only a forensic expert can testify as to whether a defendant knew right from wrong at the time of the crime. Moreover, in

the case of an affirmative defense of insanity, the jury decides whether the defendant knew right from wrong based on either the testimony of lay witnesses or expert witnesses or both. *See State v. Lewis*, 328 S.C. 273, 278, 494 S.E.2d 115, 117 (1997).

In addition, we find Dr. Smith, as Simpson's treating psychiatrist, was qualified to opine as to Simpson's mental capacity. At the time of trial, Dr. Smith had practiced psychiatry for twenty-six years and been deposed "hundreds of times" in civil cases. He also completed a rotation in forensic psychiatry during his residency. Dr. Smith has offered his opinion on a patient's criminal responsibility on five occasions and rendered an opinion on his patients' ability to conform their behavior on multiple occasions. Not only was Dr. Smith qualified to opine on Simpson's mental capacity, he also had the most direct and most recent interaction with Simpson in relation to the shootings. Dr. Smith saw Simpson thirty-four times over a three-year-period, including a visit three months before the shootings. In contrast, Dr. Mulbry examined Simpson nine months after the shootings, Dr. Price examined her one year later, and Dr. Frierson began his evaluation almost two years after the shootings.

B. Admission of Dr. Smith's Testimony

Simpson argues the trial court erred in admitting Dr. Smith's testimony. Specifically, Simpson contends the court erred in admitting testimony: (1) despite discovery violations under Rule 5, SCRCrimP, and *Brady v. Maryland*²; (2) based on evidence obtained in violation of state and federal privacy laws; and (3) based on evidence obtained as a result of an unlawful seizure under the Fourth Amendment. We disagree.

"Generally, the admission of expert testimony is a matter within the sound discretion of the trial court." *State v. Cope*, 405 S.C. 317, 343, 748 S.E.2d 194, 208 (2013) (quoting *State v. Whaley*, 305 S.C. 138, 143, 406 S.E.2d 369, 372 (1991)). This court will not disturb the trial court's admissibility determinations absent a prejudicial abuse of discretion. *State v. Adkins*, 353 S.C. 312, 326, 577 S.E.2d 460, 468 (Ct. App. 2003). "An abuse of discretion arises from an error of law or a factual conclusion that is without evidentiary support." *State v. Irick*, 344 S.C. 460, 464, 545 S.E.2d 282, 284 (2001). "A trial court's ruling on the admissibility of an expert's testimony constitutes an abuse of discretion whe[n] the ruling is manifestly arbitrary, unreasonable, or unfair." *State v. Grubbs*, 353 S.C.

² 373 U.S. 83 (1963).

374, 379, 577 S.E.2d 493, 496 (Ct. App. 2003). To show prejudice, the appellant must demonstrate "a reasonable probability the jury's verdict was influenced by the challenged evidence or the lack thereof." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

1. Rule 5, SCRCrimP, and *Brady*

Simpson argues the trial court erred in allowing Dr. Smith's testimony despite discovery violations under Rule 5, SCRCrimP, and *Brady*. We disagree.

Pursuant to Rule 5(a)(1)(D), SCRCrimP,

Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

"The *Brady* disclosure rule requires the prosecution to provide the defendant with any evidence in the prosecution's possession that may be favorable to the accused and material to guilt or punishment." *State v. Anderson*, 407 S.C. 278, 286, 754 S.E.2d 905, 909 (Ct. App. 2014). "[A]n individual asserting a *Brady* violation must demonstrate the evidence was (1) favorable to the accused; (2) in the possession of or known by the prosecution; (3) suppressed by the State; and (4) material to the accused's guilt or innocence, or [impeachment evidence]." *Id.* at 287, 754 S.E.2d at 909. "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *State v. Von Dohlen*, 322 S.C. 234, 241, 471 S.E.2d 689, 693 (1996).

Simpson's medical records were central to her defense of insanity. Shortly after trial counsel was appointed to represent Simpson, she signed a HIPAA release authorizing the release of her medical records. Simpson's records were then disclosed to the defense experts and the court appointed psychiatrist to aid in the formation of their opinions.

We disagree with Simpson's argument that the State violated Rule 5 and *Brady* by failing to disclose the records as the basis for Dr. Smith's opinion when the documents were in the possession of the defense and submitted to the defense experts. Simpson contends the State was required to disclose the basis of Dr. Smith's opinion, pursuant to Rule 5 and *Brady*, but the law does not support this contention. Rule 5 does not obligate the solicitor to notify the defendant of the substance of an expert's testimony that has not been put in the form of a written report, particularly when the expert is relying on information within the defendant's possession.

2. Privacy Laws

Simpson argues the trial court erred in admitting Dr. Smith's testimony based on evidence obtained by SLED in violation of state and federal privacy laws. We disagree.

Pursuant to the record: (1) SLED submitted a form requesting medical information from Simpson's medical providers; (2) the form cited an inapplicable state statute³; and (3) the State was unaware of the form submitted by SLED. Simpson did not request a suppression hearing, no records custodians from the medical providers testified about when the documents were disclosed, and no representative from SLED testified about how the information ultimately came into its possession. The trial court did not make a finding as to how SLED retrieved Simpson's records. However, the trial court did find Simpson waived her privilege to protect her medical records by disclosing the information to her own experts, then calling those experts to testify to the contents at trial.

We agree with the trial court's finding that Simpson waived her privacy interest in her medical records when she consented to the disclosure of her records to her own experts and opened the door to her mental health by raising the defense of insanity. Because Simpson waived her claim of privilege in her records, her argument SLED obtained her records improperly had no bearing on the issue before the trial court.

³ SLED is authorized to "expeditiously investigate child deaths in all counties of the State" in accordance with section 63-11-1940 of the South Carolina Code (2010). In addition, section 63-11-1960 of the South Carolina Code (2010) authorizes SLED to obtain the medical records of a child whose death is being reviewed by the department. Here, SLED requested Simpson's records, not the children's.

Furthermore, Simpson cannot demonstrate any prejudice from the trial court's decision to allow Dr. Smith's testimony based on her medical records. Simpson called three expert witnesses to testify as to their opinions of her mental health after reviewing her records from Dr. Smith. These experts explained to the jury the portions of Dr. Smith's records they found relevant to their opinions. Simpson cannot show Dr. Smith revealed information to the jury that was not previously revealed through the defense experts.

3. Fourth Amendment

Simpson argues the trial court erred in admitting Dr. Smith's testimony because it was based on evidence obtained as a result of an unlawful seizure under the Fourth Amendment. We disagree.

The Fourth Amendment provides no remedy for a violation of the warrant requirement, but the United States Supreme Court fashioned the exclusionary rule, a deterrent sanction whereby the State is barred from introducing evidence obtained in violation of the Fourth Amendment. *Davis v. United States*, 564 U.S. 229, 237 (2011). A Fourth Amendment seizure "deprives the individual of dominion over his or her person or property." *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011) (quoting *Horton v. California*, 496 U.S. 128, 133 (1990)). However, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, . . . then the deterrence rationale has so little basis that the evidence should be received." *Nix v. Williams*, 467 U.S. 431, 432 (1984).

Simpson argues Dr. Smith's testimony should have been excluded because SLED violated her Fourth Amendment rights. The trial court declined to make a finding that Simpson's medical records obtained by SLED were a search or seizure in violation of Simpson's Fourth Amendment rights.

As discussed above, the State was entitled to Simpson's medical records, and was entitled to call Dr. Smith as a reply witness. At trial, Simpson did not request, nor did the trial court conduct, a suppression hearing on her medical records. Simpson does not object to the disclosure of the information in her medical records to expert witnesses. Nor does she object to the information in her medical records being presented to the jury. Instead, Simpson seeks to suppress Dr. Smith's opinion on the basis of her records. We find Simpson's Fourth Amendment violation claim is

not supported by the record or an appropriate claim of exclusion to Dr. Smith's testimony.

II. Dr. Price

Simpson argues the trial court erred in excluding Dr. Price's testimony regarding statements made to Dr. Price by Dr. Smith. We disagree.

"Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Rule 801(c), SCRE. "[I]t is well-settled that an exception to the rule prohibiting hearsay exists when it is used by an expert." *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432, 433 (1997). "An expert may base his opinion on hearsay evidence so long as it is of a type reasonably relied upon by other experts in the field." *Id.*

Dr. Price testified Dr. Smith agreed with his opinion that Simpson was not able to differentiate between right and wrong at the time of the shootings. The State objected based on hearsay and the trial court sustained the objection. On appeal, Simpson argues an expert witness may testify as to matters of hearsay for the purpose of showing what information he or she relied upon in giving an opinion of value.

We find the trial court did not err in excluding Dr. Price's testimony. Dr. Price testified Dr. Smith agreed with his opinion, which necessarily indicates Dr. Price formed his opinion *before* Dr. Smith agreed with it. Dr. Price's testimony was an impermissible attempt to bolster his credibility before the jury, and did not fit within the hearsay exception for expert testimony.⁴ *See State v. McKerley*, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012) (holding a witness is not permitted to vouch for the credibility of another witness by offering testimony that bolsters the testimony of another witness).

III. Directed Verdict

Simpson contends the trial court erred in denying her motion for a directed verdict, arguing the State failed to present sufficient evidence tending to prove her guilt. We disagree.

⁴ We note Simpson did not attempt to enter Dr. Smith's statement to Dr. Price pursuant to Rule 613(b), SCRE.

"When ruling on a motion for a directed verdict, the trial court is concerned with the existence or nonexistence of evidence, not its weight." *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006). "A defendant is entitled to a directed verdict when the State fails to produce evidence of the offense charged." *Id.* "On appeal from the denial of a directed verdict in a criminal case, an appellate court must view the evidence in the light most favorable to the State." *State v. Stanley*, 365 S.C. 24, 41, 615 S.E.2d 455, 464 (Ct. App. 2005). "If there is any direct or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, we must find that the issues were properly submitted to the jury." *State v. Mollison*, 319 S.C. 41, 46, 459 S.E.2d 88, 91 (Ct. App. 1995).

Pursuant to section 17-24-10(A) of the South Carolina Code (2014),

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.

However,

[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 Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law.

S.C. Code Ann. § 17-24-20(A) (2014).

Viewing the evidence in the light most favorable to the State, we find a jury could reasonably deduce Simpson was capable of recognizing her actions as morally or legally wrong. Although Simpson's three experts opined she was unable to distinguish between right and wrong at the time of the shootings, Simpson's treating psychiatrist Dr. Smith testified she was capable of distinguishing between right and wrong. Additionally, several lay witnesses testified as to Simpson's behavior around the time of the shootings. The following evidence was introduced

from which a jury could conclude Simpson understood right from wrong: (1) Simpson removed her children from school and lied as to the reason; (2) Simpson appeared irritated with her husband and children the day before the shootings; (3) Simpson turned off the home's alarm system before the shootings; and (4) Simpson refused to tell her neighbor or the police about the whereabouts of her family.

Although Simpson's experts opined she did not know right from wrong at the time of the shootings, the jury was not required to give the expert testimony greater weight than that of the lay witnesses. *See State v. Douglas*, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009) (holding the fact that a witness was qualified as an expert did not require the jury to accord her testimony any greater weight than that given to any other witness). Accordingly, the trial court did not err in denying Simpson's motion for a directed verdict.

CONCLUSION

Simpson's convictions are

AFFIRMED.

THOMAS and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2016-001387

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SC Court of Appeals

The State, ... Respondent,

v.

Suzanna Brown Simpson, ... Appellant.

APPELLANT'S BRIEF

J. Falkner Wilkes, 12893
114 Whitsett Street
Greenville, SC 29601
(864) 282-1292
Counsel for Appellant

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STATEMENT OF ISSUES ON APPEAL

- 1) Did the trial court err in admitting forensic testimony of the state's expert witness?
- 2) Did the trial court err in excluding testimony of the defense expert?
- 3) Did the trial court err in refusing to direct a verdict for the defendant or grant a new trial?
- 4) Did the trial court err in admitting forensic testimony where state expert was not qualified as an forensic expert?

STATEMENT OF THE CASE

The Appellant was indicted for the murder of her two children, and the attempted murder of her husband along with being in possession of a weapon during a violent crime. The Appellant proceeded to a jury trial in Pickens County on June 20, 2016. At trial the Appellant was represented by John Mauldin, Public Defender, Teal Johnson, and Jacob Goldstein of the Public Defender's Office. The State was represented by Walter Wilkins, Solicitor and Betty C. Strom, Deputy Solicitor, for the 13th Judicial Circuit. The case was tried before a jury, the Honorable Brian M. Gibbons, presiding. The jury returned a verdict of guilty on all charges and the Appellant was sentenced to the maximum possible sentence on the charges, two life sentences, a thirty year sentence, and a five year sentence, all consecutive. The Appellant timely appealed and J. Falkner Wilkes substituted as counsel for the Appellant. This brief follows:

STATEMENT OF FACTS

The Appellant was charged with attempted murder of her husband and the murder of her two children, ages five and seven. The Appellant did not contest that she shot her husband and children. R. 116. Appellant defended on the basis of her inability to tell right from wrong at the time of the incident. R. 117. The incident occurred at approximately 4:00 a.m. on May 14, 2013. R. 327.

On the day before the incident Nathan Stegall, a friend of the defendant's husband, came over to borrow a car while the defendant's husband was at work. He had a short conversation with the defendant. Stegall said that he "could tell she was highly agitated." R. 273, l. 25. Stegall borrowed a truck and left. At 9:11 p.m. that night Stegall received a text message from the defendant that said "Hell on Earth?" R. 277. Stegall testified that out of all the time that he had known the defendant this was the only text he had ever received from her and thought it very odd R. 280.

Kevin Sanders' son and the defendant's daughter attended the same school. The day before the incident Mr. Sanders was in the school office and recalled overhearing the defendant telling her son that she was signing out his sister because he was sick, to which the boy responded "I'm not sick,

Mom." R. 282-283. Sanders characterized her behavior that day as odd. While waiting for her daughter to come to the office the defendant was walking back and forth, real impatient. R. 285. Then when leaving, the defendant heard Sanders say something to his child and mistakenly believed that he had been speaking to her. The defendant spun around angrily and said, "What did you say to me?" R. 286, l. 8. Sanders said that "something just didn't feel right" about the defendant's actions. R. 287, l. 11-14. Sanders said that the defendant was acting very strangely. R. 288-289.

The defendant's mother-in-law, Alison Simpson, testified to the defendant's commitment to an in-patient mental health facility about a year before the incident, and that after the commitment she had openly questioned the defendant's ability to care for the children and whether she would ever hurt them. R. 295. Alison Simpson said that on the day before the incident the defendant had called and asked her about why she didn't come to the house as much. R. 297. The end of the call was bizarre with the defendant saying, "I just wanted to say hello." R. 397, L. 6-7. Simpson testified to another bizarre conversation with the defendant just after she was released from inpatient psychiatric care. R. 301.

The defendant's mother, Susan Brown, testified about the defendant's

history of mental health problems and her behavior leading up to her hospitalization at St. Francis Hospital and the Carolina Center about ten months prior to the incident. She said that during a drive to Asheville the defendant was not making sense, nothing connected, talking about friends that she had talked to that had somebody else's voices coming out of their mouth. R. 312-313. Brown testified that the defendant later called her around midnight saying to turn the lights on because her house wasn't safe. R. 314. Brown said that the defendant did not even sound like herself in the phone call. R. 314. They took her to the emergency room and she was committed based on the psychotic episode. R. 315-316. Brown said that the defendant thought she was being followed, her phones bugged, and that she was being watched through her ceiling fan. R. 317.

On the day before the incident, Brown indicated that the defendant wasn't quite herself when they went out to dinner for Mother's Day. R. 319; 746-749. Brown said that the defendant was just sitting and staring and wouldn't eat dinner. R. 321.

On the day of the incident Brown had several conversations with the defendant. R. 307. The defendant called her around 10:30 in the morning and asked one "very bizarre" question: "Did you and dad really want me?" R. 307,

l. 10-12. About noon the defendant called a second time and asked another "very bizarre" question about deceased family members being better off in heaven. R. 307. Brown testified that the defendant's tone was so strange that it almost didn't sound like herself. R. 307. Brown responded to the defendant's question about family members better off in heaven that they were because they had suffered so much. R. 307. Then around 1:30 in the afternoon the defendant called back and "was talking very fast, nonstop about the evils of the world and how you couldn't protect yourself, you couldn't protect your children from the evils of this world." R. 308, l. 14-18. At 5:45 that evening the defendant called Brown again and said that the defendant sounded so happy. R. 308-309. Then at 8:45 p.m., just hours before the incident, the defendant called back and sounded as sad and low as she had been happy hours earlier. R. 309. In that last conversation the defendant told her mother that she couldn't take care of the kids anymore. R. 310. In addition to the very bizarre nature of the calls Brown testified that it was very unusual for her to get so many calls from the defendant in one day. R. 310.

Dr. Leonard Mulbry, Jr., M.D., was qualified as an expert in forensic psychiatry. R. 376. Mulbry reviewed the defendant's extensive medical, psychiatric and associated records. R. 378. He met with the defendant on

three different occasions as part of his forensic evaluation. R. 378. Dr. Mulbry diagnosed the defendant with schizoaffective disorder bipolar type, the typical symptoms for which can include long periods of very severe depression and high rates of suicide. R. 380-381. Mulbry testified that this also includes mania where the mind races, irritability, and the inability to think clearly because thoughts don't link very well, which can result in a person not sleeping for a week or more at a time. R. 382. Mulbry testified that his review of records showed that the defendant had been treated for bipolar disorder for a long time. R. 382. Mulbry explained schizophrenia which involves the marked loss of reality. R. 382. Symptoms include hearing things that aren't there. R. 382. Symptoms also include paranoia, inability to link thoughts, and the inability to complete a sentence or thought. R. 382. Dr. Mulbry testified that the defendant suffered a major decline in mental health beginning in 2010. R. 387. In 2012 the defendant was committed to in-patient psychiatric treatment by St. Francis Hospital emergency room staff. At that time the defendant was found to be psychotically paranoid. R. 388. Dr. Mulbry testified that there is no cure for the defendant's condition. R. 390. Dr. Mulbry indicated that the photo taken of the defendant the day before the incident at the Mother's Day dinner showed a typical appearance for someone distracted

and fearful from paranoia. R. 746-749. Based on an extensive forensic review of the defendant's records, Dr. Mulbry opined that at the time of the incident the defendant was unable to tell moral and legal right from wrong. R. 391.

Dr. David Price, PhD., was qualified as an expert in forensic psychology, clinical psychology, and neuropsychology. R. 435. Dr. Price reviewed thousands of pages of medical history for the defendant and met with her on nine different occasions. R. 439. Dr. Price also interviewed the defendant's parents, and her treatment providers, including Dr. Jeffrey Smith. R. 440. Dr. Price diagnosed the defendant with schizoaffective disorder bipolar type. R. 449. After an exhaustive forensic review, Dr. Price opined that at the time of the incident the defendant did not know legal and moral right from wrong. R. 440. Dr. Price testified that he had no question about her psychosis, delusions, or paranoia, and that she was acting under the presence of a significant delusion at the time of the incident. R. 441.

Dr. Richard Lesense Frierson, M.D., was qualified as an expert in the field of forensic psychiatry. R. 463. On the motion of the State Dr. Frierson was appointed by the court to perform an evaluation of the defendant. Dr. Frierson did an extensive evaluation, reviewed records, interviewed family member, interviewed the ER physician that treated the defendant after the incident,

and met with the defendant three times. He also diagnosed the defendant with schizoaffective disorder bipolar type. R. 469. His diagnosis was wholly independent of the diagnosis of the other two defense experts. R. 470. Frierson explained that the defendant suffered from delusions which he defined as fixed false beliefs and psychosis which he defined as "out of touch with reality". R. 471-472. Dr. Frierson opined that the defendant was, due to mental illness, unable to distinguish legal or moral right from legal or moral wrong at the time of the incident. R. 475. Dr. Frierson related the defendant's paranoid delusional thought that hell had come to earth to the text message the defendant sent to Nate Stegall the day before the incident. R. 475; 745. Dr. Frierson has conducted over a thousand evaluations for criminal responsibility. R. 492. Dr. Frierson testified that the defendant was not criminally responsible for her actions when she shot her family. R. 493.

In reply, and over the discovery violation objection by the defense, the State offered surprise forensic testimony by Dr. Jeffrey K. Smith, M.D. Dr. Smith was the defendant's treating physician leading up to the date of the incident. Dr. Smith last saw the defendant clinically three months prior to the incident, and then for only 8 minutes. R. 610-611; 626. Dr. Smith's average appointment with the defendant lasted 7.4 minutes. R. 626-627. Dr. Smith

was qualified as an expert in psychiatry. R. 583. The state chose not to offer Smith as an expert in forensic psychiatry, stating that it would not be able to have him qualified in forensic psychiatry. R. 539, l. 1-2. Dr. Smith believed that the defendant had stabilized around that time but admitted in his testimony that he was obviously wrong. R. 610. Smith admitted that his own records indicated that the defendant suffered from psychosis on at least three occasions. R. 613. Throughout his treatment Smith had the defendant on various anti-psychotic drugs. R. 615. Smith admitted that during her treatment the defendant's condition would destabilize when she would stop taking medications which resulted in mood swings and recurrence of paranoia. R. 617. During Smith's treatment the defendant had the psychotic episode that caused her to be committed for psychiatric by the emergency room at St. Francis Hospital. R. 617. Smith's records indicate that on the appointment immediately following the defendant's release from her commitment in Carolina Behavioral Center he saw the defendant for eight minutes for her August 16, 2012. R. 620-621. Over the course of his treatment of the defendant the average time spent with the defendant was 7.4 minutes. R. 626.

In preparing to testify for the State Dr. Smith never reviewed witness

statements, police reports, supplemental reports, EMS reports, 911 phone calls. R. 607. Dr. Smith never met with any of the family members, Michael Simpson, the defendant's parents, or the defendant's in-laws. R. 608; 609. Over the objection of the defense Smith gave a forensic opinion that the defendant knew right from wrong but was unable to conform her conduct to the behavior of the law. R. 599.

The defense objected to the testimony of Dr. Smith based on a lack of prior notice to the defense required by Rule 5, Brady and due process. R. 25-28; 36; 340-341; 516-523. Based on Fourth Amendment grounds, HIPAA, and state privacy laws pertaining to mental health records the defense further objected to any forensic testimony by Dr. Smith. R. 517-518; R. 802. The defense also sought to suppress any forensic testimony that was based on his review of the defendant's mental health records illegally seized by SLED. R. 517-524; 802. Those records, which Dr. Smith admitted that he had never seen before, were provided to him by the solicitor just prior to trial to allow Dr. Smith to give forensic testimony. R. 567. The court expressly refused to make any findings as to the SLED's seizure of the defendant's records or make a clear ruling on the issue. R. 541. *(Additional facts in argument section)*

ARGUMENT

I. THE COURT ERRED IN ADMITTING FORENSIC TESTIMONY OF THE STATE'S EXPERT WITNESS.

A. The Court Erred in Allowing the Testimony of State Expert Despite Discovery Violations under Rule 5 and Brady.

At the beginning of the trial the defense first learned that Dr. Jeffrey K. Smith might be offered as witness by the State. Dr. Smith was the Appellant's treating physician for approximately three years, but had not seen the defendant for three months prior to the incident, and then for only about eight minutes. Although the defense was aware of who Dr. Smith was, it had no notice that he had conducted a forensic evaluation, or that he would be offered to give a forensic opinion as to sanity at the time of the incident. The defense therefore objected to Smith being qualified or allowed to testify as a forensic expert. After extensive arguments the State subsequently offered Dr. Smith only as an expert in psychiatry, with the solicitor admitting that he didn't think he could have Dr. Smith qualified as an expert in forensic psychiatry. Accordingly the court qualified Dr. Smith only as an expert in psychiatry.

There is no question that the State failed to disclose to the defense prior to trial that it would offer Dr. Smith as an expert, or that he would be asked to

give forensic testimony based on documents (medical records) obtained by SLED that belonged to the Appellant. Pursuant to Rule 5, and as a matter of due process, the defendant objected to the State's failure to provide notice of Dr. Smith as a forensic expert, or the substance of his testimony which clearly was the result of an undisclosed forensic evaluation. R. 24-32. The defense objected repeatedly throughout the trial to the State's use of Dr. Smith as an undisclosed forensic expert. R. 28; 341.

The record shows that the State's failure to disclose the substance of Dr. Smith's testimony was entirely intentional. In the State's reply to the defense's initial objection the solicitor specifically said: "I don't want to tell the defense." R. 51. Yet as the State's expert, Dr. Smith was ultimately asked by the state to testify to matters clearly the subject of Rule 5. Timely disclosure to the defense prior to trial was therefore required.

In his testimony, Dr. Smith testified to the contents of the defendant's mental health records. Dr. Smith's testimony covered not only his own records, as one of the defendant's prior treating physicians, but also to the content of records from other mental health providers which were obtained by SLED and provided by the solicitor to Dr. Smith to review. R. 527; 596-597. Even though those documents were not introduced as exhibits, the content nd

substance of the records were put to the jury through Dr. Smith's testimony.

R. 595-596. Accordingly, the State was required to disclose to the defense any documents from which that the State intended to have Dr. Smith testify.

Rule 5 provides:

Upon request of the defendant the prosecution shall permit the defendant to inspect and copy books, papers, *documents*, photographs, tangible objects, buildings or places, or copies or portions thereof, *which are within the possession, custody or control of the prosecution*, and which are *material to the preparation of his defense* or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or *belong to the defendant*.

Rule 5(a)(1)(C). Disclosure of Evidence by the Prosecution, Information Subject to Disclosure, Documents and Tangible Objects. *emphasis added*.

Here the mental health records at issue belonged to the defendant, were in the possession of the prosecution, and material to the preparation of the defense. They were therefore required to be disclosed to the defense. The defense made a proper request for the disclosure of any such documents and timely objected when it learned at trial that the State might offer testimony as to those documents despite a lack of any prior notice to the defense. R. 28; 341; R. 735-744

In addition to the failure to give prior notice of medical records seized by SLED that belonged to the defendant, the prosecution further failed to

disclose the forensic mental examination conducted by Dr. Smith based on those records. Rule 5 provides:

Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any *results* or reports of physical or *mental examinations*, and of scientific tests or experiments, or copies thereof, which are *within the possession, custody, or control of the prosecution*, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are *material to the preparation of the defense* or are intended for use by the prosecution as evidence in chief at the trial.

Rule 5(1)(D) Reports of examinations and tests.

Over the defense objection the court also allowed Dr. Smith to give a forensic opinion that the Appellant knew the difference between right and wrong, thus negating the Appellant's defense of insanity. R. 575. Since Dr. Smith had not seen the defendant for three months prior to the incident, and then for only eight minutes, Dr. Smith's testimony was necessarily based on his review of records that were obtained by SLED and provided to him by the solicitor to enable him to give forensic testimony at trial.

Although Dr. Smith had a dual role being a fact witness, he also became the State's forensic expert when asked to review the defendant's records from other providers and opine on the issue of sanity. Dr. Smith's pre-trial review of the records of other providers, including Carolina Center for Behavioral

Health and St. Francis Hospital, constituted a forensic mental evaluation of the defendant. R. 584-599. This is obvious as Dr. Smith admitted that he had never seen the records before they were provided to him by the solicitor. R. 567. Using these records Dr. Smith gave forensic testimony, including his opinion that the defendant knew the difference between right and wrong *at the time of the incident*. R. 599. As this testimony was clearly based on a forensic mental examination or evaluation of the defendant through her medical records, it was discoverable under Rule 5 and Brady.

"The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings." State v. Proctor, 348 S.C. 322, 330, 559 S.E.2d 318, 322 (Ct.App.2001), *rev'd on other grounds*, 358 S.C. 424, 595 S.E.2d 480 (2004). Despite the different underpinnings of Brady and Rule 5, each has the same goal of ensuring the criminal defendant's right to a fair trial. Neither is designed "to displace the adversary system as the primary means by which truth is uncovered, but [rather] to ensure that a miscarriage of justice does not occur." Bagley, 473 U.S. at 675, 105 S.Ct. 3375. Furthermore, "the prosecutor's role transcends that of an adversary [because] he 'is the representative not of an ordinary party to a controversy, but of a sovereignty

... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.' " *Id.* at n. 6 (quoting Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). Taking this into consideration and understanding that "the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure." Agurs, 427 U.S. at 108, 96 S.Ct. 2392. State v. Kennerly, 331 S.C. 442, 454, 503 S.E.2d 214, 220-21 (Ct. App. 1998), *aff'd*, 337 S.C. 617, 524 S.E.2d 837 (1999)

In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court held that, irrespective of good or bad faith, suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where such evidence is material to either guilt or punishment. Brady imposes an affirmative duty on the prosecution to produce at the appropriate time requested evidence that is materially favorable to the accused, either as direct or impeaching evidence. Brady is not a rule of discovery; it is a rule of fairness and minimum prosecutorial obligation. United States v. Beasley, 576 F.2d 626, 630 (5th Cir. 1978), *cert. denied*, 440 U.S. 947, 99 S.Ct. 1426, 59 L.Ed.2d 636 (1979) *citing* United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342 (1976). *See also*

United States v. Campagnuolo, 592 F.2d 852, 859 (5th Cir. 1979). The obligation to disclose is measured by the “character of the evidence, not the character of the prosecutor.” Agurs, 427 U.S. at 110, 96 S.Ct. at 2400.

Information known to investigative or prosecutorial agencies may, under certain circumstances, be imputable to the State. see United States v. Auten, 632 F.2d 478 (5th Cir.1980); State v. Von Dohlen, 322 S.C. 234, 240–41, 471 S.E.2d 689, 693 (1996). In this case SLED obtained the defendant’s mental health records, so possession of those records is clearly imputable to the prosecution. Of course the record clearly shows that the solicitor had actual possession of the documents since he personally gave them to Dr. Smith to conduct a forensic mental evaluation in this case. Based on the prosecution’s actual possession of the documents, and nature of the use of those records, the failure to provide notice to the defendant prior to trial constitutes a discovery violation. The court erred in failing to properly address the issue.

When a trial judge determines the prosecution violated Rule 5, the judge should fashion a proper remedy. The rule itself explains that if a party failed to comply with the rule, the court “may prohibit the party from introducing evidence not disclosed, or it may enter such other order as it

deems just under the circumstances.” Rule 5(d)(2), SCRCrimP. This Court in Kennerly explained the definition of “material” as used in Rule 5 is the same as the definition used in the context of violations and obligations pursuant to Brady. Kennerly, *supra* at 220. Thus, evidence is material for the purposes of Rule 5 “if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” United States v. Bagley, 473 U.S. 667, 682 (1985).

As explained in Kennerly, the goal of Rule 5 is to ensure a criminal defendant’s right to a fair trial. Further, the role of a prosecutor is to be a minister of justice, not the representative of an ordinary party. As the representative of the sovereign, the prosecutor’s interest in a criminal prosecution is not to win, but to see that justice is done. Kennerly, at 220; *See also Riddle v. Ozmit*, 369 S.C. 39 (2006).

Similarly, the Rules of Professional Conduct impose certain duties upon prosecutors. Specifically, the Rules require a prosecutor “make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.” Rule 3.8(3) SCACR. The special duties imposed upon prosecutors are due to the prosecutor’s “responsibility of a minister of justice and not simply

that of an advocate." Thus, the prosecutor has "specific obligations to see that the defendant is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence." Rule 3.8, *cmt. 1*, SCACR.

Brady requires that prosecutors fully disclose to the accused all exculpatory evidence in their possession.¹ United States Supreme Court decisions have extended the Brady obligation to include (1) the duty to disclose impeachment evidence, (2) favorable evidence in the absence of a request by the accused, and (3) evidence in the possession of person or organizations. See Giglio v. United States, 405 U.S. 150 (1972); United States v. Agurs, 427 U.S. 97 (1976); Material must be disclosed "when prejudice to the accused ensues ... [and where] the nondisclosure [is] so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Stickler v. Greene, 527 U.S. 263, 281-282 (1999).

The trial judge erred in failing to exclude Dr. Smith's forensic testimony based on the State's violation of Rule 5 and Brady.

¹Dr. Smith's opinion as to GBMI would constitute exculpatory evidence where it mitigated the potential sentence.

B. The Court Erred in Admitting Testimony of State Expert Based on Evidence Obtained in Violation of State and Federal Privacy Laws.

Dr. Smith testified to records of other mental health providers that he had never seen before they were given to him by the solicitor. Those records were obtained by SLED in clear violation of state and federal privacy laws relating to mental health records. The record shows that SLED sent a letter demanding that the defendant's current and prior mental health providers turn over the defendant's mental health records to the State. R. 566-567; 802-806. SLED did not obtain a search warrant, court order, or subpoena for the records. SLED'S demand failed to comply with both state and federal law relating to mental health records.

The defendant had a constitutional and statutory right to privacy in her mental health records. The defendant's mental health records were confidential, privileged, and protected by S.C. Code § 44-22-90 which provides:

(A) Communications between patients and mental health professionals including general physicians, psychiatrists, psychologists, psychotherapists, nurses, social workers, or other staff members employed in a patient therapist capacity or employees under supervision of them are considered privileged. The patient may refuse to disclose and may prevent a witness

from disclosing privileged information except as follows:

- (1) communications between facility staff so long as the information is provided on a "need-to-know" basis;
- (2) in involuntary commitment proceedings, when a patient is diagnosed by a qualified professional as in need of commitment to a mental health facility for care of the patient's mental illness;
- (3) in an emergency where information about the patient is needed to prevent the patient from causing harm to himself or others;
- (4) information related through the course of a court-ordered psychiatric examination if the information is admissible only on issues involving the patient's mental condition;
- (5) in a civil proceeding in which the patient introduces his mental condition as an element of his claim or defense, or, after the patient's death, when the condition is introduced by a party claiming or defending through or as a beneficiary of the patient, and the court finds that it is more important to the interests of justice that the communication be disclosed than the relationship between the patient and psychiatrist be protected;
- (6) when a competent patient gives consent or the guardian of a patient adjudicated as incompetent gives consent for disclosure;
- (7) as otherwise authorized or permitted to be disclosed by statute.

(B) This does not preclude disclosure of information to the Governor's ombudsman office or to the South Carolina Protection and Advocacy System for the Handicapped, Inc.

S.C. Code § 44-22-90.

None of the exceptions of § 44-22-90 existed at the time SLED obtained the defendant's mental health records in this case. The defendant's mental health records were further protected under S.C. Code Section 19-11-95 which provides in pertinent part:

- (B) Except when permitted or required by statutory or other law, a provider knowingly may not:
- (1) reveal a confidence of his patient;

.....
(C) A provider may reveal:

- (1) confidences with the written authorization of the patient or patients affected, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed;**
- (2) confidences when allowed by statute or other law;**
- (3) the intention of the patient to commit a crime or harm himself and the information necessary to prevent the crime or harm;**
- (4) confidences reasonably necessary to establish or collect his fee or to defend himself or his employees against an accusation of wrongful conduct;**
- (5) in the course of diagnosis, counseling, or treatment, confidences necessary to promote care within the generally recognized and accepted standards, practices, and procedures of the provider's profession;**
- (6) confidences in proceedings conducted in accord with Sections 40-71-10 and 40-71-20;**
- (7) confidences with the written authorization of the patient or patients affected for processing their health insurance claims, but only after disclosure to them of what confidences are to be revealed and to whom they will be revealed.**

(D) A provider shall reveal:

- (1) confidences when required by statutory law or by court order for good cause shown to the extent that the patient's care and treatment or the nature and extent of his mental illness or emotional condition are reasonably at issue in a proceeding; provided, however, confidences revealed shall not be used as evidence of grounds for divorce;**
- (2) confidences pursuant to a lawfully issued subpoena by a duly constituted professional licensing or disciplinary board or panel;**
- (3) confidences when an investigation, trial, hearing, or other proceeding by a professional licensing or disciplinary board or panel involves the question of granting a professional license or the possible revocation, suspension, or other limitation of a professional license.**

(E) A disclosure pursuant to subsection (C) or (D) is limited to the information and the recipients necessary to accomplish the purpose of the subsection permitting the disclosure.

(F) A person to whom a disclosure is made pursuant to subsections (C)(1), (5), and (7), an employee to whom a disclosure is made pursuant to subsection (G), and any other person to whom a confidence, written or oral, is disclosed by a provider are bound by the same duty of confidentiality as the provider from whom he received the information.

(G) A provider shall exercise reasonable care to prevent his employees, associates, and others whose services are utilized by him from disclosing or using confidences of a patient, except that a provider may reveal the information allowed by subsections (C) and (D) through an employee.

(H) A provider releasing a confidence under the written authorization of the patient or under the provisions of this section is not liable to the patient or other person for release of the confidence to the person authorized to receive it; provided, however, a patient has a cause of action for damages against a provider, associate, agent, employee, or any other person who intentionally, wilfully, or with gross negligence violates the provisions of this section.

(I) Nothing in this section alters the existing requirements of nonproviders to preserve confidences or the requirements of providers subject to Sections 44-23-1090 and 44-52-190.

S.C. Code Ann. § 19-11-95. None of the exceptions were applicable at the time SLED seized the defendant's mental health records. SLED's seizure therefore violated the defendant's privacy rights under state law.

SLED's seizure of the defendant's records further violated federal law.

Under federal law mental health records are protected under HIPAA. HIPAA defines "protected health information" as "individually identifiable health information," which in turn is defined as information that:

- (1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (2) Relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
 - (i) That identifies the individual; or
 - (ii) With respect to which there is a reasonable basis to believe the information can be used to identify the individual.

45 C.F.R. § 160.103 (2016).

Federal regulations further provide that a health care provider may disclose protected health information (*i.e.*, "individually identifiable health information") for a law enforcement purpose to a law enforcement official "*[i]n compliance with ... [a] court order or court-ordered warrant*" as long as "(1) [t]he information sought is relevant and material to a legitimate law enforcement inquiry; (2) [t]he request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information is sought; and (3) [d]e-identified information could not reasonably be used." 45 C.F.R. § 164.512(f)(1)(ii) (2016), *emphasis added*. State v. Smith, 789 S.E.2d 873, 878 (N.C. Ct. App. 2016).

Absent patient consent, under both state and federal law, SLED could not lawfully obtain the defendant's mental health records except by court order (or other enumerated means), which, it clearly did not have at the time of the seizure. SLED's seizure of the defendant's mental health records therefore violated the defendant's statutory right to privacy under both state and federal law. As a result, the court erred in allowing the State's expert to testify to the contents of those records.

In addressing a similar issue under the Florida law with provisions similar to those in HIPAA, the Florida Court held that suppression was the appropriate remedy for unlawful seizure of protected health information. It's reasoning is informative:

Given the fact that these statutes were passed into law over a decade ago, and that the State Attorney's Office for the 15th Judicial Circuit has handled similar cases and is well aware of the mandated procedures, it is almost incomprehensible that law enforcement proceeded in the manner as they did herein. Other than one's expectation of privacy in one's personal effects and papers in our homes, Americans next most hold as intensely personal and private the status of their health, medical treatment, medical advice and therapy.

Suppression is the only remedy to sanction this police misconduct and deter similar misconduct. The danger of the law enforcement practices in this case are amply demonstrated by the willingness of medical professionals to surrender private medical records and engage in discussions regarding private and privileged communications concerning their treatment of

individuals on the mere naked display of authority by law enforcement. Without court intervention and review as mandated by statute, countless innocent patient records are subject to examination and review by well-meaning but misguided law enforcement officials.

State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

The Sun Court went on to reason that the application of the exclusionary rule, where there has not been a good faith effort to comply with subsection 456.057(8), should instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of a patient. State v. White, 660 So.2d 664, 666-67 (Fla.1995) (*quoting United States v. Leon*, 468 U.S. 897, 919, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (*quoting Michigan v. Tucker*, 417 U.S. 433, 447, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974)))” State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

Based on the same reasoning as seen in Sun, in a similar case the Florida Court suppressed the testimony of doctors where police had unlawfully obtained protected medical information about the defendant, stating: "Under the circumstances we can neither agree with the State that it acted in good faith nor disagree with the trial court's determination that it failed to so act. The medical records secured from Dr. Shapiro, comprised of both his and Dr. McKnight's records, were properly suppressed." State v. Strickling, 164 So. 3d

727, 734 (Fla. Dist. Ct. App. 2015). In the present case, suppression of the forensic testimony, and opinion of the State's expert, both based on medical records obtained by SLED in violation of the defendant's right to privacy, is the appropriate remedy.

C. The Court Erred in Admitting Testimony of State Expert Which Was Based on Evidence Obtained as a Result of an Unlawful Seizure Under the Fourth Amendment.

In addition to the foregoing grounds the defense further objected to the State's use of testimony based on SLED's unlawful seizure of the defendant's mental health records under the Fourth Amendment. R. 527. The court expressly declined to make any findings as to the way SLED retrieved the evidence, but indicated that the matter was preserved. R. 527. The court allowed a very limited proffer into facts underlying SLED's seizure of those records. R. 516. SLED obtained the defendant's protected mental health records by sending a written demand to all of the defendant's mental health providers. R. 519-520; 802-806. The letter was misleading as to the State's right to require providers provide those records. The letter was characterized by one provider as "a long submission form that indicated that in felony cases that HIPAA regulations did not apply and we turned over the records of the

patient to SLED." R. 566, l. 2-567, l. 1. A review of SLED's demand letter shows that it misrepresented the law to the mental health providers in order to have them release the defendant's records. R. 802-806.²

The letter cites S.C. Code Section 63-11-1960 and 63-11-1990, neither of which authorizes the disclosure of protected mental health records in the defendant's case. SLED obtained the records without a warrant, court order, or lawful subpoena, and therefore, in violation of the Fourth Amendment.

The records obtained unlawfully by SLED were then provided by the solicitor to the State's expert, Dr. Smith, to allow him to perform a forensic evaluation and testimony, including an opinion on sanity to negate the defense in the case. R. 567. Based on SLED's unlawful seizure of the records the defense objected to Dr. Smith's forensic testimony which was based on those records. R. 590. Despite the defense having timely raised the issue, the court expressly refused make appropriate findings or properly rule on the unlawful seizure issue. R. 541.

The record shows that Dr. Smith's forensic testimony was based in large part on the unlawfully seized records. Dr. Smith testified that the solicitor

²The requirements of HIPAA and state law are set forth in the preceding arguments and incorporated by reference herein.

provided him with the records seized by SLED. R. 565-566. Dr. Smith testified that he met with the solicitor prior to trial and reviewed documents "that I had not previously seen". R. 604, l. 13-15. While the State appears to agree that SLED improperly obtained the records, the Solicitor nevertheless provided them to the State's expert to prepare him for his forensic testimony. R. 526, l. 12-20; 567.

The only defense the State argued as to the unlawful seizure of the defendant's mental health records was "its" been waived by placing those records in front of the jury through the defense witnesses' testimony. R. 525-526. This argument however, does not address the issue of the use of evidence seized in violation of the Fourth Amendment, or the application of the exclusionary rule. Nor did the court properly rule on those issues.

The defendant clearly had a privacy interest in her mental health records. Communications with a mental health provider are confidential and protected. §§ 19-11-95; 44-22-90. The defendant further had a privacy interest in her mental health records pursuant to federal law under HIPAA. As a general rule, a mental health patient may refuse to disclose and may prevent

a witness from disclosing privileged information.³ The defendant clearly had an expectation of privacy in her mental health records which were seized by SLED, without a warrant, court order, subpoena, or other lawful process, and provided to the State's expert witness, Dr. Smith.

The Fourth Amendment guarantees "[t]he right of the people to be secure ... [from] unreasonable searches and seizures." U.S. Const. amend. IV. "In parallel with the protection of the Fourth Amendment, the South Carolina Constitution also provides a safeguard against unlawful searches and seizures." State v. Forrester, 343 S.C. 637, 643, 541 S.E.2d 837, 840 (2001); S.C. Const. art. I, § 10. Evidence obtained in violation of the Fourth Amendment is inadmissible in both State and federal court. Forrester, 343 S.C. at 643, 541 S.E.2d at 840.

"Generally, a warrantless search is *per se* unreasonable and thus violative of the Fourth Amendment's prohibition against unreasonable searches and seizures." State v. Bultron, 318 S.C. 323, 331, 457 S.E.2d 616, 621 (Ct.App.1995). "However, a warrantless search will withstand constitutional scrutiny where the search falls within one of a few specifically

³State and Federal law on privacy of mental health records are in the foregoing arguments and incorporated herein by reference.

established and well delineated exceptions to the Fourth Amendment exclusionary rule." *Id.* at 331-32, 457 S.E.2d at 621. These exceptions include: (1) search incident to a lawful arrest; (2) "hot pursuit;" (3) stop and frisk; (4) automobile exception; (5) "plain view" doctrine; (6) consent; and (7) abandonment. State v. Dupree, 319 S.C. 454, 456-57, 462 S.E.2d 279, 281 (1995), *cert. denied*, 516 U.S. 1131, 116 S.Ct. 951, 133 L.Ed.2d 875 (1996). "The burden of establishing probable cause as well as the existence of circumstances constituting an exception to the general prohibition against warrantless searches and seizures is upon the prosecution." Bultron, 318 S.C. at 332, 457 S.E.2d at 621. In the present case, no exception to the warrant rule exists and at trial the solicitor seemed to concede that the seizure by SLED of the defendant's mental health records was improper. Testimony regarding the improperly obtained records should therefore be excluded.

The exclusionary rule was adopted to effectuate the Fourth Amendment right of all citizens 'to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . . ' Under this rule, evidence obtained in violation of the Fourth Amendment cannot be used in a criminal proceeding against the victim of the illegal search and seizure. Weeks v. United States, 232 U.S. 383, 34 S.Ct. 341, 58 L.Ed. 652 (1914); Mapp v. Ohio,

367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed. 1081 (1961). This prohibition applies as well to the fruits of the illegally seized evidence. Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); Silverthorne Lumber Co. v. United States, 251 U.S. 385, 40 S.Ct. 182, 64 L.Ed. 319 (1920).

The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim: "(T)he ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late." Linkletter v. Walker, 381 U.S. 618, 637, 85 S.Ct. 1731, 1742, 14 L.Ed.2d 601 (1965). Instead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures: "The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed.2d 1669 (1960). Accord, Mapp v. Ohio, *supra*, 367 U.S., at 656, 81 S.Ct., at 1692; Tehan v. United States ex rel. Shott, 382 U.S. 406, 416, 86 S.Ct. 459, 465, 15 L.Ed.2d 453 (1966); Terry v. Ohio, 392 U.S. 1, 29, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968). In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect,

rather than a personal constitutional right of the party aggrieved.

The right to privacy in one's mental health records has been held to be of considerable importance. In Jaffee, the Supreme Court resolved a circuit split when it "recognize[d] a psychotherapist privilege under Rule 501" in the context of a § 1983 excessive force action. 518 U.S. 1, at 7, 116 S.Ct. 1923.

There the Court concluded that a social worker's notes from her counseling sessions with the defendant police officer were protected by the psychotherapist-patient privilege from disclosure to the plaintiff for use in cross-examination. The Supreme Court reasoned that "[e]ffective psychotherapy ... depends upon an atmosphere of confidence and trust" and that "the mere possibility of disclosure" of "confidential communications made during counseling sessions" could hinder productive therapy. *Id.* at 10. "By protecting confidential communications between a psychotherapist and her patient from involuntary disclosure, the ... privilege thus serves important private interests." *Id.* at 11. Most importantly, the Court found that, like other testimonial privileges, the psychotherapist privilege serves the greater public interest by facilitating effective mental health care—"a public good of transcendent importance." *Id.* at 4. The Court concluded that a "privilege protecting confidential communications between a psychotherapist and her

patient 'promotes sufficiently important interests to outweigh the need for probative evidence.' " *Id.* at 9–10. (*quoting Trammel v. United States*, 445 U.S. 40, 51, 100 S.Ct. 906, 63 L.Ed.2d 186 (1980)). In other words, the public benefit produced by the recognition of the psychotherapist-patient privilege is sufficiently weighty to trump the cost to the administration of justice of precluding the use of relevant evidence. In this case, application of the exclusionary rule serves the same end. As a result, it was error for the trial court in this case to allow the introduction of testimony that was based on the SLED's unlawful seizure of the defendant's mental health records.

II. TRIAL COURT ERRED IN EXCLUDING CRITICAL TESTIMONY BY DEFENSE EXPERT AS TO STATEMENTS BY STATE EXPERT.

The defense offered Dr. David Price, PhD., as an expert in forensic psychology. Dr. Price testified that in his opinion the defendant did not know the difference between moral or legal right and wrong at the time of the incident. R. 440. In explaining the basis for his opinion Dr. Price testified that he had reviewed records and discussed the defendant's treatment with Dr. Smith. R. 443. Dr. Price testified that during their discussion Dr. Smith had agreed with him. R. 443. It appears that Dr. Price considered his discussion

with Dr. Smith in formulating his opinion. R. 443, l. 8-12. Based on hearsay the State objected to Dr. Price testifying as to what the State's expert, and treating physician, had told him during their discussion. R. 443 The objection was sustained with the court reasoning that Dr. Price was relating something Dr. Smith told him directly and was not in Dr. Smith's medical records. R. 443. This was clearly error.

An expert may testify as to matters of hearsay for the purpose of showing what information he or she relied on in giving an opinion of value. *In re Manigo* (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, *rehearing denied, certiorari granted, affirmed* 398 S.C. 149, 728 S.E.2d 32. Here Dr. Smith was the treating physician as well as the State's expert that would ultimately give forensic testimony on the issue of sanity. This Court has held that the hearsay rule does not preclude forensic psychiatrist from testifying as to what she learned from sex offender's treatment provider, in proceeding to civilly commit offender as a sexually violent predator (SVP), where psychiatrist relied on that information to form the basis of her opinion that offender was an SVP. *In re Manigo* (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, *rehearing denied, certiorari granted, affirmed* 398 S.C. 149, 728 S.E.2d 32. In the present case Dr. Price's testimony, as to what he had been told by Smith, both as the

defendant's treating physician, as well as the State's forensic expert, was clearly admissible. Its exclusion was therefore error.

Because Dr. Smith later testified to his opinion that the defendant knew right from wrong, testimony that he at one point agreed with Dr. Price was substantial evidence. Especially where Dr. Smith's testimony was the only evidence offered of the defendant's sanity. The exclusion of Dr. Smith's prior statements to Dr. Price further prevented full and effective cross-examination of Dr. Smith. Precluding the defense from relating Dr. Smith's prior statement foreclosed any ability of the defense to effectively cross examine or impeach Smith with the prior statement. The therefore court erred in failing to allow Dr. Price to testify to the prior statements of Dr. Smith.

III. TRIAL COURT ERRED IN DENYING MOTION FOR A DIRECTED VERDICT AND MOTION FOR NEW TRIAL.

At the close of the State's case the defense moved for a directed verdict. The only evidence at the close of the State's case was that the defendant suffered from severe mental illness and could not tell legal or moral right from wrong. The defense again moved for a directed verdict at the close of the defense case. The only evidence at the close of the defense case was that the defendant could not distinguish between moral and legal right and wrong.

An accused who lacks the capacity to distinguish moral or legal right from moral or legal wrong at the time of the crime is relieved of responsibility for his acts. State v. Law, 270 S.C. 664, 244 S.E.2d 302 (1978); State v. Cannon, 260 S.C. 537, 197 S.E.2d 678 (1973). This is the *M'Naghten* insanity defense, codified as S.C. Code 17-24-10. The *M'Naghten* rule is old and well established:

The test here given to the jury was, as we understand it, the ordinary test in such cases; the test authorized by the opinion of all the judges of England in answer to the questions of the House of Lords growing out of *McNaghten's Case*; the test applied in the case of the United States v. Guiteau for shooting President Garfield, and in many other cases in most of the States. See Lawson on Insanity as a Defence to Crime, 270, and following pages.

State v. Bundy, 24 S.C. 439, 445 (1886).

Under the *M'Naghten* rule 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 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) (Supp.1996). "[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'." State v.

Wilson, 306 S.C. 498, 506, 413 S.E.2d 19, 23, *cert. denied*, 506 U.S. 846, 113 S.Ct. 137, 121 L.Ed.2d 90 (1992), *quoting State v. McIntosh*, 39 S.C. 97, 17 S.E. 446 (1893).

Under Rule 19(a) of the South Carolina Rules of Criminal Procedure, "the court shall direct a verdict in the defendant's favor on any offense charged in the indictment *after the evidence on either side is closed*, if there is a failure of competent evidence tending to prove the charge in the indictment." State v. Nicholson, 366 S.C. 568, 574-75, 623 S.E.2d 100, 103 (Ct. App. 2005). *emphasis added*.

At the beginning of a trial there is a presumption that a criminal defendant is sane. This presumption relieves the State of the burden of proving sanity in every case. However, when the defendant offers evidence of insanity, the presumption disappears and it is incumbent on the State to present evidence from which a jury could find the defendant sane. State v. Milian-Hernandez, 287 S.C. 183, 185, 336 S.E.2d 476, 477 (1985). After the close of the defense in the present case there had been no evidence offered that would support a finding that the defendant knew right from wrong at the time of the incident. In the defense case, three expert witnesses testified that the defendant could not distinguish between right and wrong. A number of

other witnesses testified to the defendant's long history of mental illness and psychosis. By the close of the defense case the presumption of sanity was extinguished by overwhelming evidence of the defendant's insanity. Under Rule 19, the defendant was entitled to a directed verdict when the defense made the motion at the close of the defense case. It was therefore error for the court to deny the defense motion to direct a verdict under Rule 19.

IV. THE TRAIL COURT ERRED IN ALLOWING THE STATE WITNESS TO GIVE FORENSIC TESTIMONY AND OFFER OPINION ON SANITY WHERE THE WITNESS WAS NOT QUALIFIED AS A FORENSIC EXPERT.

After extensive argument and *voir dire* Dr. Smith was qualified as an expert in the field of psychiatry. R. 583. The State did not seek to have Dr. Smith qualified in the field of forensic psychiatry and even admitted that he could not be qualified as a forensic psychiatrist. R. 511-512. Yet, over the objection of the defense, the State asked Dr. Smith to formulate an opinion as to the defendant's criminal responsibility based in large part on Smith's forensic mental examination of the defendant through her mental health records provided in part by the State. R. 599. Smith testified that it was his opinion that the defendant knew right from wrong but was unable to conform her conduct to the behavior of the law. R. 599.

Dr. Smith, as the treating physician, had not seen the defendant for three months prior to the incident, and then for only eight minutes. Dr. Smith's opinion as to sanity at the time of incident was therefore clearly based on a review of the case, including documents that the solicitor provided, in what constituted an undisclosed forensic type of evaluation. Dr. Smith reviewed documents for trial and on his own initiative contacted one of the defense experts to discuss the case. R. 579-580. To prepare him for testifying, the solicitor gave Dr. Smith mental health records of the defendant that Dr. Smith had never seen before. R. 567. As the State's expert, Smith clearly prepared for and testified to his opinion based on a forensic evaluation of the case which included records provided by the solicitor. Both his preparation and testimony exceeded that of a fact witness or his qualification in court as an expert in psychiatry. While certainly qualified to testify as the defendant's condition during his treatment of the defendant, Dr. Smith extended that into a forensic opinion of the defendant's condition *at the time of the incident*, which was three months since he had last seen her.

The trial court erred in allowing Dr. Smith to testify as a forensic expert where he was not so qualified, and the state did not seek to have him qualified and even admitted that it would be unable to have him so qualified.

"The qualification of a witness as an expert and admissibility of his testimony are matters largely within the discretion of the trial judge; however, the exercise of this discretion will be reversed where an abuse of discretion has occurred." Payton v. Kearse, 329 S.C. 51, 60–61, 495 S.E.2d 205, 211 (1998) (*citation omitted*). As discussed in a recent opinion of this Court, trial courts have a gatekeeping role with respect to all evidence sought to be admitted under Rule 702. State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009).

In the discharge of its gate-keeping role, a trial court must assess the threshold foundational requirements of qualifications and reliability and further find that the proposed evidence will assist the trier of fact. The familiar evidentiary mantra that a challenge to evidence goes to "weight, not admissibility" may be invoked only after the trial court has vetted the matters of qualifications and reliability and admitted the evidence.

Risher v. S.C. Dep't of Health & Env'tl. Control, 393 S.C. 198, 206, 712 S.E.2d 428, 432 (2011).

Here, the state did not seek to have Dr. Smith qualified as an expert in forensic psychiatry. The solicitor even admitted that he could not have him qualified as an expert in forensic psychiatry. While competent to testify as an expert as the treatment he provided, any forensic testimony and opinion as to the defendant's sanity at the time of the incident, three months after having last seen her, should have been excluded.

CONCLUSION

Based on the foregoing the convictions and sentences of the defendant should be set aside and reversed.

Respectfully submitted,



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November 19, 2017.

ORIGINAL

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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

THE STATE,

RESPONDENT,

V.

SUZANNA BROWN SIMPSON,

APPELLANT

Appellate Case No. 2016-001387

FINAL BRIEF OF RESPONDENT

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APPELLANT'S STATEMENT OF ISSUE ON APPEAL

- I. Did the trial court err in admitting forensic testimony of the state's expert witness?
- II. Did the trial court err in excluding testimony of the defense expert?
- III. Did the trial court err in refusing to direct a verdict for the defendant or grant a new trial?
- IV. Did the trial court err in admitting forensic testimony where state expert was not qualified as a forensic expert?

COUNTER STATEMENT OF ISSUE ON APPEAL

- I. The trial court properly admitted the testimony of Appellant's treating psychiatrist in the State's reply when Appellant placed her mental health at issue with an insanity defense, revealed the contents of the psychiatrist's notes during the defense's expert testimony, and waived her privacy interest in her remaining mental health records by disclosing that information to her experts.
- II. The trial court properly sustained the State's objection to the defense witness' bolstering of his own testimony by claiming the State's expert "agreed with his opinion," when Dr. Smith's purported agreement was not used as a basis for Dr. Price's opinion of Appellant's sanity.
- III. The State presented substantial evidence Appellant shot her husband and children while knowing right from wrong and with the ability to conform her conduct to the requirements of the law when Appellant failed to disclose her purported delusions to her doctor, understood the consequences of failing to take her medication, remediated quickly following the resumption of medication, carefully chose the order of and weapon for her victims, evasively answered questions in front of law enforcement, and staged an attempted suicide.
- IV. Dr. Smith's qualification as an expert in psychiatry allowed him to opine on Appellant's criminal responsibility, even though he was not qualified as an expert in forensic psychiatry, because Dr. Smith had the requisite knowledge and skill to offer his opinion of Appellant's capacity to distinguish right from wrong.

STATEMENT OF THE CASE

A Pickens County Grand Jury indicted Appellant, 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. (R. pp. 725-734.) On June 20, 2016, Appellant's case proceeded to trial before the Honorable Brian M. Gibbons and a jury. (R. p. 1.) John Mauldin, Esq., Teal Johnson, Esq., and Jacob Goldstein, Esq. represented Appellant. (R. p. 1.) Solicitor W. Walter Wilkins and Deputy Solicitor Betty Strom represented the State. (R. p. 1.) At the conclusion of the trial, the jury returned a verdict of guilty on all charges. (R. p. 717, lines 1-11.) Judge Gibbons sentenced Appellant 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. (R. p. 723, lines 2-18.)

This appeal follows.

STATEMENT OF FACTS

The Shootings and the Aftermath

In the early morning of May 14, 2013, a neighbor of Suzanna and Michael Simpson heard a commotion in his yard, ran outside, and saw Suzanna Simpson's truck in a ditch near some downed trees. (R. p. 127, lines 2-13.) As a former paramedic, the neighbor drove down the scene of the accident to assist the driver, and he saw Simpson slumped down in the driver's seat. (R. p. 128, lines 1-25.) When the neighbor approached the vehicle, Simpson recognized him, calling him by name and telling him her back hurt. (R. p. 129, lines 6-11.) The neighbor repeatedly asked Simpson where her husband and children were, and Simpson would respond by asking the neighbor, "Am I going to be okay?" (R. p. 129, lines 14-20.) Anytime the neighbor tried to walk away to talk to the other first responders, Simpson would grab his arm and ask him not to leave her. (R. p. 130, lines 1-8.) Simpson did not appear to be hallucinating or incoherent, and the neighbor had no trouble communicating with her. (R. p. 131, lines 8-17; p. 132, lines 7-11.) Both the neighbor and his daughter noticed Simpson would either ask if she was going to be okay or say, "I don't know" when anyone asked her about her husband and children. (R. pp. 129-146.) Because Simpson would not respond to his repeated questions about her family, the neighbor knocked on the doors and windows of Simpson's house to check on her husband and children. (R. p. 132, lines 13-22.) Concerned, the neighbor called 911 to request the police. (R. p. 133, lines 3-5.)

Interestingly, the path Simpson took through the neighbor's yard when she wrecked her car was the same path involved in a fatal wreck months before. In that wreck, a young man died when his car struck a large oak tree. (R. p. 133, lines 14-20.) When Simpson drove through the

path, she managed to avoid the large oak tree and a telephone pole, running over several smaller trees and then crashing into the ditch. (R. p. 133, lines 15-23; p. 137, lines 4-13.)

The nurse who treated Simpson at the hospital following the accident described walking into Simpson's treatment room, finding her lying on the table strapped to the back board and neck brace, and asking her what happened. (R. p. 152, line 22 – p. 154, line 19.) Simpson said very little at first, while the police were in the room, but as they began to leave, Simpson started to talk. (R. p. 156, lines 2-8.) Simpson told the nurse, in a flat voice, "I shot my husband and kids. And then I had an accident." (R. p. 154, lines 7-23.) When the nurse questioned Simpson why, she responded, "Because it's an awful world." When the nurse asked why she did not kill herself instead, Simpson said, "I thought about it and tried, but I couldn't do it." (R. p. 155, lines 5-9.) The nurse was frustrated and asked Simpson how she could shoot her children and not herself. Simpson told him she tried but "it wouldn't shoot" and then decided to try to kill herself in a car accident the same way the young man had died before. (R. p. 155, lines 11-21.) Once the police noticed Simpson was talking to the nurse, they came back into the room. Simpson refused to talk after the police were present. (R. p. 156, lines 19-25.) The nurse was able to determine Simpson was alert, knew where she was and the time, and spoke clearly, but did not want to talk about the accident and shootings while the police were in the room. (R. p. 161, lines 6-15.)

While Simpson was receiving treatment, police rushed to the scene to check on the well-being of Michael Simpson and the children. (R. p. 164, lines 5-12.) The responding officer first noticed the open gun safe, with multiple firearms lying on the floor. (R. p. 169, line 17- p. 170, line 10.) The officer began to clear the house and found the bodies of Simpson's son and daughter in their bedrooms, both shot in the head. (R. pp. 166-168.) Michael Simpson was on the floor of the master bedroom, breathing heavily, but still alive. (R. p. 168, line 24 – p. 169, line 4.)

The little boy, who was still in his bed, had several gunshot wounds to the head, as did the little girl. In the little girl's room, there were also two bullet holes in the wall. In the master bedroom, officers saw multiple fired cartridge cases. (R. p. 184, lines 4-25.) In the kitchen, crime scene analysts found a still illuminated head lamp and a cell phone right nearby. (R. p. 186, line 5 – p. 187, line 2.) Analysts found .40 caliber spent casings on the floors of the children's bedrooms and 22 caliber casings on the floor of the master bedroom. (R. pp. 201-206.) Investigators later found the .40 caliber handgun at the scene of the wreck down the street. The gun ejected from the vehicle during the collision. (R. p. 208, lines 11-19.) The .40 caliber handgun was loaded with a magazine filled with .9 millimeter cartridges. (R. p. 209, lines 7-10.)

The Events Leading to the Shootings

On the day before the shooting, a friend of the couple, Nathan Stegall, stopped by the Simpson's house to borrow Michael's truck. (R. p. 271, lines 5-13.) Simpson could not find the key, so Stegall waited for Michael to return home with the spare key. (R. p. 272, lines 2-12.) While he waited, Stegall tried to initiate conversation with Simpson, but noticed she seemed angry. (R. p. 272, lines 15-25.) Stegall believed Simpson and her husband were arguing. (R. p. 273, line 22 – p. 274, line 2.) Stegall borrowed the truck, ran some errands, and returned the truck to Michael at the end of the day. (R. p. 275, line 9 – p. 333, line 15.) Later that evening, Stegall received a text message from Simpson that read, "Hell on earth?" (R. p. 277, lines 3-5.)

At the Simpson children's school, another parent saw Simpson in the school office the day before the shootings. (R. p. 282, lines 9-17.) The parent was checking his child out from school and walked in behind Simpson, who was withdrawing her daughter. (R. p. 283, 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. (R. p. 284, lines 11-16.) The little boy, who

was with Simpson, said, "I'm not sick, Mom." (R. p. 283, lines 3-6; p. 284, lines 9-16.) The parent noticed Simpson pacing back and forth and growing impatient. (R. p. 285, 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." (R. p. 285, lines 10-21.) Simpson also appeared angry and snapped at the parent as they left the building with their children. (R. p. 286, lines 4-14.)

Simpson's mother in law, Allison, recalled an unusual conversation the night before the shootings in which Simpson asked her why her mother and father-in-law did not come to visit them much anymore. (R. p. 296, lines 1-3.) Allison recalled another unusual conversation with Simpson the previous year following her release from a behavioral care center. In the same month she was discharged, Michael left on a hunting trip, and Simpson called her mother in law asking if she thought Michael would return home to his family. (R. p. 298, line 17 – p. 301, line 8.)

Simpson's mother testified Simpson called her the day before the murders and asked her if her parents really wanted her. (R. p. 307, lines 1-14.) Later that day, Simpson called again and asked her mother if various relatives who were deceased were better off in heaven. (R. p. 307, line 19 – p. 308; 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. (R. p. 308, 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. (R. p. 308, line 23 – p. 309, 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." (R. p. 309, lines 23-25; p. 322, lines 14-17.) When her mother pressed her for details, Simpson said her husband told her she stares into space all the time.

Simpson also told her mother the couple was not seeking counseling. (R. p. 310, lines 1-10.) Simpson told her mother she loved her and said she needed to go put the kids to bed. (R. p. 310, 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. (R. p. 313, line 2 – p. 315, line 10.) Simpson was hospitalized for five days after this episode. (R. p. 315, lines 5-13.) Simpson then transferred to the Carolina Center for Behavioral Health, where she remained for three more days. (R. p. 316, line 18 – p. 315, line 4.) Simpson's mother recalled several instances in which her daughter told her she believed the family was being watched. (R. p. 317, line 13 – p. 318, line 17.)

The Defense Presents Its Case

Dr. Leonard William Mulbry, one of the defense's expert, testified he met with Appellant three times and examined her medical records prior to the shootings. (R. p. 377, line 10 – p. 378, line 10.) Dr. Mulbry diagnosed Appellant with schizoaffective disorder bipolar type. (R. p. 380, 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. (R. pp. 383-385.) In 2010, Appellant began seeing Dr. Smith, a local psychiatrist, who treated Appellant with several medications in an effort to control her symptoms. (R. p. 386, line 15 – p. 387, line 12.)

According to her medical records and Dr. Smith's notes, Dr. Mulbry explained Appellant's moods began cycling through depression, sleeplessness, confusion, and paranoia. (R. p. 387, line 16 – p. 388, line 1.) Dr. Mulbry opined Appellant was unable to distinguish right from wrong at the time of the shootings. (R. p. 390, line 21 – p. 391, line 6.) On cross

examination, Dr. Mulbry said he examined Appellant nine months after the shootings and determined that at the time of his meetings with her, Appellant did know right from wrong. (R. p. 408, lines 1-11.) Dr. Mulbry also acknowledged he never consulted with Appellant's treating psychiatrist, Dr. Smith, instead, relying on Smith's notes for the basis of his opinion. (R. p. 408, line 12 – p. 409, line 7.) Dr. Mulbry said Appellant'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. (R. p. 410, lines 3-20.) Dr. Mulbry noted Appellant received treatment for her bipolar disorder at the Behavior Health facility, and she improved. (R. p. 411, line 5 – p. 469, line 17.) Appellant 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. (R. p. 413, line 2 – p. 414, line 8.) In fact, when Appellant 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. (R. p. 417, lines 3-21.) In contrast with Dr. Mulbry's opinion, when Appellant was discharged in 2013, she was not diagnosed with schizoaffective disorder. (R. p. 418, 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 Appellant 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. (R. p. 418, line 19 – p. 421, line 22.)

Appellant's second expert, Dr. David Price, also evaluated Appellant's "criminal responsibility" by reviewing her extensive medical records. (R. p. 436, line 15 – p. 437, line 16.) Dr. Price met with Dr. Smith, who first diagnosed Appellant as bipolar, having Attention Deficit

Disorder (ADD), and another unspecified anxiety disorder. (R. p. 442, line 24 – p. 443, line 4.) Dr. Price testified he discussed Appellant's diagnosis with Dr. Smith and, "as part of reaching [his] opinion ... Dr. Smith agreed with [his] opinion." (R. p. 443, lines 8-12.) Dr. Price also acknowledged Appellant was a patient of Dr. Smith when the shootings occurred. (R. p. 444, lines 6-14.) Dr. Price said Appellant 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 Appellant supposedly suffered from the delusions. (R. p. 453, line 8 – p. 454, line 3.)

Dr. Frierson, the court appointed psychiatrist, also diagnosed Appellant with Schizoaffective disorder, bipolar type. Dr. Frierson explained Appellant suffered from episodes or mania and depression, and also had bouts of delusional or paranoid thinking. (R. pp. 470-473.) These moods and abnormal thought processes could coincide or appear at different times. (R. p. 472, lines 10-18.) Dr. Frierson opined Appellant could not distinguish right from wrong at the time of the shootings. (R. p. 493, lines 16-19.)

On cross examination, Dr. Frierson agreed Appellant told the treating emergency room physician she did not tell her husband about her delusions because she was afraid he would "lock her up." (R. p. 495, lines 1-9.) Appellant admitted to Frierson she did not tell Michael about the paranoid thoughts because it would upset him. (R. p. 495, lines 22-24.) Appellant also told Dr. Frierson she would take excessive amounts of her proscribed Adderall when she had an "important task to complete." (R. p. 498, lines 14-16.) Dr. Frierson said he was surprised Dr. Smith's records did not reflect Appellant's extensive paranoid delusions. (R. p. 502, lines 16-24.)

HOW THE ISSUES PRESENTED AT TRIAL

Appellant's Pre-Trial Motions

During pre-trial motions, Appellant moved for a directed verdict, arguing that once Appellant informed the State she intended to plead not guilty by reason of insanity, the State was then required to put Appellant on notice of an expert to rebut the claim of insanity. (R. pp. 23-29.) Because the State had not given Appellant notice of its intention to call an expert witness, Appellant argued the State would not meet its burden to prove guilt. (R. 24, line 6 – p. 25, line 24.)

The State responded by arguing the motion for a directed verdict was not appropriate as a pre-trial motion because the defense of insanity is an affirmative defense requiring Appellant to present some evidence. (R. p. 29, line 18 – p. 30, line 4; p. 31, lines 3-17.) The State also pointed out it was not obligated to give Appellant notice of an expert witness and an expert witness was not required to combat the affirmative defense of insanity. (R. p. 30, lines 5-20.) The trial court denied Appellant's motion for a directed verdict. (R. p. 33, lines 1-4.)

Appellant also sought to limit the opinion testimony of lay witnesses, again arguing the State could not prove its case Appellant was sane without expert testimony. (R. p. 41, line 12 – p. 44, line 12.) The State countered again that they could prove their case with lay witnesses, and with the testimony of the witnesses' perceptions of Appellant's actions. (R. p. 45, lines 8-17.) In denying Appellant's motion, the trial court compared the testimony of an officer being questioned about the potential intoxication of a driver, such as whether the driver appeared intoxicated, and the basis for the perception such as slurred speech or the smell of alcohol. (R. p. 45, lines 18-25.)

Appellant went on to argue the State could not prove through lay witnesses that Appellant had a mental impairment and, due to that mental impairment, could not conform her conduct to the requirements of the law. (R. p. 46, line 21 – p. 47, line 5.) The basis of the argument was the

jury could not "practice psychiatry" because they were not qualified to make that finding. (R. p. 47, lines 6-20.)

Solicitor Wilkins countered that the role of the jury is to make the factual determination of whether Appellant could conform her behavior based on the evidence presented and the trial court's instruction on the law. (R. p. 48, lines 8-17.) The trial court then denied Appellant's motion to limit the witness testimony, but noted the objection for the record. (R. p. 48, lines 18-20.)

Appellant next moved to bar the testimony of Appellant's treating physician, Dr. Jeff Smith. (R. p. 50, lines 14-22.) Appellant's expert consulted Dr. Smith and he was a known witness. Solicitor Wilkins informed the court he might ask to qualify him as an expert in psychiatry, but he was not sure how he would use his testimony yet. (R. p. 51, lines 1-10.) The solicitor also mentioned the emergency room physician who treated Appellant after the murders, but told the court that although he was not certain who exactly he would call and the extent of their testimony, he did not intend to call an expert unknown to the defense. (R. p. 51, line 12 – p. 109, line 1.)

Appellant indicated she was aware of both witnesses and understood the role they played in her treatment. (R. p. 52, lines 4-11.) The trial court decided to rule on any objections to the testimony at the appropriate time. (R. p. 52, lines 2-15.)

The Close of the State's Case

At the close of the State's case, Appellant again renewed her motion for a directed verdict, arguing the State had given the defense no notice of their intent to call an expert witness and thereby could not prove their case. The solicitor argued the law presumes the defendant is sane, and an affirmative defense requires them to prove by a preponderance of the evidence that

Appellant was insane at the time of the murders. (R. p. 343, lines 9-15.) After the defense shows that, the State must prove beyond a reasonable doubt that she was not sane. (R. p. 343, lines 13-15.) The solicitor went on to explain to the trial judge that Appellant filed a limited Rule 5 motion approximately three weeks before the trial. (R. p. 344, lines 20-25.) Because the defense filed a limited Rule 5 motion, the State was not entitled to reciprocal discovery. (R. p. 345, lines 1-3.)

The solicitor explained that days before the trial, the defense gave the State one report of their experts, and another expert would not talk to the solicitor. (R. p. 345, lines 3-16.) The trial court asked the solicitor if he intended to call an expert witness to reply to Appellant's defense she was insane at the time of the murders. (R. p. 346, lines 1-7.) The solicitor said he could not be sure without knowing how Appellant would present her case, but if it did call a witness, it would be one of Appellant's treating physicians, Dr. Jeff Smith. (R. p. 346, lines 16-21.) The trial court again denied Appellant's motion for a directed verdict. (R. p. 348, lines 5-7.)

The Close of the Defense's Case

At the conclusion of the defense's case, in which Appellant presented three witnesses who formed opinions based on Dr. Smith's records, the State informed the court it sought to call Dr. Smith as a reply witness. (R. p. 505, lines 2-11.) Appellant again renewed her motion for a directed verdict, then again argued the State was not entitled to present a rebuttal witness because her due process rights were violated when the State did not present evidence of her sanity beyond a reasonable doubt in its case in chief. (R. p. 507, lines 1-16.) Appellant then went on to argue that she did not consent to Dr. Smith's testimony, nor had she waived her physician/client privilege. (R. p. 509, lines 17-22.) The trial court inquired whether it could order Dr. Smith to testify because his testimony would be relevant to the issue at hand. (R. p. 510, lines 4-14.)

The solicitor argued Appellant waived her privilege in accordance with S.C. Code § 44-22-90 when she released her medical records to her retained experts. The solicitor also argued the State was entitled to call Dr. Smith pursuant to Rules 703 and 705 because Appellant's expert's relied on Dr. Smith's treatment of Appellant in forming their opinions about her diagnosis. (R. p. 529, lines 6-10.) The solicitor said Dr. Smith would be qualified as a psychiatrist and as a fact witness to his treatment of Appellant in the years prior to the shootings. (R. p. 512, lines 1-9.) The solicitor told the court he also expected Dr. Smith to explain that Appellant's remediation within 48 hours of the shooting was atypical, and that he would not expect to see that in a patient with a true psychosis. (R. p. 512, line 15 – p. 513, line 6.)

Appellant argued Dr. Smith should not be permitted to testify whether Appellant knew right from wrong or could conform her behavior. (R. p. 513, lines 13-16.) The trial court replied, "Because you say he's not qualified to because he's not a forensic psychiatrist." (R. p. 513, lines 17-18.) The court informed Appellant he would make that determination after voir dire. (R. p. 513, lines 19-22.)

The Trial Court's Ruling on the Testimony

The following day, the State argued Dr. Smith was qualified to testify about Appellant's ability to conform her behavior to the requirements of the law because of his qualifications as a psychiatrist. The solicitor argued any distinction between a treating psychiatrist and a certified forensic psychiatrist would be a matter of weight for the jury to determine. (R. p. 538, line 18 – p. 596, line 23.) Appellant countered that it would be unethical for the State to call a treating physician to testify "in a forensic manner against his own patient." (R. p. 540, lines 6-13.)

The trial court issued several rulings. First, the court found the State was entitled to present reply evidence. (R. p. 540, lines 21-24.) The trial court also found Appellant waived her

privileged medical information because that information was used by three defense experts to aid in Appellant's defense. (R. p. 541, lines 7-17.) The trial court specifically made no finding concerning the manner SLED obtained Appellant's medical records. (R. p. 541, lines 18-22.) Judge Gibbons further ruled he would allow Dr. Smith to testify. (R. p. 541, lines 22-24.) The court also found Dr. Smith would likely be qualified in the expertise of psychiatry, and the court would make its determination of his qualifications as set forth in *State v. Council*. (R. p. 542, lines 1-25.) The trial court found that beyond its role as gatekeeper, it was the purview of the jury to weigh the credibility of the expert's opinion on the matter. (R. p. 543, lines 1-7.)

Voir Dire of Dr. Smith

During the State's voir dire, Dr. Smith testified he had been in private practice for twenty-eight years and exclusively treats patients of all ages and with a variety of diagnoses. (R. p. 554, lines 1-23.) As part of his practice, Dr. Smith must evaluate whether his patients suffer from mental illness and must determine their state of mind. (R. p. 555, lines 17-25.) Dr. Smith had given opinions on patients' criminal responsibility and their ability to conform their behavior. (R. p. 556, line 23 – p. 557, line 14.)

Dr. Smith's Testimony

Dr. Smith began treating Appellant in March of 2010. Over the course of his treatment, he saw Appellant as a patient 34 times. (R. p. 588, lines 4-17.) At times over the years, Appellant'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. (R. p. 584, lines 7-17; p. 588, line 21 – p. 589, 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. (R. p. 589, lines 1-8.) In fact,

in one of three instances in which Appellant admitted having paranoia, she also told Dr. Smith she had stopped taking her mood stabilizer. (R. p. 589, lines 11-17.) Dr. Smith said Appellant's decision to continue taking the stimulant medication for ADD without the stabilizer would significantly contribute to her psychosis. (R. p. 591, lines 1-4.)

Dr. Smith reviewed the report of Dr. Frierson, and he spoke to Dr. Price, but told Dr. Price that Appellant presented entirely differently in the 34 visits with Smith than she did during their evaluation. (R. p. 592, line 17 – p. 593, line 3.) Dr. Smith said he told Dr. Frierson, "it was like we were talking about two different individuals." (R. p. 593, lines 11-12.) Dr. Smith explained Appellant only complained, vaguely, of paranoid thoughts along the lines of "I think people are talking about me." (R. p. 593, lines 17-21.) Smith said the extensive delusions reported by Appellant and her family were never mentioned to him during the course of his treatment. (R. p. 593, lines 17-25.) Dr. Smith had no recollection of any family members accompanying Simpson to her visits. (R. p. 595, lines 11-13.) Dr. Smith noted the hospital records from the treating emergency room psychiatrist, who saw Appellant directly after the shootings, did not indicate Appellant wanted to kill herself or heard any voices. (R. p. 596, lines 1-23.) Further, the ER psychiatrist's description of her psychosis was not nearly as severe as the forensic psychiatrists' reports. (R. p. 596, line 23 – p. 597, line 2.) Further, Dr. Smith believed Appellant'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. (R. p. 597, lines 7-21.)

Dr. Smith also found it unusual for Appellant's five 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. (R. p. 598, 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. (R. p. 598, line 18 – p. 599, line 5.) Dr. Smith opined Appellant knew right from wrong but was unable to conform her conduct to the behavior of the law. (R. p. 599, lines 14-17.)

ARGUMENT

- I. The trial court properly admitted the testimony of Appellant's treating psychiatrist in the State's reply when Appellant placed her mental health at issue with an insanity defense, revealed the contents of the psychiatrist's notes during the defense's expert testimony, and waived her privacy interest in her remaining mental health records by disclosing that information to her experts.**

The crux of Appellant's first issue on appeal is her attempt to limit the testimony of her treating psychiatrist, even though three of her witnesses told the jury about the information in Dr. Smith's notes and then based their expert opinions on Dr. Smith's assessment of Appellant. In effect, Appellant sought to use Dr. Smith's notes and treatment to her advantage, but did not want the jury to hear Dr. Smith's interpretation of his own treatment notes. In support of this argument, Appellant claims she was not given notice of the basis of Dr. Smith's testimony, and suggests the State illegally obtained and seized her medical records from other treating physicians. However, although it was not required, the State notified Appellant it might call Dr. Smith, depending on the defense testimony. The only other documents Dr. Smith reviewed were medical records already in Appellant's possession. Simply put, no discovery violation occurred. Further, the State was entitled to Appellant's other mental health records when she waived

privilege in her records and submitted her information to her retained experts and the court appointed psychiatrist. By putting these experts on the stand, Appellant opened the door to Dr. Smith's testimony by presenting her mental health information to the jury. Appellant's efforts to limit Dr. Smith's testimony because of the actions of SLED¹ are merely a distraction. Had Appellant truly sought to suppress the information in her medical records as protected by her State and Constitutional privacy rights, she would not have presented that information to the jury via the testimony of her expert witnesses.

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).

- a) **The State was not required to disclose its expert, but did so as a curtesy, and was certainly not required to disclose the substance of the expert's testimony. The State committed no discovery violation because the expert's opinion was based, in part, on documents already within Appellant's possession and submitted to their own experts.**

Appellant's medical records were central to her defense of insanity. Appellant signed her waiver and HIPAA releases of her medical information shortly after trial counsel was appointed to represent her, and counsel received her records within 30 days. (R. p. 517, line 18 – p. 518,

¹ The provision of §44-22-90 and §44-22-100 protect communications with health care providers and limits the disclosure of the protected information. The statutes create penalties for the provider who violated these provisions, not for the recipient. See § 44-22-100(C). Appellant's reliance on this provision to attack the recipient of the records (SLED) is misplaced.

line 3.) Necessarily, Appellant's medical records were then disclosed to the defense experts and the court appointed psychiatrist to aid in the formation of their opinion. Indeed, Appellant already disclosed her medical records to her own expert and the court appointed expert in formulating her defense before the State's reply witness, Dr. Smith, requested the information. (R. pp. 603-604.) Appellant cannot argue the State violated Rule 5, SCRE and *Brady* by its failure to disclose the documents as the basis for Dr. Smith's opinion, when the documents were in the possession of the defense and were willingly submitted to numerous experts to prepare their assessment. Appellant appears to argue the State was required to disclose the exact opinion testimony of their expert, when the State is under no such obligation to do so.

It is well settled that an expert witness may state an opinion based on facts not within his firsthand knowledge. *State v. Hutto*, 325 S.C. 221, 481 S.E.2d 432 (1997); *State v. Franklin*, 318 S.C. 47, 456 S.E.2d 357 (1995); *Halbersberg v. Berry*, 302 S.C. 97, 394 S.E.2d 7 (Ct. App. 1990). An expert may base his opinion on information; whether or not admissible, made available to him before the hearing if the information is of the type reasonably relied upon in the field to make opinions. *Halbersberg*, 302 S.C. at 97, 394 S.E.2d at 7. Also, an expert may testify as to matters of hearsay for the purpose of showing what information he relied on in giving her opinion. *State v. Slocumb*, 336 S.C. 619, 636, 521 S.E.2d 507, 516 (Ct. App. 1999) (finding Rules 703 and 705, SCRE "permit[s] the disclosure of otherwise hearsay evidence for the purpose of illustrating the basis of the expert witness' opinion."); *Halbersberg*, 302 S.C. at 97, 394 S.E.2d at 7 (citing *United States v. 5139.5 Acres of Land in Aiken and Barnwell Counties*, 200 F.2d 659 (4th Cir. 1952)).

With respect to notice to the defense, the State is not required to provide its witness list to a criminal defendant, and the disclosure of a witness to the defense before trial is nothing more

than a professional courtesy. *State v. Nicholson*, 366 S.C. 568, 579, 623 S.E.2d 100, 105-106 (2005). There is no right to discovery in a criminal trial in South Carolina beyond what is provided by statute, case law, or court rule. See *State v. Miller*, 289 S.C. 316, 317, 345 S.E.2d 489, 490 (1986); *State v. Flood*, 257 S.C. 141, 184 S.E.2d 549 (1971) (holding there is no general discovery in criminal cases in South Carolina). See also, *Brady v. Maryland*, 373 U.S. 83 (1963) (requiring the State to divulge to a criminal defendant material exculpatory or mitigating information); Rule 5, SCRCrimP (requiring the State to disclose, upon request of the defendant, certain statements of the defendant, the defendant's prior record, certain documents and tangible objects, and certain reports of examinations or tests and witnesses to be called in response to an alibi defense).

The *Nicholson* case is instructive. In *Nicholson*, the State intended to call an expert to testify about the general characteristics of a sex abuse victim. *Nicholson*, 366 S.C. at 579, 623 S.E.2d at 105. The State provided notice of the expert to the defendant, but the defendant requested a continuance claiming the notice was too close in time to trial for him to fully prepare his defense. *Id.* The Court of Appeals found the trial court acted within its discretion in denying the motion for a continuance, finding the notice provided to the defendant was a "professional courtesy" because a witness list is not required to be provided. *Id.* at 579, 623 S.E.2d at 105-106. Here, the defense was fully aware of Dr. Smith as a potential witness because he was the only treating psychiatrist of Appellant. Further, the defense's own experts relied on Dr. Smith's records in performing their evaluation. Dr. Price even sought out Dr. Smith to discuss the case. The solicitor informed the court he might call Dr. Smith, depending on the defense's evidence, but he could not be certain. *Nicholson's* holding should apply here when the professional courtesy was extended but not required.

In the instant case, Dr. Smith reviewed the following information: 1) Dr. Smith's own clinical notes from Appellant's 34 visits; 2) the treatment notes of the emergency admission to St. Francis hospital in 2012, provided by the State; 3) the treatment notes of Appellant's subsequent admission to the Carolina Behavioral Health Center in 2012, provided to him as a matter of practice because he was her treating psychiatrist; 3); the emergency room notes of Dr. Harris, provided by State; and 4) the reports of Dr. Frierson, the court appointed psychiatrist, and Dr. Price, the defense retained expert, provided to him by the defense's expert. (R. p. 563, line 18 – p. 564, line 10.) The documents provided by the State, Appellant's emergency room notes in 2012 and the day of the shootings, were provided by the State after Dr. Smith was subpoenaed in the days before the trial. (R. p. 562, lines 1-9, p. 605, lines 13-24.) Further, Dr. Smith was not subpoenaed until after he discussed Appellant's case with Dr. Price. (R. p. 565, lines 3-14.) Dr. Smith denied he received any records from SLED in his review of Appellant's case. (R. p. 566, lines 16-21.) In sum, Dr. Smith did not review Appellant's St. Francis and emergency room records, the only documents provided by the State, until long after Appellant submitted those same records to her own experts and the court appointed expert.

Appellant argues the State was required to disclose the basis of Dr. Smith's opinion, pursuant to Rule 5 and *Brady*, but the law does not support this contention. Rule 5 does not obligate the solicitor to notify the defendant of the substance of the expert's testimony, particularly when the expert is relying on information within Appellant's possession. Further, the record does not reflect that Appellant requested the State provide copies of her own medical information in accordance with Rule 5, presumably because Appellant already had that information within her control. Instead, Appellant argues the State was required to disclose whether Dr. Smith took her medical records into consideration. However, even if the State had

disclosed the entire basis for Dr. Smith's opinion, upon Appellant's request, the disclosure still would not have informed Appellant of Dr. Smith's opinion.

Further, Appellant cannot show she was prejudiced by the State's failure to disclose the basis for Dr. Smith's opinion. Determining whether evidence withheld by the state should have been disclosed under *Brady* turns on whether the cumulative effect of the withheld evidence results in a reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different. *State v. Hill*, 368 S.C. 649, 661, 630 S.E.2d 274, 280 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419, 433 (1995)). The information in Appellant's medical records was clearly within the possession of Appellant. Her witnesses presented that information to the jury. She cannot show that had she known Dr. Smith would base his opinion on that information, she would have changed the proceedings at trial and opted not to call her defense experts.

In sum, although the State was not required to turn over the information prior to trial, Appellant's counsel was well aware of the possible expert testimony available for reply by the State. The solicitor committed no discovery violations for failing to disclose the basis for Dr. Smith's opinion, particularly when that basis was the same information presented to the defense witnesses.

- b) Appellant waived her privacy interest in her mental health records when she consented to the disclosure of the medical records to her experts and opened the door to her mental health by placing it at issue before the jury.**

Appellant opened the door to the disclosure of the privileged information within her medical records when she raised the defense of insanity. The Court implicitly found she waived the statutorily protected information when he ordered the appointment of a psychiatrist to

examine Appellant following notice of her defense of insanity, pursuant to S.C. Code Ann. § 44-22-90(A)(4) and §44-22-100 (A)(2). Later, at trial the Court again found Appellant waived her confidential communications with her treating physician by presenting that evidence to the jury through the testimony of the defense experts, pursuant to S.C. Code §19-11-95. Even if the trial court erred in making such a finding, there can be no prejudice when Appellant relied on these records and the testimony of corroborating witnesses in presenting her case to the jury. Because Appellant waived her claim of privilege in her records and her confidences to her treating physician, Appellant's argument SLED obtained her records improperly had no bearing on the issue before the trial court.

Two things are evident from the record: 1) SLED submitted a form requesting medical information from Appellant's providers and the form cited an inapplicable state statute,² and 2) the solicitor's office was unaware of the document submitted by SLED to Appellant's providers. (R. pp. 516-526.) What is not clear from the record is whether the hospitals complied with the request in violation of S.C. Code Ann. § 19-11-95, whether SLED obtained the records via warrant or other means at a later time, or whether the hospitals complied with the request from SLED only after consulting Appellant's signed release to her defense attorneys. Appellant made no request for a suppression hearing, no records custodian from the hospital testified about when the documents were disclosed, and no representative from SLED testified about how the information ultimately came into its possession. The trial court specifically refrained from

² The Child Fatality Unit with SLED is empowered to "expeditiously investigate child deaths in all counties of the State" in accordance with S.C. Code Ann. §63-11-1940. S.C. Code Ann. § 63-11-1960 authorizes the unit to obtain the medical records of a child whose death is being reviewed by the department. Here, SLED did not request the children's records, but Appellant's.

making a finding on that issue undoubtedly because the evidence before the court supporting Appellant's claim was inadequate to make that determination. (R. p. 541, lines 18-24.)

However, the trial court did find Appellant waived her privilege to protect her medical information by disclosing the information to her own experts, then calling those experts to testify to the contents at trial:

All right. First of all, after considering all arguments of counsel, I am going to allow the State to present reply evidence. I believe the statutory scheme is clear.

Again, I make this decision taking seriously into consideration the defendant's position of fundamental due process possible violation with the way the statutory scheme is drafted of burden shifting. Okay. I understand that 100 percent. But I'm constrained by the arguments and by fundamental fairness both -- well, to the State as well to allow the reply testimony.

All right. Having considered -- having ruled that I am going to allow the reply testimony, I specifically find for the record that the privilege, if -- the privilege that Ms. Simpson would have had with the doctor that's going to be testifying for the State has been waived.

(R. p. 540, line 21- p. 541, line 7-17.)

The court's finding that Appellant's mental health record was necessary for the conduct of the proceedings, both prior to trial and following the defense's case, were supported once Appellant opened the door to her mental health by claiming an insanity defense. The State became entitled to Appellant's mental health records from her admission to St. Francis in 2012 and her emergency room records when the trial court ordered the appointment of a psychiatrist to examine Appellant. *See* S.C. Code Ann. § 44-22-90 (A)(4)(allowing disclosure of information related through the course of a court-ordered psychiatric examination); *and* S.C. Code Ann. § 44-22-100 (A)(2) ("mental health records may be disclosed when a court directs that disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest.") Further, S.C. Code Ann. § 19-11-95 (D) (mandating disclosure by court order when the patient's mental illness are reasonably at issue in a proceeding) authorized the trial court to find Appellant waived her confidences in Dr. Smith. In allowing Dr. Smith to

testify, the trial court found Appellant placed the issue of her mental health squarely before the jury.

The concept of waiver by opening the door to mental health claims has been explored in our common law. For example, the Supreme Court has found where insanity is interposed as a defense in a criminal prosecution, compulsory examination of the accused by experts for the purpose of determining his mental condition does not violate either the constitutional protection against self-incrimination or the constitutional guaranty of due process of law. *State v. Locklair*, 341 S.C. 352, 364, 535 S.E.2d 420, 426 (2000) (citing *State v. Myers*, 220 S.C. 309, 67 S.E.2d 506 (1951)). Although Locklair claimed an unlawful intrusion into his constitutional right to due process, the Court found he waived that right with the nature of his defense. Similarly, in *State v. Bixby*, the defendant informed the court before his capital trial that he intended to present mitigation evidence concerning his mental health. *Bixby*, 388 S.C. 528, 557, 698 S.E.2d 572, 587 (2010). The court then ordered a mental health evaluation. *Id.* Bixby argued the compulsory mental health evaluation violated his Fifth Amendment right against self-incrimination. The Supreme Court disagreed, finding Bixby opened the door to his mental health issues. *Id.* at 559, 698 S.E.2d at 588. Applying the logic of *Locklair* and *Bixby*, if the defense can open the door to mental health issues, and thereby waive a constitutional protection, Appellant can certainly waive any statutory protection of her otherwise confidential communications with her treating physician.

With respect to the underlying mental health records, the Court has offered recent guidance in *State v. Blackwell*, 801 S.E.2d 713, 2017 WL 2350965, which was filed May 31, 2017, almost one year after Appellant's trial. In *Blackwell*, the South Carolina Supreme Court recognized the dearth of case law on this issue and outlined a new procedure for the disclosure of

privileged mental health records in accordance with S.C. Code Ann. §44-22-100(A). Specifically, the Court addressed the circumstances in which the witness (patient) did not consent to the release of medical information, but a party sought access to the records by court order after a finding the disclosure necessary for "public interest." *Blackwell*, 801 S.E.2d at 727; S.C. Code Ann. § 44-22-100 (A)(2). The Court said:

If the witness does not consent, the judge alone should review the contents of the records to determine whether "disclosure is necessary for the conduct of proceedings before the court and that failure to make the disclosure is contrary to public interest." *Id.* § 44-22-100(A)(2). In making this determination, the judge should assess the importance of the witness to the prosecution's case and whether the records contain exculpatory evidence, including, but not limited to, evidence relevant to the witness's credibility.

Id. at 727-728 (emphasis added). Significantly, in *Blackwell*, the witness whose medical records were the subject of the opinion was not the defendant, but one of the victims of the defendant's crime. *Blackwell* murdered an eight year old child in front of the witness, then sought the witness's access to the mental health records of the therapist treating the victim after the murder. *Id.* at 725. Though the circumstances of the case at hand are vastly different, *Blackwell* is helpful because the Court recognized the policy interest in balancing the relevance of the mental health records to both the State's and the defense's cases. Of course, the trial court must make this determination only if the witness **does not consent**.

Intuitively understanding this rationale, the trial court in Appellant's case found Appellant constructively consented to the release of her medical records when she raised insanity as a defense and turned over her information to defense experts. In his reasoning, the court also performed the kind of balancing test outlined in *Blackwell* in noting, as a matter of "fundamental fairness," Appellant used the records "to help establish her defense" and "opened the door" for the State to use the evidence. (R. p. 541, lines 5-16.)

Other jurisdictions state this rationale more precisely. In Washington, a defendant who raises the insanity defense has “abandoned his right of medical privacy and waived the statutory physician-patient privilege as to any medical testimony which tends to contradict or impeach his medical evidence.” *State v. Brewton*, 744 P.2d 646, 647 (1987) (the “assertion of a privilege would deprive the State, and ultimately the jury, of important evidence on that issue.”) Confidentiality remains important, but a patient who could select among various physicians’ opinions, and claim privilege as to the remainder, would make a mockery of justice. *State v. Tradewell*, 515 P.2d 172, (1973). Iowa and California have recognized the absurdity of a rule recognizing the privilege in such cases, and have required disclosure. *See e.g., State v. Cole*, 295 N.W.2d 29, 35 (IA, 1980) and *People v. Arcega*, 651 P.2d 338, 348 n. 8, (Ca. 1982) (referring to a statutory exception to the physician-patient privilege for patients who place their medical condition in issue.)

Although in South Carolina, *Locklair*, *Bixby*, and *Blackwell* did not confront this exact issue, South Carolina’s rules of discovery and statutory framework for disclosure support this policy. Rule 705, SCRE allows a party to require the disclosure of the underlying facts or data supporting an expert opinion. The South Carolina Court of Appeals confronted the admissibility of protected information under this rule in *State v. Slocumb*, 366 S.C. 619, 521 S.E.2d 507 (1999). In *Slocumb*, the Court discussed the disclosure of otherwise inadmissible evidence of prior bad acts referenced in a psychiatric report when the defendant put his mental health at issue by raising an insanity defense to a criminal sexual conduct charge. *Slocumb* sought to restrict the cross examination of his own defense expert when the State tried to cross-examine the expert on an inconsistent juvenile mental health assessment considered, but disregarded, by the expert.

The Court found the earlier assessment, which addressed Slocumb's prior bad acts, would ordinarily be inadmissible as prejudicial. The Court cited Rule 705, SCRE, and reasoned:

The State's cross-examination focused on establishing that Slocumb was sane, and the records were directly related to an evaluation of Slocumb's state of mind. Furthermore, the State in its case-in-chief did not refer to these incident reports nor did it attempt to admit Slocumb's prior criminal sexual conduct conviction for which he was incarcerated at DJJ. *See State v. Faulkner*, 274 S.C. 619, 266 S.E.2d 420 (1980) (Although the State may not attack a criminal defendant's character unless he or she places it in issue, relevant evidence properly admissible for other purposes need not be excluded merely because it incidentally reflects on his or her character.)

State, at 632-33, 521 S.E.2d at 514. In other words, a defendant who seeks to claim mental incapacity may open the door to otherwise inadmissible content within those records.

Finally, Appellant can show no prejudice from the trial court's decision to allow Dr. Smith's testimony based on her underlying mental health records from other facilities. Appellant called three expert witnesses, Dr. Frierson, Dr. Mulbry, and Dr. Price, to testify about their opinions of her mental health after reviewing her records from Dr. Smith. The defense experts explained to the jury the portions of Dr. Smith's records they found relevant to their opinions. Appellant cannot show how Dr. Smith revealed information to the jury that was not previously revealed through the defense witnesses. Any error in allowing Dr. Smith's testimony about these records was harmless beyond a reasonable doubt. *See State v. Terry*, 339 S.C. 352, 360, 529 S.E.2d 274, 278 (2000) (when a defendant offers protected medical records as mitigation evidence, he cannot claim prejudice from the disclosure of the records pursuant to §44-22-100).

The State was entitled to Appellant's mental health records via the rules of discovery, common law, and statutory law. Any attempt by SLED to gain access to that information under an inapplicable state statute has no relevance to whether the State was entitled to call Dr. Smith to testify in reply. Appellant's affirmative defense of insanity, based in large part of the treatment

notes of Dr. Smith, created the necessity for the State to call Dr. Smith to explain. Appellant's attempts to distract the Court with SLED's actions, which were never developed on the record below, should not be confused as trial court error.

- c) Appellant's Fourth Amendment rights were not violated by the testimony of Dr. Smith because her mental health records were not seized and she did not seek suppression of the records' contents.**

Lastly, Appellant's contention the Dr. Smith's testimony should not have been allowed because SLED violated Appellant's Fourth Amendment right is also without merit. The trial judge specifically declined to make a finding the records obtained by SLED were a search or a seizure in violation of Appellant's Fourth Amendment rights. (R. p. 541, lines 18-24.) Based on the record, SLED sent the medical providers a form letter saying it was entitled to Appellant's mental health records. (R. pp. 518-519.) Whether the providers complied with that request, and whether the providers considered Appellant's release of her medical records before voluntarily submitting that information to SLED was not presented to the trial court.

The Fourth Amendment itself provides no remedy for a violation of the warrant requirement, but the United States Supreme Court fashioned the exclusionary rule, a deterrent sanction whereby the State is barred from introducing evidence obtained in violation of the Fourth Amendment. *Davis v. United States*, 564 U.S. 229, 237 (2011). A Fourth Amendment seizure "deprives the individual of dominion over his or her person or property." *State v. Wright*, 391 S.C. 436, 442, 706 S.E.2d 324, 327 (2011). However, "if the prosecution can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means, then the deterrence rationale has so little basis that the evidence should be received." See *Nix v. Williams*, 467 U.S. 431, 432 (1984).

Here, Appellant did not request, nor did the trial court conduct, a suppression hearing on the medical records. As discussed in the preceding section, the State was entitled to Appellant's medical records, and was entitled to call Dr. Smith as a reply witness. Appellant was not deprived of dominion over her property because she did not possess the records in question. Further, Appellant did not actually seek the suppression of the records, or even expert testimony based on the contents of the record. That suppression would have surely disqualified her experts from offering opinions on her behalf. Instead, Appellant sought to suppress Dr. Smith's opinion on the basis of Appellant's record. In other words, Appellant does not object to the disclosure of the information in her medical records to expert witnesses. Nor does she object to the information in her medical records being presented to the jury. Appellant's Fourth Amendment violation claim is neither supported by the record, nor an appropriate claim of exclusion to Dr. Smith's testimony.

In this case, the same information in the medical records was used in defense of Appellant's actions and to condemn it. The experts' interpretation of that information resulted in vastly different conclusions, which the jury was free to give whatever weight it choose in determining Appellant's guilt. Despite her assertions the medical records were improperly obtained, Appellant did not and does not want this court to suppress the medical records, or the information contained therein. Instead, Appellant asks this Court to suppress only the expert testimony of Dr. Smith because he disagreed with Dr. Price and Dr. Frierson. The Fourth Amendment does not protect Appellant's interest in stacking the deck in her favor, nor does fruit of the poisonous tree doctrine allow for such a selective remedy.

II. The trial court properly sustained the State's objection to the defense witness' bolstering of his own testimony by claiming the State's expert "agreed with his opinion," when Dr. Smith's purported agreement was not used as a basis for Dr. Price's opinion of Appellant's sanity.

All of the defense's expert witnesses relied on Appellant's medical records during her treatment by Dr. Smith to form their opinions on Appellant's sanity. To his credit, Dr. Price was the only expert who sought out Dr. Smith to discuss Appellant's case before testifying at Appellant's trial. Although he discussed his opinion with Dr. Smith, logic requires Dr. Price to have formed an opinion on Appellant's mental capacity before Dr. Smith "agreed" with his conclusion. Accordingly, Dr. Smith's purported agreement was not the basis for Dr. Price's opinion. The only explanation for Dr. Price's testimony that Dr. Smith agreed with him was to bolster Dr. Price's credibility before the jury. In fact, Dr. Smith explained the limitations of his agreement when he testified in reply. 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 Appellant's prior treatment. Dr. Price discussed details such as the events that led to Appellant'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 has already formed his opinion on Appellant'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 tens 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?

(R. p. 443, line 5 -- p. 444, 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." Price's statement was an unnecessary attempt to bolster his credibility before the jury, did not fit within the hearsay exception for expert testimony.

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."). The ultimate issue for the jury in this case was Appellant's sanity at the time she shot her family. 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.

Even if the statement had been admissible, Appellant cannot show she was prejudiced by the trial court's refusal to allow Appellant to question Dr. Price on Dr. Smith's opinion. First, the State objected after Dr. Price told the jury Dr. Smith agreed with him, so Appellant obtained the benefit of the jury hearing Dr. Smith concurred with Dr. Smith's assessment. Second, Appellant cannot argue she was denied an opportunity to expound on Dr. Smith's agreement with Dr. Price, because she had the opportunity to question Dr. Smith about any agreement when he took the stand in reply. Further, when Dr. Smith testified, he discussed the meeting he had with Dr. Price, in which Price told Dr. Smith his findings. (R. p. 592, 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." (R. p. 592, lines 22-24.) Dr. Smith went on to say he adamantly told Dr. Price Appellant presented entirely differently in the 34 visits he had with her, and there was "nothing

similar in clinical presentation.” (R. p. 593, 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 Appellant. Thus, Appellant 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.

III. The State presented substantial evidence Appellant shot her husband and children while knowing right from wrong and with the ability to conform her conduct to the requirements of the law when Appellant failed to disclose her purported delusions to her doctor, understood the consequences of failing to take her medication, remediated quickly following the resumption of medication, carefully chose the order of and weapon for her victims, evasively answered questions in front of law enforcement, and staged an attempted suicide.

Appellant argues the trial court erred in denying her motion for a directed verdict because the evidence at the close of the State’s case and the defense’s case failed to show Appellant knew right from wrong when she killed her two children and attempted to kill her husband. Despite Appellant’s assertions, sufficient evidence supported submitting the case to the jury. In reviewing the denial of a motion for a directed verdict, the reviewing court must view the evidence in the light most favorable to the State. *State v. Walker*, 349 S.C. 49, 53, 562 S.E.2d 313, 315 (2002). The evidence showed Appellant concealed her purported delusional thoughts from her family and physician, meticulously shot her family in the order of strongest to weakest, concealed her crimes from first responders, and staged an attempted suicide. Even without the benefit of Dr. Smith’s testimony, the jury had ample evidence of Appellant’s sanity at the time of the shootings. Appellant’s motion for a directed verdict was properly denied.

In ruling on a motion for a directed verdict, the task of the trial court is to simply determine “whether the evidence presented is sufficient to allow a reasonable juror to find the

defendant guilty beyond a reasonable doubt.” *State v. Bennett*, 415 S.C. 232, 781 S.E.2d 352 (2016) (emphasis added). “[T]he lens through which a court considers circumstantial evidence when ruling on a directed verdict motion is distinct from the analysis performed by the jury.” *Bennett*, 415 S.C. at 236-37, 781 S.E.2d at 354 (citing *State v. Littlejohn*, 228 S.C. 324, 89 S.E.2d 924 (1955); see also *Crawford v. United States*, 375 F.2d 332, 334 (D.C. Cir. 1967) (“The jury question of whether there was proof of guilt beyond a reasonable doubt presents a stricter or higher standard than the trial court’s consideration of whether there is sufficient evidence to allow the jury to find guilt beyond a reasonable doubt, and it rests in the unreviewable ratiocinations of twelve reasonable persons whose deliberations are protected by the highest security.”). Further, “a trial judge is not required to find that the evidence infers guilt to the exclusion of any other reasonable hypothesis.” *State v. Hepburn*, 406 S.C. 416, 753 S.E.2d 402, 409 (2013).

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. See S.C.Code Ann. §17-24-10(A). However, 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 Section 17-24-10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law. See S.C.Code Ann. §17-24-20(A).

The State clearly presented sufficient evidence to convince a reasonable juror that Appellant shot her children and her husband. Appellant admitted to her neighbor, the EMS

worker, the nurse at the hospital, and the defense experts that she was the perpetrator of the crime. Appellant then raised the affirmative defense of not guilty by reason of insanity. The burden shifted to Appellant to prove by a preponderance of the evidence her culpability should be mitigated by reason of her mental illness to a finding of guilty but mentally ill, or not guilty by reason of insanity. Therefore, the question whether Appellant was entitled to a directed verdict and a new trial turns on whether there was any evidence during the State's case in chief from which a jury could find Appellant was capable of recognizing her actions as morally or legally wrong. Appellant mistakenly claims the only evidence of her sanity was offered by the expert witnesses. However, this argument ignores the testimony of the lay witnesses during the State's case who observed Appellant in the moments before and after the crime. In its case in chief, the State presented the following evidence showing Appellant understood right from wrong:

- 1) Appellant withdrew her children from school the day before she killed them, lying to the school officials by claiming her children were sick. (R. pp. 282-285.)
- 2) Stegall testified Appellant seemed irritated with her children and her husband, not worried for their safety because of a delusion someone was going to hurt them. (R. pp. 271-273.)
- 3) Appellant rose early in the morning to commit the crime, even wearing a headlamp to find her way around the darkened house before her family awoke. (R. pp. 186, 393.)
- 4) Appellant shot her husband first with a .22 caliber handgun, presumably so he could not prevent her from killing the children. (R. p. 393.)
- 5) Upon her failure to kill Michael quickly, Appellant chose another larger caliber weapon to shoot her children. (R. pp. 183-203.)

- 6) Appellant's shot each victim multiple times in the head. (R. p. 184, 335)
- 7) Appellant turned off the alarm to the house at 4:48 am so the police would not be summoned. (R. p. 327.)
- 8) Appellant refused to answer her neighbor's questions about the whereabouts of her family. (R. p. 129-131.)
- 9) When she supposedly tried to kill herself, Appellant chose a path through the woods where a driver had previously been killed in a car accident, yet she avoided striking the large tree which killed the driver before. (R. pp. 136-138.)
- 10) Appellant refused to talk to the emergency room nurse while law enforcement officers were near or in her treatment room. (R. pp. 154-156.)

When a defendant presents evidence in his own defense, he waives the right to limit the appellate court's consideration of the denial of his motion for directed verdict to only the evidence presented in the State's case-in-chief. *See State v. Hepburn*, 406 S.C. 416, 432, 753 S.E.2d 402, 410 (2013). For this Court's review accordingly, the State presented the following evidence in its case on reply:

- 1) Appellant either did not suffer from extreme paranoid delusions, or if she did, she understood she needed to conceal them from her psychiatrist. (R. p. 593, line 17 – p. 594, line 11.)
- 2) Appellant understood the consequences of failing to take her medication. (R. p. 589, lines 9-17.)
- 3) Appellant may have continued to take her Adderall even after discontinuing her mood stabilizer. (R. p. 589, lines 4-8; p. 590, lines 21-25; p. 591, lines 1-4.)

- 4) Appellant remediated quickly after her medications were administered in an institutional setting, indicating any psychosis was medication induced. (R. p. 597, lines 3-21.)

Although the defense presented experts who opined Appellant did not know right from wrong, the jury was not required to give the expert testimony greater weight than that of the lay witnesses. Indeed, expert testimony is not required to rebut the presumption of insanity. *State v. Pitman*, 373 S.C. 527, 545, 647 S.E.2d 144, 153 (2007); *State v. Poindexter*, 314 S.C. 490, 494, 431, S.E.2d 254, 256 (1993); *State v. Smith* 298 S.C. 205, 379 S.E.2d 287 (S.C. 1989) (finding the State is not required to produce expert testimony to prove sanity; lay testimony may be sufficient.)

In *Pitman*, the South Carolina Supreme Court found lay testimony about Pitman's calm demeanor the day after he murdered his grandparents as he relayed his cover up story to investigators was sufficient to present a question for the jury as to Appellant's mental capacity. 373 S.C. at 547-548, 647 S.E. 2d at 154-155. In *Poindexter*, the State presented lay testimony showing Poindexter fled the state after murdering the victim. 314 S.C. at 493, 431 S.E.2d at 256. Hours later, Poindexter appeared normal and was cooperative during his arrest. *Id.* The State also showed Poindexter's co-workers noticed he became quieter and more reclusive and that his work quality decreased. The Court found the jury could have deduced Poindexter had the capacity to understand it was morally or legally wrong to commit the murder, saying, "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 494, 431 S.E.2d at 256 (citing *State v. Smith*, 298 S.C. 205, 379 S.E.2d 287 (1989); *State v. Milian-Hernandez*, 287 S.C. 183, 336 S.E.2d 476 (1985)).

Here, the State presented evidence of sanity in its case-in-chief, and then again offered evidence of sanity during its case in reply. Where there is any evidence tending to prove the guilt of the accused, or from which his guilt may be fairly and logically deduced, the refusal to direct a verdict or grant a new trial is not error. *State v. Davis*, 278 S.C. 544, 298 S.E.2d 778 (1983). Viewing the evidence in the light most favorable to the State, a reasonable juror could conclude from Appellant's actions and statements that she knew right from wrong and could conform her behavior to the requirements of the law. The trial court committed no error in denying the motion for a directed verdict.

IV. Dr. Smith's qualification as an expert in psychiatry allowed him to opine on Appellant's criminal responsibility, even though he was not qualified as an expert in forensic psychiatry, because Dr. Smith had the requisite knowledge and skill to offer his opinion of Appellant's capacity to distinguish right from wrong.

In her claim Dr. Smith was not qualified to offer an opinion on her capacity to know right from wrong or conform her conduct, Appellant echoes a claim she made throughout her trial: A finding of incapacity requires the jury to "practice psychiatry," which she claims they are unqualified to do. (R. p. 47, lines 6-14.) Similarly, Appellant's objection to Dr. Smith's testimony focused solely on Dr. Smith's opinion concerning the ultimate issue at trial: did Appellant know right from wrong and could she control herself? Appellant mistakenly believes the determination of this question can be made only by experts qualified in forensics psychiatry. However, South Carolina law rejects this contention.

In determining whether to admit expert testimony, the court must make three inquiries. First, the court must determine whether "the subject matter is beyond the ordinary knowledge of the jury, thus requiring an expert to explain the matter to the jury." *Watson v. Ford Motor Co*, 389 S.C. 434, 446, 699 S.E.2d 169, 175. Second, the expert must have "acquired the requisite

knowledge and skill to qualify as an expert in the particular subject matter,” although he “need not be a specialist in the particular branch of the field.” *Id.* Finally, the substance of the testimony must be reliable. *Id.* In the case before the court, neither the State nor the defense seriously disputed whether the subject matter of Appellant’s psychiatric condition was beyond the ordinary knowledge of the jury. Appellant does not challenge the reliability of psychiatric treatment as a particularized discipline of medicine. Instead, Appellant argues Dr. Smith was not qualified to testify to Appellant’s capacity to distinguish right from wrong or conform her conduct to the law. (R. p. 537, line 18 – p. 538, line 4.)

While an expert’s qualification generally goes to weight of his testimony and not its admissibility, the trial court acts as a gatekeeper in vetting its reliability and deeming the testimony admissible. *Graves v. CAS Med. Sys., Inc.*, 401 S.C. 63, 74, 735 S.E.2d 650, 655 (2012). If the proffered testimony is scientific in nature, then the circuit court must determine its reliability per the factors set forth in *State v. Council*, 335 S.C. 1, 515 S.E.2d 508 (1999). The trial court correctly identified this standard, and specifically applied the *Council* factors to the testimony given at the pretrial hearing. (R. pp. 579-582.)

With respect to Dr. Smith’s qualifications in particular, the qualification of an expert witness and the admissibility of the expert’s testimony are matters largely within the trial court’s discretion. *McMillan v. Durant*, 312 S.C. 200, 439 S.E.2d 829 (1993). A trial court’s decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of discretion. *State v. Price*, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006); *State v. White*, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009). To present expert testimony, a party must show the witness possesses through either study or experience the knowledge or skill in a business, profession, or science making him or her better qualified than the jury to form an opinion on the particular

subject in question. *Hall v. Clarendon Outdoor Advertising, Inc.*, 311 S.C. 185, 428 S.E.2d 1 (Ct.App.1993).

Appellant claims Dr. Smith was not qualified to give an opinion on forensic psychiatry. However, in the case of psychiatry, the treating physician's opinion on the patient's mental health is critical to the everyday care of the patient; it is not solely for forensic purposes. "It has been said that a forensic interviewer's purpose is to prepare for trial." *State v. Kromah*, 401 S.C. 340, 357, 737 S.E.2d 490, 499 (2013); *See State v. Blue*, 717 N.W.2d 558, 564 (N.D.2006) (observing "[t]he forensic interviewer's purpose was undoubtedly to prepare for trial" as "[f]orensic by definition means 'suitable to courts,' ") (quoting *Merriam-Webster's Collegiate Dictionary* 490 (11th ed.2005)); *Black's Law Dictionary* 721 (9th ed.2009) (stating "forensic" is derived from the Latin terms "forensis" (public) and "forum" (court) and defining "forensic" as "[u]sed in or suitable to courts of law or public debate"). In short, "forensic" refers to the expert's preparation and participation in litigation. The term has little to do with the quality of the underlying opinion.

In the case of an affirmative defense of insanity, the jury must decide whether the defendant knew right from wrong based on the testimony of both lay witnesses and expert psychiatrists or psychologists. Only the doctors are directly asked to give an opinion that conclusively establishes a defendant's guilt. Regardless of whether a doctor is qualified as a "forensic" psychiatrist, which appears to mean prepares for and participates in litigation, a psychiatrist is more than qualified to conclude Appellant possessed the mental capacity to know right from wrong, particularly within the framework of serving as Appellant's treating physician for three years. In fact, no other doctor was more qualified than Dr. Smith to opine as to Appellant's mental capacity.

Dr. Smith obtained his medical degree from the University of Alabama and completed his residency at the William S. Hall Psychiatric Institute in Columbia. (R. p. 553, line 23 – p. 611, line 3.) At the time of trial, Dr. Smith practiced psychiatry for 26 years. (R. p. 554, lines 1-3.) Dr. Smith completes 30 hours a year of continuing education and treats patients “from 18 to 118” years of age with a variety of diagnoses. (R. p. 554, lines 12-24.) As part of his practice, Dr. Smith has to determine whether his patients suffer from serious mental illness and plan their treatment. (R. p. 555, lines 5-25.) Dr. Smith has been deposed “hundreds of times” in different civil cases, such as child custody, medical malpractice, and workman’s compensation. (R. p. 556, lines 6-8.) He completed a rotation in forensic psychiatry during his residency and prepared an evaluation for a criminal defendant who ultimately pled guilty. (R. p. 556, lines 8-16.) Dr. Smith offered his opinion on a patient’s criminal responsibility on 5 occasions and rendered an opinion on his patients’ ability to conform their behavior on multiple occasions. (R. p. 556, line 23 – p. 557, line 14.) Finally, most importantly, Dr. Smith saw Appellant for 34 times over a three year period. Despite Appellant’s claims the visits lasted 8 minutes, Dr. Smith said the visits were scheduled for 50 minutes and there was no way to know exactly how long the visits lasted. (R. p. 611, line 14 – p. 612, line 9.) Dr. Smith saw Appellant as recently as three months before the shootings and believed she was stable enough to extend her follow up visit for four months later. (R. p. 607, lines 17-20; p. 610, lines 7-13.) In contrast, defense expert Dr. Mulbry examined Appellant as late as nine months after the shootings, Dr. Price examined her 12 months later, and Dr. Frierson began his evaluation almost two years after the shootings. (R. p. 405, lines 6-16; p. 437, lines 2-10; p. 464, lines 13-24.) Not only was Dr. Smith qualified to opine on Appellant’s mental capacity, he also had the most direct and most recent interaction with Appellant in relation to the shootings.

Appellant cannot show the trial court abused his discretion in finding Dr. Smith qualified to opine on Appellant's state of mind. Moreover, questions going to an expert's knowledge of state of mind of the accused at the time of the crime are proper, and the expert's opinion as to state of mind is admissible. *See State v. Atkins*, 303 S.C. 214, 399 S.E.2d 760 (1990). Dr. Smith observed Appellant 34 times in a clinical setting, and was qualified to treat her mental condition with medications and monitor her progress while she took those medications. It was his professional responsibility to determine whether she knew right from wrong and could conform her conduct to the law. The fact that Dr. Smith was not as qualified as the other experts to prepare for and testify at trial does not render his opinion as her treating psychiatrist invalid. If the jury was entitled to hear from experts who based their opinions on Dr. Smith's treatment notes, then they were certainly entitled to hear an opinion directly from Dr. Smith. Lastly, Dr. Smith's opinion on whether Appellant knew right from wrong was the same question presented to the jury. As her treating physician, Dr. Smith need not be a forensic expert to make that determination.

CONCLUSION

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

Respectfully submitted,

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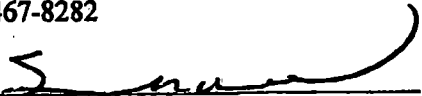
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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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

THE STATE,

RESPONDENT,

V.

SUZANNA BROWN SIMPSON,

APPELLANT

Appellate Case No. 2016-001387

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Final Brief of Respondent complies with Rule 21 1(b), SCACR, and the April 15, 2014, Order of the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2016-001387

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SC Court of Appeals

The State, ... Respondent,

v.

Suzanna Brown Simpson, ... Appellant/Petitioner.

PETITION FOR REHEARING

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PETITION FOR REHEARING

Pursuant to SCRAP Rule 221 the Appellant hereby moves this Court to reconsider its opinion and grant the Appellant a rehearing in this case based on the following:

The Court Erred in Admitting Forensic Testimony of the State's Expert Witness.

The Court's opinion fails to address the failure of the state to disclosure any forensic mental examination conducted by Dr. Smith or the substance of Dr. Smith's opinion and potential testimony on the issue of sanity prior to trial in light of the underpinnings of both Rule 5, SCRCrimP and Brady v. Maryland, as well as due process.

The prosecution failed to disclose that Dr. Smith had conducted a forensic mental examination or that he would opine on the issue of sanity.

Rule 5 provides:

Upon request of a defendant the prosecution shall permit the defendant to inspect and copy any *results* or reports of physical or *mental examinations*, and of scientific tests or experiments, or copies thereof, which are *within the possession, custody, or control of the prosecution*, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are *material to the preparation of the defense* or are intended for use by the prosecution as evidence in chief at the trial.

Rule 5(1)(D) Reports of examinations and tests.

Although Dr. Smith was presented as a fact witness as the defendant's treating physician he also gave testimony as forensic expert on the issue of sanity. Dr. Smith therefore conducted a forensic mental examination of the defendant. This was based in part on the records that were provided to him by the solicitor. Despite being aware that it would call on Dr. Smith in rebuttal, the prosecution failed to disclose Dr. Smith's examination or that he would be called as forensic expert to opine on the issue of sanity. In proceeding in this way the state prevented the defense experts to comment on Dr. Smith's expertise, analysis, or opinion as to the defendant's sanity. This Court's opinion fails to address the issue of disclosure of Dr. Smith's forensic evaluation or opinion based on such evaluation, under the principals underlying both Rule 5, Brady, and due process.

"The requirements of Rule 5, as opposed to the constitutional dictates of Brady, are judicially created discovery mechanisms for use in criminal proceedings." State v. Proctor, 348 S.C. 322, 330, 559 S.E.2d 318, 322 (Ct.App.2001), *rev'd on other grounds*, 358 S.C. 424, 595 S.E.2d 480 (2004). Despite the different underpinnings of Brady and Rule 5, each has the same goal of ensuring the criminal defendant's right to a fair trial. Neither is

designed “to displace the adversary system as the primary means by which truth is uncovered, but [rather] to ensure that a miscarriage of justice does not occur.” Bagley, 473 U.S. at 675, 105 S.Ct. 3375. Furthermore, “the prosecutor’s role transcends that of an adversary [because] he ‘is the representative not of an ordinary party to a controversy, but of a sovereignty ... whose interest ... in a criminal prosecution is not that it shall win a case, but that justice shall be done.’ ” *Id.* at n. 6 (quoting Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935)). Taking this into consideration and understanding that “the significance of an item of evidence can seldom be predicted accurately until the entire record is complete, the prudent prosecutor will resolve doubtful questions in favor of disclosure.” Agurs, 427 U.S. at 108, 96 S.Ct. 2392. State v. Kennerly, 331 S.C. 442, 454, 503 S.E.2d 214, 220–21 (Ct. App. 1998), *aff’d*, 337 S.C. 617, 524 S.E.2d 837 (1999).

In Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the Supreme Court held that, irrespective of good or bad faith, suppression by the prosecution of evidence favorable to a defendant who has requested it violates due process where such evidence is material to either guilt or punishment. Brady imposes an affirmative duty on the prosecution to produce at the appropriate time requested evidence that is materially

favorable to the accused, either as direct or impeaching evidence. Brady is not a rule of discovery; it is a rule of fairness and minimum prosecutorial obligation. United States v. Beasley, 576 F.2d 626, 630 (5th Cir. 1978), cert. denied, 440 U.S. 947, 99 S.Ct. 1426, 59 L.Ed.2d 636 (1979) *citing* United States v. Agurs, 427 U.S. 97, 107, 96 S.Ct. 2392, 2399, 49 L.Ed.2d 342 (1976). *See also* United States v. Campagnuolo, 592 F.2d 852, 859 (5th Cir. 1979). The obligation to disclose is measured by the "character of the evidence, not the character of the prosecutor." Agurs, 427 U.S. at 110, 96 S.Ct. at 2400. Allowing the state to avoid disclosure of any forensic mental examination or the substance of Dr. Smith's opinion and potential testimony on the issue of sanity prior to trial is inconsistent with the underpinnings of both Rule 5, SCRCrimP, Brady v. Maryland as well as a matter of due process. *See* Kennerly, at 220; *See also* Riddle v. Ozmit, 369 S.C. 39 (2006).

The Court Erred in Admitting Testimony of State Expert Based on Evidence Obtained in Violation of State and Federal Privacy Laws as well as the Fourth Amendment.

The Court's opinion fails to fully address the issues raised in regards to the admission of Dr. Smith's forensic testimony based on records provided to him by the state which were obtained in violations of state and federal law. In

particular, the manner of obtaining those records without valid consent furthered the ability to offer Dr. Smith as a surprise forensic expert. Absent the defendant's consent, SLED could not lawfully obtain the defendant's mental health records except by court order (or other enumerated means), which, it clearly did not have at the time of the seizure. Court order would have required notice to the defendant. The state avoided any notice to the defendant of the unlawful seizure of her records as well as the purpose for which the records were sought, which in this case was for Dr. Smith to conduct a forensic mental evaluation. SLED's seizure of the defendant's mental health records therefore violated the defendant's statutory right to privacy under both state and federal law and allowed the state to offer surprise expert testimony in a way in which the defense could not anticipate or challenge.

This Court's opinion also fails to address the sound reasoning of other courts holding that suppression was the appropriate remedy for unlawful seizure of protected health information:

Given the fact that these statutes were passed into law over a decade ago, and that the State Attorney's Office for the 15th Judicial Circuit has handled similar cases and is well aware of the mandated procedures, it is almost incomprehensible that law enforcement proceeded in the manner as they did herein. Other

than one's expectation of privacy in one's personal effects and papers in our homes, Americans next most hold as intensely personal and private the status of their health, medical treatment, medical advice and therapy.

Suppression is the only remedy to sanction this police misconduct and deter similar misconduct. The danger of the law enforcement practices in this case are amply demonstrated by the willingness of medical professionals to surrender private medical records and engage in discussions regarding private and privileged communications concerning their treatment of individuals on the mere naked display of authority by law enforcement. Without court intervention and review as mandated by statute, countless innocent patient records are subject to examination and review by well-meaning but misguided law enforcement officials.

State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

The Sun Court went on to reason that the application of the exclusionary rule, where there has not been a good faith effort to comply with subsection 456.057(8), should instill in those particular investigating officers, or in their future counterparts, a greater degree of care toward the rights of a patient. State v. White, 660 So.2d 664, 666–67 (Fla.1995) (*quoting United States v. Leon*, 468 U.S. 897, 919, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984) (*quoting Michigan v. Tucker*, 417 U.S. 433, 447, 94 S.Ct. 2357, 41 L.Ed.2d 182 (1974)))” State v. Sun, 82 So. 3d 866, 874 (Fla. Dist. Ct. App. 2011).

Based on the same reasoning as seen in Sun, in another similar case the Florida Court suppressed the testimony of doctors where police had

unlawfully obtained protected medical information about the defendant, stating: "Under the circumstances we can neither agree with the State that it acted in good faith nor disagree with the trial court's determination that it failed to so act. The medical records secured from Dr. Shapiro, comprised of both his and Dr. McKnight's records, were properly suppressed." State v. Strickling, 164 So. 3d 727, 734 (Fla. Dist. Ct. App. 2015). In the present case, suppression of the forensic testimony and opinion of the Dr. Smith, both of which were based on medical records obtained by SLED in violation of the defendant's right to privacy, is the appropriate remedy.

C. The Court Erred in Admitting Testimony of State Expert Which Was Based on Evidence Obtained as a Result of an Unlawful Seizure Under the Fourth Amendment.

The Court's opinion overlooks the fact that the inevitable discovery rule can not be applied to the unlawful seizure of mental health records, especially in the present case. There can be no "inevitable discovery" as to protected health information. Mental health records are protected from disclosure under state and federal law. There is no way for the state to inevitably discover the records other than following the prescribed lawful process. Such process would require the defendant be provided notice of the state's intent

to obtain the records and the purpose for which the records were being sought. Illegal seizure and use of the defendant's mental health records allowed the state to conduct a forensic mental exam and testify to the results without notice to the defense. The state's intent to keep the defense from discovering the forensic mental exam is evident by the solicitor's comment at trial that he didn't want to tell the defense if he would call Dr. Smith, when he might call Dr. Smith, or for what purpose he might call Dr. Smith. R. p. 51. As argued above this, combined with Dr. Smith's testimony being presented in rebuttal, prevented the defense from having its expert witnesses comment on Dr. Smith's expertise, testimony or opinion. Assuming *arguendo* that the defendant waived her right to privacy, it does not alter the fact that the exclusionary rule is still appropriate as the unlawful seizure in and of itself was the source of the prejudice.

The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim: "(T)he ruptured privacy of the victims' homes and effects cannot be restored. Reparation comes too late." Linkletter v. Walker, 381 U.S. 618, 637, 85 S.Ct. 1731, 1742, 14 L.Ed.2d 601 (1965). Instead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against

unreasonable searches and seizures: "The rule is calculated to prevent, not to repair. Its purpose is to deter—to compel respect for the constitutional guaranty in the only effectively available way—by removing the incentive to disregard it." Elkins v. United States, 364 U.S. 206, 217, 80 S.Ct. 1437, 1444, 4 L.Ed.2d 1669 (1960). *Accord*, Mapp v. Ohio, *supra*, 367 U.S., at 656, 81 S.Ct., at 1692; Tehan v. United States ex rel. Shott, 382 U.S. 406, 416, 86 S.Ct. 459, 465, 15 L.Ed.2d 453 (1966); Terry v. Ohio, 392 U.S. 1, 29, 88 S.Ct. 1868, 1884, 20 L.Ed.2d 889 (1968). In sum, the rule is a judicially created remedy designed to safeguard Fourth Amendment rights generally through its deterrent effect, rather than a personal constitutional right of the party aggrieved. In this case the application of the exclusionary rule serves the interests of justice.

Trial Court Erred in Excluding Critical Testimony by Defense Expert as to Statements by State Expert.

This Court's opinion overlooks the fact that Dr. Smith testified at trial, was subject to cross-examination, and the statement was inconsistent with his testimony on the defendant's sanity. Rule 801(d)(1) provides in pertinent part: "The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony." Rule 801, SCRE. Dr. Price's

testimony as to Dr. Smith's prior statement as to his being in agreement with Price's analysis was therefore not hearsay. Nor was Price's testimony an attempt to bolster another witness' testimony. In *State v. McKerley*, relied on by this Court, one witness testified that she found another witness' testimony to be credible. *See State v. McKerley*, 397 S.C. 461, 463, 725 S.E.2d 139, 141 (Ct. App. 2012). In this case Dr. Price, as a forensic expert, was commenting on Dr. Smith's prior statement that Smith was in agreement with Dr. Price's analysis. As an independent expert Price's testimony did not constitute improper bolstering: "In *Brown*, however, this court clearly 'distinguished improper bolstering in cases involving experts who themselves conducted the forensic interview from cases involving independent mental health experts who addressed general behavioral characteristics.' *State v. Barrett*, 416 S.C. 124, 129, 785 S.E.2d 387, 389 (Ct. App. 2016) (*citing Brown*, 411 S.C. at 343-45, 768 S.E.2d at 252-53)." *State v. Jones*, 417 S.C. 319, 335, 790 S.E.2d 17, 25 (Ct. App. 2016), *aff'd as modified*, 423 S.C. 631, 817 S.E.2d 268 (2018). Exclusion of Dr. Price's testimony based on the grounds of hearsay or bolstering was therefore error.

This Court's opinion further overlooks the fact that while Dr. Price may have formed a preliminary opinion prior to speaking with Dr. Smith, he

appears to have subsequently considered his discussion with Dr. Smith in formulating his opinion given at trial . R. 443, l. 8-12. Even though his opinion on sanity at trial may have been the same as his opinion prior to talking to Dr. Smith, Smith's comments were nevertheless relevant to the opinion he expressed at trial. Excluding that testimony prevented Dr. Price from testifying to the underlying basis for his opinion at trial.

An expert may testify as to matters of hearsay for the purpose of showing what information he or she relied on in giving an opinion of value. *In re Manigo* (S.C.App. 2010) 389 S.C. 96, 697 S.E.2d 629, *rehearing denied, certiorari granted, affirmed* 398 S.C. 149, 728 S.E.2d 32. Here Dr. Smith was the defendant's treating physician. This Court has held that the hearsay rule does not preclude forensic psychiatrist from testifying as to what she learned from a defendant's treatment provider. In the present case Dr. Price's testimony, as to what he had been told by Smith, both as the defendant's treating physician, as well as the State's forensic expert, was clearly admissible.

The Trial Court Erred in Allowing the State Witness to Give Forensic Testimony and Offer Opinion on Sanity Where the Witness Was Not Qualified as a Forensic Expert.

This Court's opinion overlooks the fact that Dr. Smith, the defendant's

treating physician was never offered nor qualified as a forensic psychiatrist. The question is not the scope of a qualified forensic expert's testimony but the admissibility of a forensic opinion as to sanity by a witness that has not been qualified as a forensic expert.

Sanity is a forensic question. Forensic psychiatry is a specific area of psychiatry for which there is a board certification. Smith was not board certified in forensic psychiatry, nor did he practice forensic psychiatry. The state admitted that he could not be qualified as an expert in forensic psychiatry. After extensive voir dire Smith was qualified only as an expert in general psychiatry only. Although not qualified in forensic psychiatry, Smith was subsequently allowed to render a forensic opinion as to sanity as of the time of the incident. This exceeded the scope of the court's qualification of Smith.

Once a witness is qualified as an expert, continued objections to the amount or quality of the expert's knowledge, skill, experience, training, or education go to weight of the expert's testimony, not its admissibility. *Id.* State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011). But the court must first address whether an expert is qualified on the topic for which he is testifying or opining. "Before a witness is qualified as an expert, the trial

court must find (1) the expert's testimony will assist the trier of fact, (2) the expert possesses the requisite knowledge, skill, experience, training, or education, and (3) and the expert's testimony is reliable. State v. White, 382 S.C. 265, 274, 676 S.E.2d 684, 689 (2009). Here the trial court did not make those findings and therefore did not qualify Smith as an expert in forensic psychiatry. Rule 702, SCRE, provides that a witness *qualified as an expert* may testify when scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue. Without the requisite findings and qualification of Dr. Smith as an expert on the issue of forensic psychiatry, he could not testify as to the issue of sanity at the time of the incident.

This Court's opinion rests on its determination that Smith is qualified to testify as an expert in forensic psychiatry. This however is contrary to the scope of Smith's qualifications as found by the trial court. The qualification of a witness as an expert is within the sound discretion of the trial court and will not be reversed absent an abuse of discretion. State v. Caldwell, 283 S.C. 350, 352, 322 S.E.2d 662, 663 (1984); State v. Goode, 305 S.C. 176, 177-78, 406 S.E.2d 391, 392-93 (Ct.App.1991). Here the Court overlooks the ruling of the trial court in limiting Smith's qualification and excluding the area of forensic

psychiatry. This Court is in effect overruling the scope of Smith's qualification as determined by the trial court when no error as to the limitation on Smith's qualification was raised by the State at trial or on appeal.

The Trial Court Erred in Denying Motion for a Directed Verdict and Motion for New Trial.

This Court's opinion misperceives facts relevant to the directed verdict issue. The Court stated that Simpson appeared irritated with her husband and children. The Court's opinion also states that Nate Stegall testified that Simpson seemed angry. Stegall described Simpson as an "angry wife" without any reference to the children. R. p. 272. Stegall did testify that Simpson appeared aggravated or irritated but admitted that he had no idea as to why. 278-280. Stegall did not testify that Simpson was angry, irritated or aggravated with the children. Additionally, evidence that the alarm was turned off in the morning fails to support an inference of guilt.

This Court further relied on the testimony of Dr. Smith in its ruling as to the directed verdict. The State did not call Dr. Smith as a witness in its case in chief. Pursuant to Rule 19 the defendant's motion for direct verdict must be judged on the evidence existing after the evidence on either side is closed. At the close of the state's case in chief and at the close of the defense case the

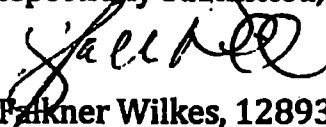
lack of evidence as to guilt entitled the defense to a directed verdict.

Additionally, as argued above, Dr. Smith's forensic testimony and opinion should have been excluded. To the extent that Dr. Smith's testimony is properly excluded, then the defense was entitled to a directed verdict at the close of the State's rebuttal as well.

CONCLUSION

Based on the foregoing the Appellant moves this Court to reconsider its opinion and grant a rehearing in this case.

Respectfully submitted,


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February 7, 2019.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Pickens County
Court of General Sessions

Brian M. Gibbons, Circuit Court Judge

Appellate Case No.: 2016-001387

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The State, ... Respondent,

v.

Suzanna Brown Simpson, ... Appellant.

CERTIFICATE OF SERVICE

I certify that I have, on the 7th day of February, 2019, served a copy of the Appellant's Petition for Rehearing on the Respondent by placing a copy of same in the United States Mail, and by facsimile if so indicated, first class postage prepaid, addressed to counsel of record as follows:

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February 7, 2019.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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The Hon. Brian M. Gibbons, Circuit Court Judge
Appellate Case No.: 2016-001387

The State, ... Respondent,
v.
Suzanna Brown Simpson, ... Appellant.

RECORD ON APPEAL (VOLUME I)

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DEC 07 2017

SC Court of Appeals

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1 State of South Carolina
2 County of Pickens . In the Court of General Sessions

3
4 State of South Carolina,)

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5
6 -vs-

June 20, 2016

7 Suzanna Brown Simpson,)

Volume 1 of 4

8 Defendant.)

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10

11

B E F O R E:

12

13 The Honorable Brian M. Gibbons, Judge;
14 and a jury.

15

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E x h i b i t s

For the State:

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For the Defendant:

Marked	Description	I.D.	Admitted
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1 (WHEREUPON, court convened with all parties
2 present now in Courtroom 4 and the following
3 proceedings were had commencing at 11:17 a.m.)

4 THE COURT: All right. All members of the jury
5 panel are present. The State is present along with the
6 defense.

7 All right. Now, ladies and gentlemen of the jury
8 panel, I'm going to tell you this. You're going to get
9 an early lunch break here momentarily. There are some
10 matters I need to take up prior to the commencement of
11 the trial. I will tell you before we go through
12 questions -- I have more questions for you, for the
13 jury panel. It's called voir dire questions. It's a
14 Latin term. I don't know what it means. Do any of the
15 lawyers know what it means? It's where I question you
16 more, okay, let's put it that way. But we'll do that,
17 and we're going to do that this afternoon because I
18 have some other matters I need to take care of before
19 we actually start the trial of the case. I will have
20 the State go ahead and call the case, and then we'll
21 hold off voir dire until after lunch, okay.

22 So at this time, Solicitor, if you will -- and the
23 solicitor is what other states call the district
24 attorney or the State's attorney. That's what we call
25 prosecutors in South Carolina, okay.

1 So at this time I'm going to have the solicitor
2 call the case for trial.

3 MR. WILKINS: Your Honor, the State calls the
4 State versus Suzanna Simpson Brown. This is
5 2014-GS-39-0396, 0397, and 0398.

6 THE COURT: Okay. So State versus Suzanna Brown
7 Simpson.

8 MR. WILKINS: Suzanna Brown Simpson, yes, sir.

9 THE COURT: Thank you.

10 Ladies and gentlemen of the jury, there are some
11 questions that I need to ask you before we go through
12 all that. I will swear in the jury panel when we get
13 back from lunch for the purpose of the questioning --
14 well, I tell you what. Let me go ahead and swear you
15 in because I have something to hand to you to fill out
16 over lunch.

17 MS. STROM: Judge, may we approach?

18 THE COURT: Go ahead.

19 (WHEREUPON, a bench conference was held off the
20 record in the presence of the prospective jury panel,
21 but out of their hearing.)

22 THE COURT: All right. Ladies and gentlemen, I'm
23 going to swear you in just for the purpose of voir dire
24 questions, okay. So, again, that means questions I
25 have to ask you.

1 So at this time would everybody please stand. All
2 of you please raise your right hand.

3 Do each of you swear to tell the court the truth,
4 the whole truth, and nothing but the truth so help you
5 God?

6 (Jurors state "I will.")

7 THE COURT: All right. You can all be seated.

8 Here is what's going to happen, ladies and
9 gentlemen, as far as scheduling. The State has called
10 the case. I'll tell you, the indictments -- and, of
11 course, the indictments are nothing but the written
12 pieces of paper by which a case comes to court which
13 describes the charges which have been made by the State
14 against someone charged with a crime. And these
15 indictments allege that on or about the 14th day of
16 May 2013 Suzanna Brown Simpson unlawfully and with
17 malice aforethought did kill Female Child [REDACTED], a
18 seven-year-old female, by means of shooting the victim
19 in the head, and that Female Child [REDACTED] died as a
20 proximate result thereof. She's been charged with
21 murder on that account.

22 The defendant has also been charged with
23 possession of a weapon during the commission of a
24 violent crime. I'll describe the charge to you as
25 stated in the indictment that Suzanna Brown Simpson did

1 in Pickens County on or about the 14th day of May 2013
2 unlawfully and with malice aforethought kill [Male]
3 [REDACTED] a five-year-old male, by means of
4 shooting the victim in the head, and that [Male Child]
5 Simpson died as a proximate result thereof; that
6 Suzanna Brown Simpson did in Pickens County on or about
7 the 14th day of May 2013 possess or visibly display a
8 40-caliber pistol during the commission or attempted
9 commission of a violent crime.

10 Lastly, on the charge of attempted murder, that
11 Suzanna Brown Simpson did in Pickens County on or about
12 the 14th day of May 2013 unlawfully with malice
13 aforethought with the intent to kill attempt to kill
14 Michael John Simpson.

15 All right. So that's the case that the State has
16 called for trial, ladies and gentlemen. We're going to
17 break -- you're going to break for lunch in about five
18 minutes. One of the questions that you've been sworn
19 to tell the truth for -- and I'm going to have more
20 questions when you come back from lunch -- there is a
21 question that I'm going to have the clerk's office hand
22 out to you that you will retrieve when you are released
23 for lunch, okay. And here is the question. Each one
24 of you will get a copy, okay. It's called -- again, it
25 references the indictment numbers, of course, which

1 don't mean anything. And it says, "State of South
2 Carolina, County of Pickens." Then it says, "The
3 State," which is the State of South Carolina, "versus
4 Suzanna Brown Simpson, defendant." And it says,
5 "Defendant's proposed jury questionnaire." And the
6 question at the top, right here it says "juror number."
7 You will write in your juror number. You don't have to
8 write your name, just write in your juror number, okay.
9 And the question is as follows: Have you had any
10 experience, either personal, family members, friends or
11 otherwise, with mental illness? Okay. And you either
12 check yes or no. And if you check yes, you briefly
13 describe it. I don't need two pages of description. I
14 just want a little brief description because I'm going
15 to ask you about that, okay. And we'll go from there,
16 okay. All right.

17 So having said that, anything further to speak to
18 the panel from any of the attorneys at this time?

19 MR. WILKINS: None from the State, Your Honor.

20 MR. MAULDIN: Nothing further, Your Honor.

21 THE COURT: All right. So what we're going to do,
22 I have some matters that -- legal matters that I'll
23 deal with. As you will find out, I'm the judge of the
24 law, and if you're put on the jury, you're the judge of
25 the facts. So as the judge of the law, I have to deal

1 with legal matters, and y'all deal with factual
2 matters. So right now I've got to deal with some legal
3 matters. So I'm going to do that while y'all go to
4 lunch. I want you back in this jury -- in this
5 courtroom -- what do y'all think, lawyers? 2:00.

6 MR. MAULDIN: 2:30.

7 MR. WILKINS: 2:00..

8 MR. WILKINS: I'd say 2:00, Your Honor.

9 MR. MAULDIN: Well, that's fine.

10 THE COURT: Let's do 2:00. That gives y'all a
11 two-and-a-half-hour lunch. Y'all be back here in this
12 courtroom at 2:00 p.m., and we'll go from there on
13 further voir dire questions. Okay?

14 When you leave, come up here, grab one of these
15 questionnaires from the clerk right at the front, make
16 sure you have one before you leave. When you return,
17 hand that in to the clerk. All right? Everyone must
18 fill out one and hand it in to the clerk. Thank you
19 very much. You are excused until 2:00 p.m. if you get
20 a questionnaire.

21 THE BAILIFF: Also you need to leave your badges
22 with the bailiff as you go out the door there, please.
23 Please keep in mind parking can be a problem here. So
24 give yourself a little extra time.

25 (WHEREUPON, the prospective jurors are receiving

1 their questionnaires and exiting the courtroom.)

2 THE COURT: Is that it for jurors? Okay.

3 Do I have any members of the media here? Not yet?

4 There's some out there. Let's go ahead and deal with
5 the media issue first.

6 Mr. Bailiff, can you get whatever media is out
7 there and bring them in. They don't need their cameras
8 and stuff, just the members of the media.

9 THE COURT: That's it? I got like seven requests
10 up here. All right. Okay.

11 Who is here from WYFF? Thank you.

12 Who's here from WSPA? Anybody? All right. I'll
13 meet with them again.

14 Who's here from Greenville News? Okay. Got it.

15 And WHNS? All right. Got it. All right.

16 So have we got anybody here whose outlet I didn't
17 say?

18 All right. Here is what we're going to do. I've
19 received your requests. They are timely requests under
20 the rule. I will allow y'all to set up. I think
21 you're going to be right behind you. There's going to
22 be two cameras. Y'all are going to have to figure
23 out -- two video cameras are allowed. So y'all have to
24 pool together to figure out which two cameras you are
25 going to allow. I'm not going to allow live streaming.

1 I have considered that. Both the State and the defense
2 have weighed in on that.

3 And, Solicitor, do you wish to weigh in any
4 further on the issue of live streaming?

5 MR. WILKINS: No, Your Honor. I agree with your
6 assessment.

7 THE COURT: Mr. Mauldin, do you wish to weigh in
8 any further on the issue of live streaming?

9 MR. MAULDIN: No, sir.

10 THE COURT: All right. Thank you. So live-
11 streaming will not be allowed, but certainly you can
12 have two video cameras. Y'all can have one radio
13 recorder, the rule allows, and two still cameras. Of
14 course, y'all are all dressed appropriately, not
15 indicate what news outlet you're from.

16 So that will now be the rules governing how we're
17 going to proceed with the trial, okay. So thank you
18 very much.

19 Yes, sir. Question?

20 MEMBER OF MEDIA: You said recording. Microphone,
21 wireless microphone?

22 THE COURT: You can use a wireless microphone back
23 there but you can't use it up here.

24 MEMBER OF MEDIA: Okay.

25 THE COURT: As far as picking up as far as for

1 your broadcast. No live streaming, though. Okay.

2 MEMBER OF MEDIA: With witnesses, we can't have a
3 microphone up there?

4 THE COURT: That's correct. During witnesses up
5 there, you have to go with whatever the courtroom does.

6 They will notify you when the actual trial starts,
7 opening statements. Thank you.

8 (Members of the media left the courtroom.)

9 THE COURT: Anything else from the State and
10 defense concerning instructions to the media?

11 MR. WILKINS: Not from the State, Your Honor.

12 MR. MAULDIN: None, Your Honor.

13 THE COURT: Of course, I'll make sure that they,
14 wherever they line up, they will not have any members
15 of the jury to be seen as well.

16 All right. Let's go ahead and deal with any
17 pretrial issues, and I will defer to y'all as far as
18 order in which y'all wish me to address them.

19 MR. MAULDIN: May it please the Court.

20 THE COURT: Yes, sir.

21 MR. MAULDIN: Your Honor, I had sent at your
22 request a list, and I'm simply going to work down that
23 list that was provided to your law clerk last week, if
24 it please the court.

25 THE COURT: Yes, sir.

1 MR. MAULDIN: The initial motion, Your Honor, that
2 we would make is that the method by which the case
3 against Anna Simpson has been docketed for call for
4 trial is a violation of the *State vs. Langford* case.
5 The Langford case, as this court will recall, I believe
6 it was December of '12, November or December of '12
7 when that case was issued.

8 The case, basically the fundamental principle was
9 a separation of powers between the judicial branch, the
10 court, and the executive branch, which would include
11 solicitors. The method also, Your Honor, I'm going to
12 refer to is contained in the administrative order that
13 was issued by Chief Justice Toal for the management of
14 cases in the Thirteenth Judicial Circuit which is
15 Greenville and Pickens Counties. I did provide a copy
16 of that, would pass up a hard copy if the court --

17 THE COURT: Okay.

18 MR. MAULDIN: And so the order, basically, Your
19 Honor, and the relevant sections actually are on page 6
20 under trials. First of all, with regard to Langford,
21 the idea that the solicitor has inherent authority
22 under the constitution to call cases on his own
23 schedule, that is, he gets his terms of court
24 designated to him by the court administration. He then
25 calls them when and if he wishes.

1 Let me say that Solicitor Wilkins and I have been
2 in communication about this particular term of court.
3 So it's not that the June 20th trial of Anna Simpson is
4 necessarily a surprise to me. We talked about that
5 date some months ago.

6 But what happened here is on June the 8th,
7 Wednesday, June the 8th, the legal investigator for the
8 Pickens County solicitor's office sent by e-mail the
9 trial docket. And the trial docket, which also was
10 attached to our notice of pretrial motions, indicated
11 that there were two judges, Judge Gibbons, Your Honor,
12 and Judge Hall, and the docket shows on its face that
13 the two cases first up would be Suzanna B. Simpson and
14 Eddie Otto Hayes. It also shows that the first up in
15 front of Gibbons is Simpson, and the first up in front
16 of Hall is Hayes.

17 And the fact of the matter is on its face, it's
18 just an absolute defiance of what the supreme court has
19 said is the law of this state. And that is the
20 solicitor does not have that authority. It is a
21 violation of the separation of powers. It is -- the
22 analogy is, Your Honor, if you had a common pleas case,
23 a wreck case, plaintiff and defendant, car wreck. If
24 one of the two sides has the power to decide when cases
25 are called, and not only that, but who's going to hear

1 them, that is inherently unfair.

2 And while that wasn't necessarily the underlying
3 legal principle in Langford, I think that that's what
4 Langford is actually telling us. That separation of
5 powers violation is inherently unfair for one side of
6 the controversy to basically be making the decisions
7 about when, where, and in front of whom a case would be
8 called.

9 So what we say at this point of this litigation,
10 what is the remedy for us? The remedy is that this
11 docket be quashed, that the case cannot be called under
12 the circumstances that Solicitor Wilkins has set in
13 place.

14 Second, and certainly a more drastic remedy, would
15 be to quash the indictments. Now, that, I will admit
16 to the court, is a reach. But one thing that was
17 mentioned to me when I was planning my pretrial
18 motions, the comment was made to me, Well, I mean, you
19 know, that Langford case, that doesn't mean anything.
20 That Langford case is just kind of squandering around
21 and floundering around, and nobody is doing anything
22 about it. Well, we need to step up and do something
23 about it. It is the law in South Carolina according to
24 the chief justice and members of the supreme court.

25 It is the law. And the fact that the transition

1 to a method to comply has admittedly been awkward and
2 to some extent nonexistent, that doesn't mean it isn't
3 the law. It's still the law, and we encourage the
4 court to seriously consider our motion to quash this
5 trial docket. This trial docket is a direct violation
6 of that case.

7 And, I assume, Your Honor, for the purposes of
8 preservation, not that I'm anticipating a ruling, but I
9 do think that I probably should have these marked, the
10 administrative order for the Thirteenth Circuit and the
11 trial docket.

12 THE COURT: Let's go ahead and mark them for
13 purposes of this argument as Defense 1.

14 MR. MAULDIN: Support for this motion, Your Honor.

15 THE COURT: This motion.

16 (WHEREUPON, Defendant's Exhibit Number 1
17 and 2 were marked for identification.)

18 MR. MAULDIN: And these are not going into the
19 trial exhibits.

20 THE COURT: No, sir. These are for the purpose of
21 this motion.

22 Mr. Mauldin, any further argument on your motion
23 under Langford?

24 MR. MAULDIN: Not on Langford, Your Honor.

25 THE COURT: Thank you. Mr. Wilkins.

1 MR. WILKINS: Your Honor, if it please the court.

2 THE COURT: Yes, sir.

3 MR. WILKINS: I have been involved with State v.
4 Langford for quite a long time now, and the net result
5 in the Thirteenth Circuit of the Langford case has been
6 at this point in time because of the, I guess the
7 awkward transition that Mr. Mauldin was referring to,
8 has been almost nil.

9 When Langford came out, we certainly respected
10 jurisprudence, and the chief administrative judge at
11 that time of the Thirteenth Circuit and other judges
12 got together and we proposed an administrative order.
13 And I think many other circuits have proposed
14 administrative orders to the supreme court in 2014.
15 Then sitting Chief Justice Toal signed an
16 administrative order which really memorialized how
17 things were being done in the Thirteenth Circuit prior
18 to the Langford case.

19 In this particular case -- and Pickens is not
20 handled exactly like Greenville. One, because of the
21 size difference and the number of cases that are being
22 called. Once this administrative order came out, Doug
23 Richardson, the deputy solicitor here in Pickens, would
24 send our trial docket to then Chief Administrative
25 Judge Miller. First it was Verdin. And she would

1 publish the docket... We then sent it to Judge Miller,
2 and I believe he just said, "I don't want to hear it."
3 Okay. And then we sent it to Judge Miller, the then
4 subsequent chief administrative judge, and his response
5 was, "I don't need to see that."

6 So we have gone through chief administrative
7 judge, and the way it is in Pickens is we give the
8 defense counsel 30 days' notice. They know what cases
9 are coming in 30 days in advance. And in this
10 particular case, because this case was a complicated
11 case, Mr. Mauldin and I just had a conversation in a
12 meeting and said, "When would you like to try this
13 case? Let's look at our calendars," knowing that
14 there's experts that need to be flown in or come in,
15 there's witnesses that need to be here, so we have to
16 plan out ahead. We just coordinated that among
17 ourselves. We agreed that this week would be an okay
18 week for everybody's schedule. Nobody was on vacation.
19 His witnesses would be -- he actually said, "No, let me
20 call you back and make sure my witnesses are
21 available." I said, "That's fine." He responded to
22 me, "My witnesses are available. That week sounds
23 good." So he was in agreement with the State. He
24 agreed with me.

25 So we get the docket, we set it, and we have got

1 two judges. We have got Your Honor, and we've got
2 Judge Hall. Somebody has got to try the case. So we
3 pick one judge to try this case, you pick one judge to
4 try the other case.

5 THE COURT: What was the methodology in deciding
6 which judge got what? Did y'all flip a coin?

7 MR. WILKINS: Literally. "Who do you want?"

8 "I don't care."

9 "Who wants to try it?"

10 "I don't care."

11 There was absolutely zero methodology in the
12 decision of what judge.

13 Your Honor, the State takes position that all
14 judges are adequate, qualified, fair, and impartial.
15 So it really doesn't matter which judge we get because
16 you're all great judges, and y'all are going to do a
17 fine job, and nobody is going to get a benefit or get
18 punished. So somebody has to do it.

19 The Langford decision in legalese sounds really
20 good, and they found unconstitution a statute. But in
21 practical purposes, how it is being applied has been
22 extremely difficult.

23 As you know, Your Honor, the State would take the
24 position, all right. The judges can decide which cases
25 we are going to call. Well, that creates a large

1 issue. I'm going to hand over 7,000 defendants to the
2 court and say, "Okay. Tell me which one you want to
3 try first. I'm ready."

4 Well, that creates an administrative nightmare for
5 the court for a large county like Greenville County.
6 Here in Pickens it's a little bit smaller because it's
7 just one week a month, and we can coordinate it and
8 work it out under the guise of this -- of this order
9 that we have developed along with the judges, and it's
10 been working absolutely fantastic.

11 But I would like to say, Your Honor, I think
12 Mr. Mauldin, by acquiescing in discussions with me
13 about when to have this trial, I think he's kind of
14 waived his right to raise this Langford issue. I'm
15 assuming he's not raising it on a timeliness of
16 notification, 30 days to publish the trial docket. It
17 has to be on the choice of judge.

18 And I'm assuming his remedy is that we change
19 judges, we don't change judges. Is he asking for a
20 continuance? I mean, he's asking for a continuance
21 after he's told me he's ready to try this case today,
22 and I'm ready to try this case today. So I'm a little
23 confused as to the purpose behind his motion and the
24 net result or the remedy that he's proposing to Your
25 Honor. It seems a little at odds with each other at

1 this point.

2 THE COURT: Coming back to you. Yes, sir.

3 MR. MAULDIN: Just a couple of remarks, Your
4 Honor. First of all, it also -- this action also
5 constitutes on its face a violation of the terms of the
6 admin order that we are operating on in the Thirteenth
7 Circuit.

8 I'm not moving for a continuance. I am prepared
9 for trial. But the question is exactly when is the
10 State of South Carolina going to try to comply with a
11 South Carolina Supreme Court decision. Are we all
12 going to just continue to flounder around. Anna
13 Simpson's case might as well be the case where we say
14 this docket was prepared and the judge assigned to
15 specific cases in violation of the letter and the
16 spirit of the South Carolina Supreme Court's case.
17 That's what I'm saying.

18 Now, the remedy is difficult. What do we do, put
19 the two names of the judges in a hat and flip coins? I
20 don't know the remedy. But I'm just simply saying on
21 its face, this trial docket just clearly is a technical
22 violation. That's my point, Your Honor. Thank you.

23 THE COURT: All right. Considering the arguments
24 made by counsel, here is what we're going to do. All
25 right. First of all, let me preface my decision by

1 saying I'm the chief administrative judge over my
2 circuit, Sixth Circuit, and I'm always the chief
3 administrative judge because I'm the only show in town,
4 okay. And so I'm very familiar with this Langford
5 decision. We have an administrative order in Lancaster
6 County, which is the biggest county in my circuit, that
7 the chief justice blessed and signed and did all that,
8 so I'm very familiar with it. I've spoken with Justice
9 Beatty, Chief Justice Elect, about this, familiar with
10 their commission's studies on how -- where do we go
11 from -- where do we go to from here as far as docketing
12 cases.

13 As far as the calendaring of the court date, I do
14 find the defense has waived any argument made as far as
15 the calendaring of it because the defense assisted in
16 the scheduling or consented to the scheduling of this
17 matter for trial this week.

18 And, of course, Mr. Mauldin, you indicated you're
19 ready for trial. You're not seeking a continuance, so
20 I'm not ordering a continuance. As far as your motion
21 is to be considered as quashing the trial docket, I
22 decline to do that because, you know, although we
23 are -- I understand your position concerning Langford.
24 You know, we're moving toward some type of remedy as
25 far as docketing cases, whether it's going to continue

1 to be a solicitor-run docket, whether it's going to be
2 a court-run docket, whether it's going to be a clerk
3 docket. The way we do it in Lancaster is a hybrid.
4 And I don't know if that's going to be -- it's not one
5 size fits all. We tried to do a one size fits all on
6 whatever committees I've been on, and it ain't going to
7 work.

8 Bottom line, I'm denying your motion under
9 Langford. I find the case was properly docketed
10 pursuant to a presumably valid on its face supreme
11 court order signed by Justice Toal in reliance upon
12 Langford. I'm making that decision. I believe
13 Solicitor Wilkins has the authority to schedule it the
14 way he did and the docket the way he did, and I accept
15 and I consent to serving as the trial judge. Whether
16 I'm going to be assigned to it or not, I have spoken
17 with Judge Hall in the hallway back there, and he
18 offered. He said, "Do you want me to do it?" And I
19 said, "No, I'll be glad to do it." So I consented to
20 serving as a trial judge. And I think that takes care
21 of any selection of judges argument.

22 All right. So that motion is denied. You're
23 protected in the record.

24 MR. MAULDIN: Thank you, Judge.

25 Next, Your Honor, is a motion for a directed

1 verdict of not guilty by reason of insanity. Now, as
2 awkward and as untimely as that motion would first
3 appear, I would like to at least put on the record the
4 point.

5 THE COURT: Sure.

6 MR. MAULDIN: The incident involved in this matter
7 occurred in May of 2013. In June or June the 10th,
8 2014, by written notice I advised the solicitor,
9 actually was directed to Betty Strom, the deputy
10 solicitor who's here involved in the case, I advised
11 the solicitor that Anna Simpson would enter a plea of
12 guilty -- a plea of not guilty by reason of insanity.
13 I asked if she wished a more formal notice, and she
14 said she did not.

15 What that notice did was it triggered at that
16 point the State's obligation to proceed in their
17 case-in-chief addressing the issue of sanity. In other
18 words, a comparable analysis would be a competency
19 notice or an alibi notice where the defendants must
20 raise the issue. And then after the issue is placed in
21 contest, the State then has to proceed.

22 Now, what has happened here, Your Honor, is that
23 the State, unless I'm misunderstanding, unless I'm
24 misunderstanding with regard to our chambers conference
25 earlier today with regard to my understanding of the

1 rules, criminal rules, if the prosecution intends to
2 present an expert witness regarding the sanity or
3 insanity issue, they would have had to put me on
4 notice. I would have already known that.

5 At this point we have received no notice of any
6 expert witness to testify regarding a forensic
7 evaluation of insanity or sanity. What that does,
8 Judge, it means this case sits like this at this point.
9 The State will put up fact evidence. They won't put up
10 expert evidence because they haven't provided notice.
11 But they will -- I mean, that's what I'm assuming the
12 rule says. They will put up fact evidence as to the
13 allegations in the indictment knowing that the not
14 guilty by reason of insanity is actually the challenge
15 that they've got to confront.

16 And so my position is there is at now no point in
17 controversy regarding the sanity of the defendant. She
18 has challenged the sanity. It is assumed if she
19 doesn't challenge it but now that it's been challenged,
20 they have a responsibility of putting something in
21 their case, and they have actually said, "We don't
22 intend to do that." We take the position that equates
23 to a directed verdict, that it's almost like a motion
24 for summary judgment.

25 THE COURT: That's what I was fixing to say.

1 MR. MAULDIN: And the state of mind of the
2 defendant in both the primary indictments of murder and
3 the other indictment of attempted murder, the state of
4 mind of the defendant is an absolute requirement. In
5 the attempt to murder, it is a specific intent crime.
6 In murder, there's a malice element. So there's just
7 no question that they have got to prove the state of
8 mind, and they have simply not proceeded with it.

9 THE COURT: How do you -- I understand your
10 argument. I mean, the 17-24-10(B), the defense has the
11 burden of proving the defense of insanity by a
12 preponderance of the evidence.

13 Doesn't that shift the burden to you? Going by
14 your argument, the State has to prove a negative, and
15 then you get an opportunity to prove by a preponderance
16 of the evidence -- or you don't even have to do that, I
17 guess is what I'm asking. You follow me?

18 MR. MAULDIN: Yeah, the question of whether or not
19 there is a burden on the defendant by a preponderance
20 of evidence to prove the --

21 THE COURT: Sanity.

22 MR. MAULDIN: -- inability to distinguish right
23 from wrong.

24 THE COURT: No. I'm reading the statute.

25 Affirmative defense, 17-24-10: It is an affirmative

1 defense to a prosecution for crime that at the time of
2 the commission or the act constituting the offense the
3 defendant, as a result of a mental disease or defect,
4 lacked the capacity to distinguish moral or legal right
5 from moral or legal wrong.

6 In other words, you have pled the affirmative
7 defense or she's pled not guilty by reason of insanity.
8 And as such, the statute says the defendant has the
9 burden of proving the defense of insanity by a
10 preponderance of the evidence.

11 So what I'm saying is I understand exactly your
12 argument. I follow you, you know, by putting the issue
13 of insanity in play, you're saying the State has to
14 address it. And at this point in time you haven't been
15 put on notice of any expert who's going to address it,
16 and, therefore, you're entitled to judgment as a matter
17 of law which would be a directed verdict.

18 MR. MAULDIN: And -- yeah. And I guess, Your
19 Honor, that there is -- and I'll try to connect some
20 dots in this. I acknowledge that statute and where the
21 burden now lies. I propose that that burden is
22 improper and unconstitutional. The shifting of the
23 burden to the defendant to prove by a preponderance
24 that she was insane, I say is a violation of the South
25 Carolina and United States Constitution. So -- but

1 that having been said, the statute exists and I
2 acknowledge it.

3 THE COURT: Okay.

4 MR. MAULDIN: But here is what that statute, if we
5 allow the process to go in this direction, and here's
6 the consequence of it. We are required to notify the
7 state of the assertion of the defense. We did that.
8 We are required to identify the witnesses that would
9 support that under Rule 5, and I can't remember the
10 particular -- it's the C or D paragraph, the one that
11 says if examinations of physical or mental evaluations
12 are done, we have to disclose that. And we've done
13 that.

14 If there is no -- but the State now comes into
15 court. They know who our witnesses are and they know
16 what our witnesses are going to say. They're going to
17 say she didn't know the difference between right and
18 wrong. We have no notice, none, of any expert witness
19 that would somehow be used by the State to counter that
20 position. They may call a witness during their
21 case-in-chief. We would say that that would clearly
22 violate the rule because we haven't gotten any notice
23 of such a witness. Are they going to then be calling
24 the witness after the testimony in some sort of form of
25 rebuttal? And I've got an entire argument about the

1 inappropriateness of that.

2 So what happens is the defendant, under that
3 interpretation of the rules, has the requirement to
4 basically show to the prosecutor here is what we're
5 going to do, and the prosecutor has no obligation under
6 this interpretation to also show.

7 So what happens is I'm coming in here on Monday
8 for trial, and I have no clue about whether or not
9 they're going to call an expert witness or what that
10 expert witness is going to be called for because they
11 haven't given me any notice of it. And so -- I mean,
12 so the -- that's why I challenge that burden to the
13 extent it allows them to hide the ball. I don't
14 understand that. So I challenge it and believe that
15 it's a violation of due process.

16 THE COURT: All right.

17 Mr. Wilkins.

18 MR. WILKINS: Thank you, Your Honor. My first
19 response is that Mr. Mauldin, I think it's a motion for
20 directed verdict, is inappropriate in and of itself.
21 You don't have jurisdiction at this point to hear a
22 motion for directed verdict. The State has not
23 presented any evidence. A jury is not impaneled. I'm
24 not aware of any motion to dismiss in the criminal
25 world. It doesn't exist unless there's some sort of

1 unconstitutional violation along the way, you may be
2 able to bootstrap something in. So I would say it's
3 inappropriate to hear any motion for directed verdict
4 at this stage of the game.

5 Second, there is no notice requirement for
6 experts. Specifically, *State v. Nicholson* 623 S.E.2d
7 100 specifically states that the State does not have to
8 give, nor the defense, a notice of any witness.
9 There's Rule 5 discovery, but there's no notice of
10 expert witness that is required under Rule 702 -- 701,
11 702 or 703, and the case law specifically says that the
12 State does not have to give notice of any expert
13 witnesses.

14 Third, the State -- and there is a lot of case law
15 that says -- does not have to rely on an expert witness
16 to combat the affirmative defense of insanity. And so
17 we can rely totally on lay witnesses and circumstantial
18 evidence to prove our case. We're not required to have
19 an expert witness. And *State v. Bell* and *State v.*
20 *Poindexter* both hold that proposition as well.

21 So, finally, Your Honor, I'm not sure where
22 Mr. Mauldin is going with that.

23 THE COURT: In his argument, he also challenged
24 the constitutionality of burden shifting under Section
25 17-24-10, where the defendant has the burden of proving

1 the defense of insanity by a preponderance of the
2 evidence.

3 MR. WILKINS: And that's exactly what an
4 affirmative defense is. The case law brings it out.
5 The rules specifically state notice of affirmative
6 defense of insanity, self-defense.

7 Your Honor, finally, the defendant at this stage
8 in the game is presumed sane. And she's presumed sane
9 until any evidence is presented to the otherwise.
10 Until they prove beyond a reasonable doubt -- I mean
11 beyond a preponderance of the evidence, I'm sorry, Your
12 Honor -- beyond a preponderance of the evidence that
13 she is not guilty by reason of insanity, she's presumed
14 sane.

15 So at this stage of the game, she's sane as she
16 can be right now. And until they present their
17 evidence --

18 THE COURT: What case is that?

19 MR. WILKINS: That she's presumed sane? Hold on
20 just a second.

21 THE COURT: That's not in the statute.

22 MR. WILKINS: *State vs. Smith*, 379 S.E.2d 287.
23 That's the case that came out of Johnston, South
24 Carolina with the postal worker. And it says once the
25 defendant offers evidence of insanity, then State no

1 longer enjoys the presumption. So it's evidence at
2 trial. Once that evidence is presented at trial do we
3 lose that presumption.

4 THE COURT: Okay. All right.
5 Anything further?

6 MR. WILKINS: That's it, Your Honor.

7 THE COURT: Thank you.

8 Any reply, Mr. Mauldin?

9 MR. MAULDIN: Only, Your Honor, that we do
10 strongly question the idea that the State would have no
11 burden of notifying the defendant in a criminal case of
12 the intention of presenting expert testimony.

13 And let me say, I don't know whether they actually
14 intend to. I mean, I'm standing here arguing against
15 something that could be a moot point. But what I
16 understood was that they did not intend to call an
17 expert. So I'm kind of halfway operating on that
18 assumption.

19 If they do intend to call an expert, then we have
20 a whole new set of objections to that. But, you know,
21 if the requirement of disclosure under Rule 5 does not
22 require the government to notify the defendant of an
23 expert witness' proposed presentation, then I don't
24 really know what Rule 5 is actually all about, if
25 that's the case.

1 THE COURT: All right. Defense's motion for
2 directed verdict is denied without prejudice. Of
3 course, you may renew your motion at the presentation
4 of the State's case.

5 All right. What's the next item of business?

6 MR. MAULDIN: Your Honor --

7 THE COURT: And hold on a second. Let me go ahead
8 for the purposes of the record. And in making that
9 decision, I note defense's argument concerning the
10 constitutionality of 17-24-10, and I reject the
11 defendant's request to find that statute
12 unconstitutional. In other words, a finding in the
13 record.

14 MR. MAULDIN: Thank you, Judge.

15 THE COURT: Yes, sir.

16 MR. MAULDIN: Our next motion on our list, Your
17 Honor, is the waiver of a jury trial. This has been a
18 principle that has kind of ebbed and flowed for years
19 about whether the State has the right to a jury trial.
20 We acknowledge the current state but want to emphasize
21 a couple specifics about our circumstance in this case
22 that we believe distinguish the *Singer* and the *Sender*
23 cases.

24 The defendant in this case requests that the judge
25 try the case as a bench trial. It has nothing to do

1 with how long the case might take or whether we -- it's
2 quicker to do it that way. I've got all respect in the
3 world with jurors, been trying cases for 42 years in
4 front of jurors.

5 But at this particular set of circumstances, that
6 is, the horrible killing of two innocent children in
7 their home, the likelihood of passion, emotion,
8 arbitrary factors being a part of the jury deliberation
9 process is so real and so profound, that it -- and this
10 is something that the trial by a bench, by the judge as
11 a bench trial, does not involve. But the judges in
12 South Carolina, Walt used the term "adequate." I would
13 say they're great judges, and we all as trial lawyers
14 have great confidence in our judges' ability to make
15 the right findings regardless of the emotions and any
16 other arbitrary factor. The ware, passions, and
17 emotions, public feelings, prejudice, or any other
18 arbitrary factor may render it impossible or at least
19 unlikely for an impartial trial jury to be able to
20 serve in a particular case. We believe that the *Singer*
21 decision is distinguishable there, and so we ask that
22 this court seriously consider trying this case as a
23 bench trial.

24 The example, Your Honor, that I would give you,
25 and I don't know Your Honor's experience in the capital

1 litigation field, but there's a provision, 16-3-25,
2 that requires when a jury in a capital case comes back
3 with a death verdict or recommendation, but a death
4 verdict, the judge must have an opportunity to do an
5 individual independent determination that that verdict
6 was free from passion, emotion, or any other arbitrary
7 factor, and certifies it at the time the sentence is
8 imposed.

9 That's my point in this case. This isn't a
10 capital case, but the need to have that type of
11 impartiality exists when the facts of the case are as
12 horrific and just horribly emotional and graphic as
13 they're going to be here. So we do encourage the court
14 to consider a bench trial in this case.

15 THE COURT: All right.

16 Solicitor.

17 MR. WILKINS: Your Honor, the State does not waive
18 its right to a jury trial. We rely on *State vs.*
19 *Burgin*, 178 S.E.2d 325, where we do request a jury
20 trial in this case. Jurors in our state handle all
21 kind of cases on a continuous basis. Some are wreaked
22 with emotion and passion and are difficult cases in
23 facts, and it happens all the time. And they're
24 equipped to handle this case as well as they're
25 equipped to handle all the other types of cases. And

1 any type of issue you may have with a particular juror
2 who is sitting in judgment in this particular case can
3 be handled through voir dire, and we have done some
4 extensive voir dire. And your judge can decide who is
5 qualified to sit and who is not.

6 But, Your Honor, we have a right to a jury trial
7 and we assert it at this time.

8 THE COURT: All right.

9 Anything in reply?

10 MR. MAULDIN: Yes, Your Honor. But to make sure
11 for the record, we are challenging the
12 constitutionality of Rule 14(b) that apparently grants
13 to the State the right to take this position they're
14 taking this morning. We believe that the complexities
15 and nature of the case essentially amount to an
16 unconstitutional -- or a constitutional violation and
17 that the defendant is, in fact, deprived of due process
18 by requiring to be tried before a jury.

19 The last point that I would make on this, Your
20 Honor, is -- and, again, we are making, I guess, a
21 prediction, but when the court last week invited
22 prospective jury instructions, the State said that they
23 would be requesting a guilty but mentally ill
24 instruction.

25 Once again, I don't know who their expert would be

1 that would actually testify to that, so I don't know
2 how that's going to end up being in the record. But
3 whether it is or not, Your Honor, there is this
4 impression that such a jury instruction would be
5 literally an invitation for a trial jury to consider a
6 compromised verdict. That invitation is so clear --
7 and, Judge, please bear with me for a moment. If you
8 have a choice of guilty, not guilty by reason of
9 insanity, and then you throw in a third option and that
10 is guilty but mentally ill, then there is a strong
11 likelihood that a jury, as opposed to a bench trial
12 judge, could may very well meet in the middle, so to
13 speak, and compromise with the verdict of guilty but
14 mentally ill, whereas a judge as a bench trial would
15 take technical legal issues and justifications and
16 measure the appropriate verdict. There again is an
17 additional reason why we -- but, again, like I say, I
18 only know that from what they sent you as a possible
19 jury instruction. I don't know if any witnesses are
20 going to say that. But that is at least raised by that
21 situation.

22 THE COURT: Anything in reply to that?

23 MR. WILKINS: That jury verdict comes out of State
24 vs. Rimert, and I'm trying to find if it's in the
25 statute or not, but it requires Your Honor to submit

1 those four options on the jury verdict form.

2 THE COURT: Well, the statute --

3 MR. WILKINS: It may be in the statute. I'm
4 looking at the statute again.

5 THE COURT: The statute on -- it's -- I got it
6 right here. 17-24-30, form of verdict.

7 MR. WILKINS: Yeah. It tells you all four.
8 Guilty, not guilty --

9 THE COURT: In a prosecution for a crime when the
10 affirmative defense of insanity is raised sufficiently
11 by the defendant, or when there's sufficient evidence
12 of a mental disease or defect of the defendant where
13 that's admitted into evidence, the trier of fact shall
14 find under the applicable law -- the trier of fact
15 there means either a judge or jury -- shall find under
16 the applicable law the verdict must so state whether
17 the defendant is guilty, not guilty, not NGRI, or
18 guilty but mentally ill.

19 MR. WILKINS: That's correct, Your Honor.

20 THE COURT: Okay. All right.

21 MR. MAULDIN: I do, Your Honor, since you raised
22 it --

23 THE COURT: You're protected in the record. I'm
24 going to deny your motion for a bench trial, but your
25 position on the constitutionality of 14(b) as well as

1 this statute is preserved in the record.

2 MR. MAULDIN: If I may, Your Honor, since the
3 question of that statute was raised by the court, and I
4 think it's appropriate to consider at this point, let
5 me make sure that the record reflects our position on
6 this statute.

7 This statute, basically they're saying to our
8 trial judges if the issue of not guilty by reason of
9 insanity is presented, then you as a trial judge must
10 give four alternative verdicts. How clear does a
11 violation of separation of powers have to be? Here's
12 what's happening with that statute. And we object to
13 that statute. We have alleged that that statute is
14 blatantly unconstitutional because here's what it's
15 doing. Legislators in Columbia are passing a law and
16 telling the court before you ever hear the first
17 witness, before you've ever had any evidence put,
18 they're telling you what you must put on a verdict
19 form.

20 Let's say that you got a not guilty by reason of
21 insanity where there's not one single grain of evidence
22 that would warrant the submission of an optional
23 verdict of guilty but mentally ill. There's no
24 evidence, no evidence. The legislature is telling you
25 you've got to say it anyway? It is fundamental in our

1 jurisprudence that jury instructions rise or fall by
2 the existence of testimony or evidence in the case. I
3 mean, the cases are overwhelming that say that. I mean
4 in every offense, judges write --

5 THE COURT: Let me cut to the chase. I agree with
6 you on that. I'm going -- I understand what your
7 argument is on that. And if, after the conclusion of
8 the evidence, I believe that something shouldn't be
9 presented to the jury, I ain't going to present it to
10 the jury.

11 MR. MAULDIN: That's our position.

12 THE COURT: I think there is a lot -- regardless
13 of whether the statute tells me to do that or not, if
14 that's the case, that's an unconstitutional violation
15 of separation of powers. So that argument is preserved
16 because I don't know what's going to happen. I don't
17 know what they are going to present on that.

18 MR. MAULDIN: I don't either.

19 THE COURT: I understand where you are. I
20 understand that perfectly.

21 Do you wish to be heard?

22 MR. WILKINS: Just for the record, just so the
23 court knows, that once they assert the affirmative
24 defense of insanity and there's evidence presented of
25 insanity, we have to prove beyond a reasonable doubt

1 that the person is sane. And they will argue that in
2 directed verdict motion, I assume, or at some point
3 during the trial they will argue that we have not done
4 that. And I go back to my further cases that we have
5 every ability and right to do that just purely through
6 evidence laid out, non-expert evidence laid out through
7 witnesses and through circumstantial evidence.

8 THE COURT: Yes. All right.

9 What's the next motion?

10 MR. MAULDIN: One moment. Let me try to catch up
11 with myself here.

12 The next question, Your Honor, that arises, if I
13 can follow my preparation here, is an analysis of and
14 limitations of opinion testimony. And I have cited a
15 series of our court rules which I'm sure the court is
16 eminently familiar with: 602, 701, 702, 703 and 705.
17 And what those rules basically talk about is, you know,
18 the bottom line is who and under what circumstances are
19 witnesses allowed to express opinions.

20 We take the position that a -- that Rule 602 and
21 Rule 701 basically read in conjunction mean that lay
22 witnesses can testify only as the personal knowledge.
23 That's 602. And then 701, they can testify -- the
24 expression of opinions is limited to their perception
25 of what they are being asked to testify about. They

1 have to -- it has to have been seen, heard. They
2 cannot express opinions as to conclusions based upon
3 what they saw. They can only testify to what they saw,
4 what they heard. Here is what I saw. Here's what I
5 heard. Their testimony has got to be limited to their
6 perception, and I'm trying to look at this rule and
7 talk at the same time.

8 THE COURT: I understand. That's 701 you're on.
9 If the witness is not testifying as an expert, the
10 witness' testimony in the form of an opinion, that's a
11 lay witness, or emphasis is limited to those opinions
12 or inferences which are rationally based upon the
13 perception, upon their perception, are helpful to a
14 clear understanding of what their testimony is or to
15 help determine what an issue of fact is.

16 MR. MAULDIN: Right.

17 THE COURT: And do not require special knowledge,
18 skill -- I understand.

19 MR. MAULDIN: That's right. It's the fact that
20 they can like -- an example, Your Honor. If a person
21 is standing on a street corner and a car goes flying
22 by, that person can say that car was speeding.

23 THE COURT: Right. It's their opinion.

24 MR. MAULDIN: But they can't then draw
25 conclusions. And I think that's what -- they can

1 describe facts. How hot was it? It was very hot. I
2 was sweating.

3 THE COURT: 701 goes more toward credibility of
4 evidence rather than admissibility. I mean, if that's
5 kind of cutting to the chase of what your argument is.

6 What are you wanting to keep out and what are you
7 wanting me to let in, I guess?

8 MR. MAULDIN: The point is that if, as I have
9 understood this morning, that the State intends to
10 present lay testimony; non-expert testimony; and that
11 testimony is going to be in the form of an effort to
12 prove sanity, well, I mean, I don't see how -- I don't
13 know. Maybe I'm making an incorrect assumption. But
14 they can't put lay witnesses on the witness stand to
15 say whether or not this person or another person was
16 sane or not. That requires special technical,
17 scientific --

18 THE COURT: Isn't sanity an issue of fact for the
19 jury to determine?

20 MR. MAULDIN: I think it is, but it's a question
21 of fact that has to be established through expert
22 testimony.

23 THE COURT: I'm with you.

24 MR. MAULDIN: So there's got to be limitations on
25 lay witnesses testifying to such things. Examples:

1 And this is just something I'm imagining. How did this
2 person act? Well, she acted crazy. Or she acted
3 normal. "Normal" and "crazy" are terms in an attempt
4 to establish some sort of mental state. That's for
5 expert witnesses to testify to. That's why we put them
6 on notice. That's what this case is all about. It has
7 been about this for three years now.

8 And if they're saying this morning we're going to
9 just present lay witnesses, then -- and they have got a
10 burden of proving sanity? I once again renew my motion
11 for a directed verdict if that's the case because the
12 rules on opinion testimony are going to prohibit that.

13 THE COURT: My law clerk, my smart law clerk, just
14 handed me a case, *State vs. Lewis*, which he says that a
15 defendant can rely on lay testimony to establish
16 insanity. So if that case says a defendant can do it,
17 why can't the State do it?

18 Go ahead.

19 MR. WILKINS: Your Honor --

20 THE COURT: I'll come back to you and let you
21 argue.

22 MR. WILKINS: That's exactly right. We can
23 establish sanity beyond a reasonable doubt or we can
24 establish guilty but mentally ill beyond a reasonable
25 doubt through lay witnesses. And we can present enough

1 evidence in which they can derive the fact that she is
2 guilty or guilty but mentally ill.

3 THE COURT: Provided the State relies on
4 circumstantial evidence must be you believe you have
5 enough substantial circumstantial evidence to prove to
6 the trier of fact, which is going to be the jury, that
7 you have met your burden.

8 MR. WILKINS: Absolutely. And, you know, we agree
9 lay people can't say, "So-and-So is not guilty by
10 reason of insanity." They don't have the authority to
11 do that. Now, they can give their perception of how
12 someone was acting. They can say what her statements
13 were to them at the time. We can ask them questions
14 about their perceptions. Absolutely we can, just like
15 any other witnesses. And all of that taken together
16 can prove to the fact-finder that she was guilty or
17 guilty but mentally ill at the time of the incident.

18 THE COURT: Similar to asking an officer about,
19 "How did the driver appear to you?"

20 "He appeared to be under the influence of
21 alcohol."

22 "Why?"

23 MR. WILKINS: Well, he had alcohol on his breath,
24 you know.

25 THE COURT: I'm with you. I understand exactly

1 where you're going.

2 I respectfully, to the extent there is a motion to
3 limit or exclude, I'm going to deny the motion. I
4 believe you're protected in the record on that.

5 Anything else you want to say on that to make sure
6 you're protected on the record.

7 MR. MAULDIN: Just a couple -- and I beg the
8 court's pardon. I never had experience with you in
9 trial court. I know I get kind of out of hand. I
10 apologize.

11 THE COURT: No, sir. I'm very patient. I was a
12 family court judge for eight years, remember that.

13 So what's going to happen, if you -- I mean, you
14 can certainly object at the time. I'm just letting you
15 know they're going to -- I'm going to allow the State
16 to try to prove its case through lay witnesses to the
17 extent they can. But that's for a jury to determine.

18 MR. MAULDIN: All right. But one thing. Just
19 this is a slippery slope. And I'll give you my
20 instinctive view as follow-up to what Walt was saying.

21 If it is the State's intention to get into this
22 case and into the record the fundamental legal
23 principle of guilty but mentally ill, there are two
24 stages to that: That the person has a mental
25 impairment -- they would have to establish that -- and

1 the second stage, which just cannot be established by
2 lay testimony, is that the person, due to the mental
3 impairment, the individual lacked the capacity to
4 conform their conduct to the requirements of the law.
5 That's what the law is.

6 Now, if the prosecution is saying we're going to
7 get the mental impairment in front of the jury, and
8 then we're going to argue to them that because of that
9 mental impairment, she didn't have the ability to
10 conform her conduct, that is absolutely improper. They
11 are inviting the jury to practice psychiatry during
12 jury deliberations about whether or not their lay
13 testimony is sufficient to establish the inability to
14 conform. They can't do that. They can't do that. And
15 the reliance on lay testimony, to get that in front of
16 this jury, is going to fail because they can't ask
17 them, "Well, did she have the ability to conform?" The
18 witness is not qualified to testify to that. They
19 cannot invite the jury to nullify and find that.
20 Therefore, we object to that.

21 THE COURT: All right.

22 MR. WILKINS: At the risk of sounding petulant,
23 yes, we can. I mean, we can. That's what a trial is
24 about. I mean, you know, we're going to present
25 witnesses. They're going to give their testimony. I'm

1 assuming they have experts on notice. They're going to
2 get their experts. We get to cross-examine them. We
3 can bring out whatever we want during that
4 cross-examination.

5 THE COURT: Again, I believe these are issues more
6 toward the weight and credibility of the evidence, not
7 the admissibility.

8 MR. WILKINS: The jury will then have to decide.
9 Those are -- it's a factual question. You get to
10 define guilty but mentally ill. You get to define not
11 guilty by reason of insanity. You get to explain that
12 just like you define reasonable doubt, and then they
13 get to decide whether she knew right from wrong at the
14 time of the murder and couldn't conform, or whether she
15 did not know right from wrong, she's not guilty, or
16 whether she's just guilty or not guilty. That's their
17 job.

18 THE COURT: All right. I agree with the State's
19 position on that, but the defense's position is
20 protected in the record. All right.

21 MR. MAULDIN: And, Your Honor, with regard to
22 being protected, I'm going to attempt to make
23 contemporaneous objections. I just don't -- I want the
24 court to --

25 THE COURT: Well, let me do it this way. I don't

1 want you to -- I don't want you to tick off the jury,
2 okay, getting up and down. And I understand that
3 perfectly. That's the reason why we're having this
4 discussion to create a clear record, okay.

5 I think and I will say for the purpose of the
6 court of appeals and the supreme court, whichever other
7 appellate court reviews this record in the event that
8 there is an appeal, okay, my intent is to preserve that
9 issue that you just raised for any lay witness that the
10 State calls. And the intent will be shown by you
11 making your objection for each witness, but you don't
12 have to continue to make the objection. Just state,
13 "Your Honor, previous objection." I'll say, "Noted for
14 this witness." And that is the court of appeals or
15 supreme court or whatever appellate court that's
16 reviewing this record, that's their notice that you
17 object to all that testimony.

18 MR. MAULDIN: Yes, sir.

19 THE COURT: So I'm making sure you're protected in
20 the record.

21 MR. MAULDIN: All right. And, fortunately, I have
22 got folks helping me, so if you will give me ten
23 seconds.

24 THE COURT: Right. The last thing I want you to
25 do is tick the jury off by making objections. Same

1 goes for Ms. Strom and Mr. Wilkins.

2 MR. MAULDIN: With regard to this issue, I'm going
3 to ask that the judge's clerk look at these three --
4 yeah, these three cases that relate to what is or isn't
5 admissible.

6 When is expert testimony required? *State vs.*
7 *Bulsa*, B-u-l-s-a, 308 S.C.322. *Moriarty vs. Of God*,
8 G-o-d, 341 S.C. 320, that's a 2000 case. And *In re*
9 *Thomas S.*, 402 S.C. 373, a 2013 case. Those are cases
10 that discuss the issue of lay testimony, expert
11 testimony, when is it appropriate and when is it not.

12 Your Honor, should I move on to the next one?

13 THE COURT: Yes, sir.

14 MR. MAULDIN: All right. The next question is the
15 barring of any expert not properly noticed under Rule 5
16 or under the court rules. Once again I am a little bit
17 in the blind about whether or not to anticipate.

18 THE COURT: Do we have one? Are y'all calling an
19 expert?

20 MR. WILKINS: We have an expert in psychiatry.
21 It's a known witness. It's Dr. Jeff Smith, her
22 treating psychiatrist. He -- their expert has talked
23 to him. They know all about him. They have his
24 records. I'm not sure. He cannot be qualified as an
25 expert in forensic psychiatry. So I don't -- I don't

1 have -- I can't tell the court exactly how far I'm
2 going to be able to go down the road with him, but I'm
3 going to attempt to qualify him as an expert in
4 psychiatry.

5 THE COURT: During your case-in-chief?

6 MR. WILKINS: Don't know, Your Honor.

7 THE COURT: Or possibly rebuttal?

8 MR. WILKINS: Possibly could be rebuttal, I don't
9 know. I don't want to tell the defense, and I don't
10 know myself.

11 THE COURT: Okay.

12 MR. WILKINS: That's the only -- well, I take that
13 back. And there is a Dr. Wade -- I don't know if
14 they're calling this expert -- the treating
15 psychiatrist at the ER hours after the alleged murders
16 is a Dr. Wade Harris. They know Dr. Wade Harris.
17 They've got his records just like we do. I don't know
18 if they're going to call him. I don't know if I'm
19 going to call him. I might call him in rebuttal. I
20 don't know. They know everybody.

21 THE COURT: Her treating psychiatrist and the ER
22 psychiatrist.

23 MR. WILKINS: Yeah. I can represent to the court
24 I don't have some secret expert that they have never
25 heard, seen, or know anything about that's going to

1 waltz in here and say something, if that's an issue.

2 THE COURT: Can I defer this motion until the
3 appropriate time?

4 MR. MAULDIN: Yeah. I think probably so, Your
5 Honor. We are aware of both those doctors. We know
6 who they are and what role they play. Dr. Smith was
7 the treating psychiatrist for our client. That does
8 open a whole new set of worms, but, obviously, I
9 certainly don't think that's forensic psychiatry
10 testimony, but we'll wait and see where Walt goes with
11 that. And we are aware of Dr. Harris who was present
12 and treating our client at the time or thereafter of
13 the incident.

14 THE COURT: All right. So we'll deal with that
15 one, then, if it comes up when it comes up.

16 Then to preview and premark all photographic
17 evidence.

18 MR. MAULDIN: The question there is I don't know
19 the best time to try to do that.

20 MS. STROM: We can do it over lunch. I'll be glad
21 to show him everything, every piece of evidence we plan
22 to put in.

23 MR. MAULDIN: We just, because of the nature of
24 this incident, I just would like to see what they --

25 THE COURT: I mean, we're not putting in the

1 autopsy photos or anything like that.

2 MR. WILKINS: We never put autopsies in. There
3 will be pictures of the bedrooms where the children
4 were laying, but the children won't be seen in the
5 pictures.

6 MR. MAULDIN: Yeah. And then the other thing I
7 had I believe I got this clarified this morning about
8 my need to have witness notice. If we do openings this
9 afternoon and begin the testimony, I would ask that the
10 State give us a half day because we've got people from
11 out of town that need to come to Pickens, and if
12 they're going to be called the next morning, then they
13 need to come the night before.

14 THE COURT: Okay.

15 MR. MAULDIN: We just need as much notice as we
16 can to keep the case going.

17 THE COURT: You know, by the time we get a jury
18 selected today, it's probably going to be 3:30 before
19 y'all even start opening statements.

20 MR. MAULDIN: Right.

21 THE COURT: You know, I think can the defense
22 be -- assuming that y'all stay on your day-and-a-half
23 track.

24 MR. WILKINS: I think we can finish up tomorrow
25 afternoon.

1 THE COURT: Can the defense be ready for Wednesday
2 afternoon?

3 MR. MAULDIN: If Wednesday afternoon is a good
4 start for us, we can go ahead and tell everybody
5 Wednesday afternoon.

6 THE COURT: I do have a prior engagement Wednesday
7 afternoon that I need to be at, so I'm not going to run
8 past 4 o'clock Wednesday afternoon. That's the only
9 thing I have.

10 MR. WILKINS: So you're going to give us the
11 morning off, Wednesday morning off?

12 THE COURT: I don't know. That's why I'm trying
13 to figure him out. What are we doing -- can you do
14 Wednesday morning?

15 MR. MAULDIN: Well --

16 MR. WILKINS: If he gives them notice today.

17 THE COURT: Giving you notice today. That's a
18 full day and a half.

19 MR. MAULDIN: If we need to have them -- let me --
20 I'll just be candid, Judge. These are expensive
21 people.

22 THE COURT: I know.

23 MR. MAULDIN: And so we don't want to just burn or
24 have them sitting around. But if you tell me that they
25 need to be in Pickens on Wednesday morning, I'll tell

1 them to do that.

2 THE COURT: Okay. Who's paying for it, OJD?

3 MR. MAULDIN: Yeah. Columbia, you know. I mean,
4 but you have to approve it.

5 THE COURT: Oh, yeah. I'll approve all that.
6 Tell them to be here Wednesday morning.

7 MR. MAULDIN: Wednesday morning.

8 THE COURT: Because I'm going to be on them.
9 We're going to finish the State's case. And provided I
10 do not grant a directed verdict, you need to be ready
11 to roll Wednesday morning, 10:00 a.m.

12 MR. MAULDIN: Yes, sir, 10:00 a.m.

13 THE COURT: 10:00 a.m.

14 MR. MAULDIN: And I will say that just off the
15 record, on the record, whatever, I appreciate the court
16 being relatively relaxed in the schedule. We're all
17 coming from Greenville every day, so it is sometimes.

18 THE COURT: Yeah. I ain't starting at 9:00. That
19 ain't going to happen, okay. We'll start at 9:30 at
20 the absolute earliest. It was tough getting here this
21 morning.

22 MR. MAULDIN: Let me check with my boss here and
23 see if I left anything out.

24 THE COURT: I'm looking at your e-mail. Looks
25 like we have done everything. The only thing we didn't

1 put on the record was the confidential voir dire forms.
2 We did it for the mental health. I denied your request
3 to do it for publicity. Because I am going to ask --
4 I'm going to ask your question during voir dire. I
5 just didn't put it in written form.

6 Did you wish to be heard on that?

7 MR. MAULDIN: Yes, sir.

8 THE COURT: All right. Go ahead.

9 MR. MAULDIN: Thank you, Judge.

10 That's all from the defense.

11 THE COURT: Okay.

12 MS. STROM: You said you wanted to put on the
13 record --

14 THE COURT: Do you want to be heard on that, on
15 the issue of having them do the confidential media one
16 as well as the --

17 MR. MAULDIN: Oh, the problem, Your Honor, we
18 asked for two, the mental health question and the media
19 question.

20 THE COURT: And I gave you one.

21 MR. MAULDIN: One of them is done, and we do
22 appreciate that. The second one regarding the media
23 coverage, Your Honor, what's going to happen or what
24 could happen, is we get all of the jurors in the
25 courtroom, and this case did receive a tremendous

1 amount of exposure initially. It's a small -- Pickens
2 County is a small community, basically. The case has
3 now come back up through media coverage here in the
4 last couple of weeks.

5 If you ask the question about whether or not a
6 juror has formed an opinion as to the guilt or
7 innocence of the defendant and you have half the group
8 raise their hand or one third of the group raise their
9 hand, not only do I believe you have to deal with each
10 one of those, I don't think you could say to the group,
11 "Can you change your mind? Can you just ignore what
12 you think and set it all aside?" I don't think you
13 could. I think you have to individually ask the jurors
14 are they going to be able to individually set aside a
15 preconceived verdict in a case. Because they may say,
16 "I don't think I can." And that is a disqualification.

17 But if you do it as a group, you're going to have
18 this contagious problem, I believe, and that's why we
19 want it done individually. So that was the point, Your
20 Honor.

21 THE COURT: All right. And what's the State's
22 position on that, if any?

23 I've already ruled. I'm just going to do it the
24 way I normally do it which is just ask, "Have you heard
25 anything about the case?" And if they stand up, "What

1 have you heard?" Well, I remember seeing about it on
2 the news or hearing about it on the radio or reading
3 about it in the paper. "Would that affect your ability
4 to be fair and impartial in the case?" And if they say
5 no, then, you know, at least from a prima facie basis.
6 Of course, you can always strike them. If you don't
7 want to strike them, peremptory strikes, you can always
8 bring that matter to my attention and I can strike them
9 for cause. And we'll see where that goes. I have no
10 idea. I wish I had that looking glass, but I don't.

11 MR. WILKINS: State agrees with Your Honor.

12 MR. MAULDIN: And I don't know --

13 THE COURT: Thanks.

14 MR. WILKINS: Not that it matters.

15 MR. MAULDIN: I don't know what this particular
16 court would ask them -- I think the critical question
17 is not just whether they have heard about it. It is
18 whether they have actually formed an opinion on the
19 critical issue of guilt or innocence.

20 THE COURT: All right. Do y'all have any problem
21 with me asking that question?

22 MS. STROM: I would think that would be the
23 follow-up question if they say they know about it.

24 MR. WILKINS: Then you have got to say, "Have you
25 formed an opinion?"

1 THE COURT: Okay. All right.

2 You know, I don't want to -- what I don't want
3 to -- yeah. Let's say I ask that question. "Yeah, I
4 think she's guilty." I don't want to ask what the
5 opinion is. I'll say, "Have you formed an opinion as
6 to the guilt or innocence of Suzanna Brown Simpson?"

7 "Yes."

8 Okay. "Can you be a fair and impartial juror?"

9 "Yes."

10 Let's say we have somebody who says yes to both of
11 those.

12 MR. WILKINS: Then I think we need to bring her up
13 privately.

14 THE COURT: Yeah, we can do that. We can either
15 bring them up privately, then I could discuss, or y'all
16 can decide what y'all want to do with your peremptory
17 strikes or strikes for cause. We'll deal with that as
18 it goes.

19 On that line, do y'all have any other written -- I
20 mean, I like to have it in my hand. I don't read off a
21 computer. When I charge, I charge with a piece of
22 paper. I want your proposed voir dire handed up to me
23 if y'all can do that. So I am going to ask that
24 question.

25 Any other voir dire from the State? I'm pulling

1 up yours.

2 MR. WILKINS: We had two voir dire, and I've -- we
3 discussed it earlier, and I kind of rewrote it out.
4 But mine, it's regarding a letter that we have
5 information that was sent out to a number of churches
6 regarding the defendant and her mental illness. It
7 basically says, "Has anyone been contacted by a church
8 pastor or member through letter or oral communication
9 regarding the defendant, Anna Simpson, or this case?"
10 Yes or no.

11 THE COURT: Okay.

12 MR. WILKINS: The second one is, "Has anyone
13 contributed to NAMI or any other organization having to
14 do with mental illness or MADD," or you can add other
15 groups in there. And if the answer is yes, "Can you
16 still be fair and impartial?"

17 THE COURT: You got that in writing?

18 MR. WILKINS: Yes, sir.

19 THE COURT: If you will hand that up to me.

20 Do you have any problem with those requests?

21 I'm not specifically going to say her father. I
22 think we discussed this.

23 MR. WILKINS: It just says, "Have you ever been
24 contacted by communication, oral or written, by a
25 church member or organization?" It doesn't reference

1 her father or anything. We're talking to the jurors
2 here.

3 THE COURT: Has any juror been contacted by a
4 church pastor or member -- by your church pastor or
5 member of a church, either through letter or oral
6 communication, regarding the defendant, Anna Simpson,
7 or about this case?

8 MR. MAULDIN: We have no objection to that
9 question.

10 THE COURT: All right.

11 MR. MAULDIN: The second question, Your Honor --

12 THE COURT: Has any member -- has any juror been a
13 contributor to or supporter of -- contributor to or
14 supporter of -- what's NAMI?

15 MR. MAULDIN: NAMI.

16 THE COURT: What is that?

17 MR. MAULDIN: It's national Alliance of Mental
18 Health.

19 MR. WILKINS: National Alliance of Mental Illness.

20 THE COURT: NAMI.

21 MR. MAULDIN: NAMI.

22 THE COURT: Or any other organization dealing with
23 mental illness or -- then I'll ask the, you know, CAV,
24 SADD, MADD, all that kind of stuff.

25 MR. MAULDIN: Right. My recommendation would be

1 that in order to avoid particular emphasis, that you
2 add other -- contribution to other law enforcement
3 organizations.

4 THE COURT: CAV, SADD, Fraternal Order of Police,
5 all that stuff, okay.

6 Any other specific voir dire while we're on the
7 subject?

8 MR. WILKINS: Not from the State.

9 We have two brief motions in limine.

10 THE COURT: Can you hand me up your media one?

11 MR. MAULDIN: I think --

12 THE COURT: I don't have it in writing. I just
13 have it on my laptop. I would like to have it in
14 writing. The one about the media. I can print it out.

15 Brian can print it out.

16 MR. MAULDIN: Let's see, Your Honor. I think --
17 hang on.

18 MS. STROM: While he's looking for that, Judge --

19 MR. MAULDIN: Yeah. Here it is.

20 THE COURT: There we go. Thank you. I just like
21 to have something in my hand.

22 MR. MAULDIN: That's the one that I had sent to
23 him.

24 MR. WILKINS: Yeah.

25 THE COURT: All right. Thank you.

1 MS. STROM: Judge, for the purpose of jury
2 qualifications, we have a list of potential State's
3 witnesses. We would not -- we do not plan on calling
4 all these, but just in trying to be prepared for
5 anything that might happen. I'm prepared to hand that
6 up to you.

7 And I would ask the defense provide you as well
8 for the purpose of jury qualification under *State v.*
9 *Robinson* a list of the witnesses for jury qualification
10 purposes. And then I just gave you a summary.

11 THE COURT: Hand me yours and I'll -- okay.

12 Doesn't mean they're going to be called. I've got
13 those. All right.

14 What else? All right.

15 MR. MAULDIN: On that, Your Honor, did you intend
16 to actually go down that list of names?

17 THE COURT: I'm going to do it in fives or threes.
18 I'm not going to do it in twenties.

19 MR. MAULDIN: You might want to just mix them up
20 so we're not making references to who's got how many.

21 THE COURT: That's what I'll do, in no particular
22 order.

23 The verdict form, I'll reserve that for later
24 ruling. Obviously, the charges, we're not even close
25 to that yet. I just wanted to kind of get a feel from

1 both of y'all as to where we're heading.

2 State's motions in limine, you had two.

3 MR. WILKINS: Yes, Your Honor. The first is we
4 would like to make sure there would be no reference by
5 any witness, expert or lay, as to the consequences of
6 the actual verdicts. We don't want them to know, What
7 does guilty by mentally ill mean if we check that box,
8 what happens to the defendant?" What does it mean if
9 not guilty by reason of insanity, what happens to the
10 defendant? Inappropriate in this setting. This is a
11 trial. That's a sentencing issue.

12 THE COURT: You agree with that?

13 MR. MAULDIN: No, sir.

14 THE COURT: Okay. What's the second motion?

15 MR. WILKINS: We would ask that no one mention any
16 other trials or cases where mental illness has been the
17 issue. For example, Angela Yates is a case that
18 oftentimes people refer to. Maybe be some similarities
19 in this case, who knows. But we would ask that that be
20 not allowed to be testified to by expert or lay.

21 THE COURT: Okay. Let me hear from you on those.

22 MR. MAULDIN: As to the second one?

23 THE COURT: Yep.

24 MR. MAULDIN: Evaluation of a defendant by expert
25 witnesses, we can't -- we can't tell these expert

1 witnesses what they can or cannot use in criteria.
2 That's why we hire them. That's why we get them in the
3 case, to evaluate the case. If an expert witness were
4 to testify in explaining to the jury what a term, for
5 example, distinguishing right from wrong, what does
6 that mean, and they want to use examples to help the
7 jury understand the terms, then how in the world can we
8 say, "Wait a minute. You can't use that example," or,
9 "You can't use this example." I mean, that's
10 inappropriate limitation on the expert's analysis and
11 explanation to the jury.

12 So as to the second motion he made about limiting
13 witnesses from talking about any other case, if that is
14 part of the expert witness' presentation to explain to
15 the jury to give them what expert testimony is supposed
16 to give them, then we believe that they should be
17 allowed to talk about it. Whatever it is. And I don't
18 know whether they're going to talk about it or not, but
19 I don't think we ought to be telling the experts they
20 can't be talking about the one Walt mentioned was
21 Andrea Yates. Or another example would be the girl
22 over in Union County that drowned her two children. I
23 believe that they found that she had a mental illness,
24 but they still convicted her.

25 So, I mean, if a psychiatrist analyzes the facts

1 before him based upon that type of analysis, I think he
2 ought to be able to explain that.

3 MR. WILKINS: They can do it through
4 nonidentifying -- if they want to use an example, use a
5 generic example if they need to explain something. But
6 they don't need to refer to a specific case or to the
7 specific results of that particular case is all we're
8 saying. I think it confuses the jury and allows them
9 to associate that case and try to garner instances
10 where there's similarities between the two cases, and I
11 think it's not good for the fact-finder.

12 THE COURT: To the extent that I have a magic wand
13 and a looking glass to determine what the expert
14 witness is going to say, I agree with the State that
15 they don't need to be interjecting stuff from other
16 cases. But, again, I don't know if they're going to do
17 it or not. So if a proper objection is made at the
18 time, then I will rule on it. Of course, depending on
19 how the trial is going, I may allow it if I think the
20 jury needs an explanation.

21 So what's the other one?

22 MR. MAULDIN: The other one was the prohibition of
23 the jury from knowing the consequences.

24 THE COURT: Oh, yeah.

25 MR. MAULDIN: All right. The problem there, Your

1 Honor, is that we're asking the jury to operate
2 essentially in the blind or in a void. We're saying --
3 and let's relate to this particular case. We're saying
4 two small children were killed. The evidence by the
5 State establishes the guilt of the defendant in the
6 act. And the jury goes back in the jury room and says,
7 "You know, if I do what Mr. Mauldin says, that is find
8 her not guilty by reason of insanity, she's just going
9 to go out here to the bus stop and go home."

10 We actually know that that's not right. There is
11 a South Carolina Supreme Court protocol signed by Chief
12 Justice Toal that actually cites, tells this court,
13 exactly what steps to take subsequent to a not guilty
14 by reason of insanity. And this court would have to
15 order that protocol to take effect.

16 THE COURT: That's all in the statute.

17 MR. MAULDIN: So what the State is saying is we
18 don't want the jury to know that anything is going to
19 happen if this woman were found not guilty, that she's
20 just going to go back to her house. That's what they
21 want. That's what they're telling you. And that is
22 so, so unfair. It's like you're saying to the jury --
23 an example, Your Honor, in the capital world again,
24 life in prison. *State vs. Simmons*, long line of cases,
25 a bunch of reversals where the trial judges did not

1 tell the jury life means life without parole. They're
2 never going to get out of prison. There were more
3 reversals of capital trials on that probably than any
4 other single issue.

5 That's the same point. The jury needs to know
6 what their verdicts mean. They need to know, for
7 example, that guilty and guilty but mentally ill,
8 essentially both mean that she goes to the penitentiary
9 for a term decided by the court, a sentence to the
10 Department of Corrections. It doesn't mean that she's
11 guilty, mentally ill, and therefore goes to a halfway
12 house. That doesn't happen.

13 So what we're doing is we're putting a blindfold.
14 on the jurors and inviting them to speculate, inviting
15 them to be curious about, "Well, what's going to happen
16 if we find her not guilty?" "Well, we can't tell you
17 that."

18 What I propose is a very simple remedy, Your
19 Honor.

20 THE COURT: What's that?

21 MR. MAULDIN: They be told that a conviction of
22 guilty or a conviction of guilty but mentally ill means
23 that a defendant, this defendant in this case, would be
24 sentenced to a term as determined by the court. You
25 don't have to say life or 30 or anything. The verdict

1 of not guilty by reason of insanity would mean that
2 this court would follow the protocol established by the
3 South Carolina Supreme Court regarding the follow-up
4 for a person found with that verdict. So that the jury
5 then actually goes back to the jury room, and they
6 don't have that arbitrary curiosity about what's going
7 to happen if they write a certain verdict. They know
8 what all three mean. And that's the truth.

9 MR. WILKINS: Your Honor, we strenuously object to
10 any of that. The purpose of the jury is to be the
11 fact-finder and to find -- and their job this week is
12 going to determine whether the defendant knew right
13 from wrong. That's their job, and that's their job
14 alone. And they're going to be extremely prejudiced by
15 any information that they may have regarding what's
16 going to happen to her if we do something. We don't
17 tell them what the statutory provisions are for burg
18 first.

19 THE COURT: Or shoplifting third offense.

20 MR. WILKINS: Shoplifting third.

21 THE COURT: I agree with the solicitor. You can
22 sit down. I'm looking at the statute 17-24-40, which
23 is what happens to somebody found not guilty by reason
24 of insanity. And throughout this statute none of it
25 says the trier of fact. It all says the trial judge

1 must order this, trial judge, trial judge, trial judge.
2 If the legislature intended for the trier of fact to
3 know what is going to happen to a person found not
4 guilty by reason of insanity, they would have put it in
5 the statute, okay.

6 So I respectfully -- well, I understand your
7 argument and you're preserved for the record, but I
8 agree with the State that there's not going to be any
9 mention through lay witnesses or expert testimony about
10 what the consequences of a guilty verdict, guilty but
11 mental ill, or NGRI verdict would be.

12 MS. STROM: Or the parties. We cannot talk about
13 it either.

14 THE COURT: Y'all can't talk about it either.
15 That's anybody.

16 All right. We're hungry. It's time to go eat
17 lunch. I've addressed every issue which y'all told me
18 you wanted me to address. To the extent we haven't
19 addressed it, we'll do it, you know, I mean, sometime
20 before we pick a jury, but I think I've heard all the
21 motions in limine that you sent to me, Mr. Mauldin.

22 I have heard your two.

23 Anything else?

24 MR. MAULDIN: Not at this time, Your Honor.

25 THE COURT: Let's go get some nourishment. We'll

1 see y'all back here at 2 o'clock.

2 MR. WILKINS: Thank you, Your Honor.

3 (Lunch recess taken from 12:58 p.m. to 2:04 p.m.)

4 (Prospective jury panel sent out of courtroom.)

5 THE COURT: I was getting them out when they
6 brought her in. I didn't know whether or not she had
7 restraints on or not. Plus I'm collating the yeses and
8 the noes. I want to give y'all an opportunity to look
9 at them prior to.

10 And I'm not going to make them approach the bench
11 and turn around when their names are called for
12 possible selection, so y'all may need to turn around
13 and look at them. I'm not going to make them walk to
14 the front, and if they don't get chosen, have to take
15 the walk of shame back. I'm not going to have them do
16 that.

17 Y'all come look at these yeses and y'all can make
18 your notes accordingly. I'll give like half to
19 Mr. Mauldin, half to the State, then y'all switch off
20 when you're through making your notations:

21 Here's y'all's half.

22 MR. WILKINS: These are all yeses?

23 THE COURT: Those are the yeses.

24 MR. WILKINS: Are there any noes?

25 THE CLERK: I've got them right here. It's about

1 half and half.

2 THE COURT: For the record, there were 25 noes.

3 So we had exactly 50.

4 MR. WILKINS: 50/50, yeah.

5 THE COURT: All right. There we go. All right.

6 So real quick like, how do y'all want me to -- any

7 suggestions on how to handle these 25 who replied yes?

8 Do you want me to question each one of them? "Would

9 that affect your ability to be fair and impartial?"

10 Except for the one who obviously says she knew the

11 defendant and her family. Or do you not even want me

12 to question?

13 MR. WILKINS: I think you need to ask the

14 question. You can do it as a group, "Can any of you

15 be -- can all of you be fair and impartial?"

16 THE COURT: And then if they say they can't, I can

17 have the juror number, and we have the information why

18 right here. And that way we won't make them stand up,

19 except for the ones who say they can't be fair and

20 impartial.

21 Are you okay with that?

22 MR. MAULDIN: Yeah. I agree with that.

23 THE COURT: I think that's the easiest way to do

24 it without calling specific attention it to, okay.

25 Yes, ma'am.

1 MS. STROM: And then my suggestion would be if
2 that if that one particular juror does not respond, do
3 you think we need to go into that anymore?

4 MR. WILKINS: Yeah.

5 MS. STROM: Well, we could just move to strike for
6 cause.

7 MR. WILKINS: Yeah.

8 MR. MAULDIN: What juror?

9 MR. WILKINS: 128 knows the defendant and their
10 kids were in the same school, same class.

11 MR. MAULDIN: Yeah. That one, you might actually
12 want to make an inquiry on that, 128.

13 THE COURT: Y'all just want to go ahead and agree
14 that 128 is not going to be in the pool?

15 MR. WILKINS: Fine with me.

16 THE COURT: That way neither one of you loses a
17 peremptory.

18 MR. MAULDIN: Well, I think we probably ought to
19 do it the same way we're doing the others. We need to
20 ask her.

21 THE COURT: That's fine. We can do that.

22 MR. MAULDIN: What do you think?

23 MR. WILKINS: I'm going to move to strike her for
24 cause, most likely.

25 THE COURT: Right. What I'm telling you is I

1 would grant his motion to strike for cause rather than
2 make him waste a peremptory strike based upon her
3 response. Likewise, I would do the same for you as
4 well.

5 MR. MAULDIN: I would not oppose that, Your Honor.

6 THE COURT: We're going to go ahead, then, Juror
7 Number 128 will be stricken for cause. Just remove her
8 or him, whoever it is, from the list.

9 THE CLERK: Okay. That will be the last one to
10 go.

11 Anything else before we bring the jury in?
12 They're getting kind of anxious.

13 Let's bring the jury in.

14 No media, though, just jury.

15 After we have the jury chosen, we'll be in there,
16 you set your stuff up, and I'll talk to the media.

17 MR. WILKINS: Thank you, Judge.

18 THE COURT: All right.

19 (WHEREUPON, the jury entered open court at
20 2:19 p.m.)

21 THE COURT: All right. All members of the jury
22 panel are present.

23 Can everybody hear me okay? All right. Thank
24 you, ladies and gentlemen. Again, I apologize for the
25 slight delay, and I appreciate all of your patience,

1 okay. I know it's a hot day, and I know nobody wants
2 to stand out in the hall, but thank you again for doing
3 that. We do things like that to make things, once you
4 get in here, go quickly, as quickly as they can. And
5 efficiently. All right.

6 And, ladies and gentlemen of the jury panel, you
7 have already been sworn to answer truthfully to any of
8 the questions propounded by the court concerning what's
9 called voir dire. This is where the court asks certain
10 questions so the lawyers can select a jury for the
11 trial of this case.

12 Now, as I indicated to you earlier, the name of
13 the case is the State of South Carolina versus Suzanna
14 Brown Simpson, also known as Anna Simpson. Ms. Simpson
15 is seated to my left.

16 Ms. Simpson, if you will please stand, turn and
17 face the jury panel.

18 And I'm going to have her lawyers and everybody
19 sitting at her table, please introduce yourselves.

20 Yes, sir.

21 MR. MAULDIN: My name is John Mauldin. I'm the
22 Thirteenth Circuit public defender for Pickens and
23 Greenville counties.

24 MS. JOHNSON: I'm Teal Johnson. I'm an assistant
25 public defender for the Thirteenth Circuit public

1 defender's office.

2 MR. GOLDSTEIN: My name is David Goldstein. I'm
3 also an assistant public defender for the Thirteenth
4 Circuit.

5 THE COURT: Thank you, sir.

6 And, Solicitor, if you will introduce yourself.

7 MR. WILKINS: My name is Solicitor Walt Wilkins.
8 I am the solicitor for the Thirteenth Circuit, which is
9 Greenville and Pickens counties.

10 MS. STROM: And I'm Betty Strom. I'm his deputy
11 solicitor.

12 THE COURT: All right. Thank you.

13 So, ladies and gentlemen, here's some questions
14 I'm going to ask you concerning the potential trial of
15 this case. You're going to respond to the questions
16 again just like we did downstairs -- please stand,
17 first question I'm going to ask you is what is your
18 juror number, and then we'll go from there. Okay?

19 So the first question is: Is any member of the
20 jury panel related by blood or marriage to the
21 defendant, Suzanna Brown Simpson? If so, please stand.

22 No response.

23 Next question: Does anybody have a close personal
24 or social relationship with Suzanna Brown Simpson? If
25 so, please stand.

1 No response.

2 Next question: Is any member of the jury panel
3 related by blood or marriage or have a close personal
4 or social relationship with any of the attorneys
5 involved in this case? If so, please stand.

6 All right. No response.

7 All right. I'm going to read out some names in no
8 particular order. These are what's called potential
9 witnesses. These are people who may testify in this
10 case, and so I want you to listen carefully to the
11 names. And just because I say all these names doesn't
12 mean everybody is going to testify. It just means they
13 may testify, okay.

14 So the question is going to be if you recognize
15 the name, do you have a close personal or social
16 relationship with that person, or are you related by
17 blood or marriage to that person. Okay?

18 So here is some names in no particular order:
19 Dr. Richard Frierson; Dr. L. William Mulbry; Robert
20 Bowling with the Pickens County Sheriff's Office; Chad
21 Brooks with the Pickens County Sheriff's Office; Susan
22 Brown from Taylors.

23 Is anybody related by blood or marriage, have a
24 close personal or social relationship with any of those
25 people?

1 No response to those five.

2 Again in no particular order: Dr. David R. Price;
3 Dr. Wade Harris; Tommy Camp with the Pickens County
4 Sheriff's Office; Joe Conway with Greenville Memorial
5 Hospital; Suzann Cromer with South Carolina Law
6 Enforcement Division. Same questions.

7 No response.

8 Keri Finley with Greenville County EMS; Dr. James
9 Fulcher with Pathologist Associates of Greenville; Kay
10 Gilstrap, Pickens County EMS; Dr. Wade Harris with
11 Greenville Memorial Hospital; and Amber Hart from
12 Pickens. Does anybody have a close personal or social
13 relationship or related by blood or marriage to any of
14 those people? If so, stand.

15 No response.

16 Next couple: Scott Hart from Pickens; Chief
17 Deputy Creed or Creed Hashe, Pickens County Sheriff's
18 Office; Kandy Kelley, Pickens County Coroner; Keith
19 Littleton, Pickens County Sheriff's Office, or Charlie
20 Musselwhite; Pickens County Sheriff's Office.

21 Same questions.

22 Michael Weight; Nathan Stegall or Stegall; Dustin
23 Reeves; Tony Robin from Anderson; Tony Robinson,
24 Pickens County Sheriff's Office; Kevin Sanders from
25 Pickens.

1 Same questions.

2 No response.

3 Alison Simpson from Greenville; Dr. Jeff Smith
4 from Greenville; Leigh Snow from Anderson; Nate
5 Stegall -- or I already said that. Michael Torres from
6 Pickens County Sheriff's Office, Kukilia Wallace with
7 the South Carolina Law Enforcement Division.

8 Anybody recognize those names, have a close
9 personal or social relationship or related by blood or
10 marriage?

11 Yes, ma'am. Juror number?

12 POTENTIAL JUROR: 107.

13 THE COURT: What name?

14 POTENTIAL JUROR: Michael Torres, his wife is a
15 friend of mine.

16 THE COURT: His wife is a friend of yours?

17 POTENTIAL JUROR: Yes, sir.

18 THE COURT: Would that affect your ability to be a
19 fair and impartial juror?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: Thank you very much.

22 All right. I believe that's it for potential
23 witnesses.

24 All right. Ladies and gentlemen, prior to the
25 lunch recess, I gave you written questionnaires, and

1 those questionnaires have been turned back in. And,
2 again, thank you so much for that.

3 For those of you who replied yes -- and I'm not
4 going to pick you out individually -- for those of you
5 who replied yes, if you believe by your replying yes
6 and your briefly describing what that situation is, if
7 you believe that would make -- that would make you
8 question your impartiality or whether or not you could
9 be fair to both the State and the defense, please stand
10 at this time.

11 Okay. Yes, sir. If you will approach.

12 What's your juror number, sir?

13 POTENTIAL JUROR: 128, sir.

14 THE COURT: All right. Yes, sir. Actually, sir
15 you can be seated. Thank you.

16 Yes, ma'am. Juror number?

17 POTENTIAL JUROR: 95.

18 THE COURT: Juror Number 95. Yes, ma'am. If you
19 will please approach the bench. And bring her over
20 here.

21 THE REPORTER: This is not going to be on the
22 record if you're way over there.

23 (WHEREUPON, an off-the-record discussion was
24 held.)

25 THE COURT: Go tell her what you said.

1 POTENTIAL JUROR: He asked me if I thought I could
2 be fair, and I said I thought I would also be swayed in
3 the direction of the plaintiff, given my acquaintance
4 with a number of people with mental health issues.

5 THE COURT: Thank you, ma'am. You may be seated.

6 So, again, due to the fact that we had this
7 written jury questionnaire, those of you who responded
8 yes and wrote down a brief description, the question
9 is: Would that affect your ability to be a fair and
10 impartial juror to both the State and the defense?

11 Okay. Anybody else wish to stand on that
12 question? Got a lot more questions, but anybody else
13 on that question?

14 All right. Thank you. All right.

15 Has any member of the jury panel been contacted by
16 a church pastor or a member of any church you may
17 attend, either through a written or oral communication,
18 regarding the defendant, Anna Simpson, or about this
19 case? If so, please stand.

20 No response.

21 Next question: Is any member of the jury panel a
22 contributor of or supporter of NAMI? That stands for?

23 MR. MAULDIN: National Alliance of Mental Illness.

24 THE COURT: The National Alliance of Mental
25 Illness or any other organization dealing with mental

1 illness? Included in that: Is any prospective juror a
2 member of or contributor to any type of organization
3 which promotes victims' rights or police as far as like
4 Fraternal Order of Police, Mothers Against Drunk
5 Driving, Citizens Against Violent Crime, or Students
6 Against Drunk Driving, SADD, any organization like
7 that? If so, please stand.

8 All right. No response.

9 I asked this question because, of course -- let
10 me -- hang on one second. The matter before the court
11 today has been the subject of extensive news media
12 reports since the incident back in May of, 2013. The
13 question is: Has any prospective juror seen, heard,
14 read, or otherwise been exposed to this public
15 information, and if so, have you formed an opinion as
16 to the guilt or innocence of Suzanna Brown Simpson?

17 If this applies to you please stand.

18 THE COURT: All right. Sir, if you will please
19 come forward. What's your juror number?

20 POTENTIAL JUROR: 208.

21 THE COURT: Juror Number 208. All right. Sir, if
22 you will please come forward, I'm going to have to come
23 down there. That's what I'm going to do.

24 Yes, sir. What kind of news media were you
25 influenced by?

1 POTENTIAL JUROR: Just the general news media.

2 THE COURT: TV or?

3 POTENTIAL JUROR: TV, web.

4 THE COURT: How has it influenced you?

5 POTENTIAL JUROR: By her own confessions, she has
6 admitted to it.

7 THE COURT: Okay. So understand that, of course,
8 cases are tried in courtrooms and not in the media --

9 POTENTIAL JUROR: Yes.

10 THE COURT: -- do you think you could be a fair
11 and impartial witness --

12 POTENTIAL JUROR: No.

13 THE COURT: -- I'm sorry, a fair and impartial
14 juror?

15 POTENTIAL JUROR: No, sir.

16 THE COURT: All right. Thank you, sir. You can
17 go back and be seated.

18 POTENTIAL JUROR: Okay.

19 THE COURT: All right.

20 Yes, ma'am. What's your juror number?

21 POTENTIAL JUROR: 59.

22 THE COURT: Yes, ma'am. When you answered that
23 question, what kind of news media?

24 POTENTIAL JUROR: Everything that's been on the
25 local news. I do have a friend that her grandchildren

1 went to school with the seven-year-old. So I've heard
2 a good bit, you know, being that close to her.

3 THE COURT: And based upon what you've heard
4 outside, even though cases are proven in a courtroom --

5 POTENTIAL JUROR: Uh-huh.

6 THE COURT: -- you don't think you could be fair
7 and impartial?

8 POTENTIAL JUROR: I don't think so.

9 THE COURT: Thank you ma'am. You may be seated.

10 Anybody else on that question? All right.

11 Kind of picking up on that question, and again I
12 hope all of you understand, and, of course, if you're
13 selected to be on the trial jury, I will tell you that
14 everyone is presumed innocent until proven guilty in a
15 court of law, and that's what this court is.

16 So having said that, this next question kind of
17 goes in line with what I just asked with the previous
18 question. Has any member of the jury panel formed or
19 expressed an opinion about any issue or matter involved
20 in this case? If so, please stand.

21 If you have already previously stood and I just
22 questioned you up there, you don't need to stand again.

23 All right. No response.

24 Next question: Is there any member -- this is
25 required to be asked by law. Is there any member of

1 the jury panel that was a member of the Grand Jury
2 which issued the indictment in this case?

3 No response.

4 Is there any member of the jury panel who has a
5 religious, philosophical or moral reason why he or she
6 cannot be a fair and impartial juror? If so, please
7 stand.

8 If you previously stood, I don't need to hear from
9 you.

10 All right. No response.

11 Any further voir dire from the defense?

12 MR. MAULDIN: No, Your Honor.

13 THE COURT: Any further from the State?

14 MR. WILKINS: None from the State, Your Honor.

15 THE COURT: All right.

16 Ladies and gentlemen, we're going to commence with
17 selecting jury at this time, okay. We're going to
18 select 12 jurors and two alternates, okay. And the way
19 this will be done is the clerk, she will get up there
20 on the podium, and she will call out your juror number
21 and name. And, again, it's randomly generated and
22 randomly selected. And then both sides will have an
23 opportunity to select you to serve on a trial jury.
24 Okay?

25 And I say this with all seriousness and respect.

1 If you're not selected to be on the jury, don't take it
2 personally. There's many reasons why lawyers all
3 across the country -- all lawyers in all courts decide
4 whether or not they want you on a jury or not. So
5 don't take it personal, ladies and gentlemen. Okay?

6 And to provide -- to keep you from being further
7 embarrassed, I'm not going to require you to walk up to
8 the front, turn around and face everybody. I'm not
9 going to do that, okay. When your name is called, just
10 please stand where you are, and then we'll go from
11 there. Okay?

12 THE CLERK: Please stand as I call your name.

13 Juror Number 182, Beth Patterson.

14 (WHEREUPON, a white female stepped forward.)

15 THE CLERK: What says the State?

16 MR. WILKINS: Please excuse the juror.

17 THE COURT: Please have a seat.

18 Madam Clerk, do I have -- this the one here that
19 you put on? I want to make sure I have the strike
20 sheet. Is that it? Thank you.

21 THE CLERK: Juror Number 191, Myra Pitman.

22 (WHEREUPON, a white female stepped forward.)

23 THE CLERK: What says the State?

24 MR. WILKINS: Please excuse the juror.

25 THE CLERK: Please have a seat.

1 Number 101, Taylor Gray.

2 (WHEREUPON, a white female stepped forward.)

3 THE CLERK: What says the State?

4 MR. WILKINS: Please present the juror.

5 THE CLERK: The defense?

6 MR. MAULDIN: Excuse Ms. Gray from this case,
7 please, ma'am.

8 THE CLERK: Please have a seat.

9 Juror Number 246, Marion Whitehurst.

10 (WHEREUPON, a white female stepped forward.)

11 THE CLERK: What says the State?

12 MR. WILKINS: Please present the juror.

13 THE CLERK: The defense?

14 MR. MAULDIN: Swear her.

15 THE CLERK: Please come have a seat in the jury
16 box.

17 Juror Number 53, Lisa Crisp.

18 (WHEREUPON, a white female stepped forward.)

19 THE CLERK: What says the State?

20 MR. WILKINS: Please seat the juror.

21 THE CLERK: The defense?

22 MR. MAULDIN: Excuse Ms. Crisp from this case,
23 Your Honor.

24 THE CLERK: Please have a seat.

25 Number 107, Sandra Hall.

1 (WHEREUPON, a white female stepped forward.)
2 THE CLERK: What says the State?
3 MR. WILKINS: Please present the juror.
4 THE CLERK: The defense?
5 MR. MAULDIN: Swear Ms. Hall.
6 THE CLERK: Please come have a seat in the jury
7 box.
8 Juror Number 98, Douglas Grant.
9 (WHEREUPON, a white male stepped forward.)
10 THE CLERK: What says the State?
11 MR. WILKINS: Please present the juror.
12 THE CLERK: What says the defense?
13 MR. MAULDIN: Excuse the juror from this case,
14 please.
15 THE CLERK: Please have a seat.
16 Number 118, Narvis Hart.
17 (WHEREUPON, a white female stepped forward.)
18 MR. MAULDIN: What was that number?
19 THE CLERK: 118.
20 What says the State?
21 MR. WILKINS: Please excuse the juror.
22 THE CLERK: Please have a seat.
23 Number 6, Angela Arnold.
24 (WHEREUPON, a white female stepped forward.)
25 THE CLERK: What says the State?

1 MR. WILKINS: Please present the juror.

2 THE CLERK: The defense?

3 MR. MAULDIN: Swear Ms. Arnold in the case.

4 THE CLERK: Please come have a seat in the jury
5 box.

6 Number 117, Nicole Harris.

7 (WHEREUPON, a black female stepped forward.)

8 THE CLERK: What says the State?

9 MR. WILKINS: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. MAULDIN: Swear Ms. Harris in the case.

12 THE CLERK: Please come have a seat in the jury
13 box.

14 Juror Number 37, James Carr.

15 (WHEREUPON, a white male stepped forward.)

16 THE CLERK: What says the State?

17 MR. WILKINS: Please present the juror.

18 THE CLERK: The defense?

19 MR. MAULDIN: Excuse Mr. Carr from this case, Your
20 Honor.

21 THE CLERK: Please have a seat.

22 Number 43, Mary Clark.

23 (WHEREUPON, a black female stepped forward.)

24 THE CLERK: What says the State?

25 MR. WILKINS: Please present the juror.

1 THE CLERK: The defense?

2 MR. MAULDIN: That's 43?

3 THE CLERK: That's correct.

4 MR. MAULDIN: Swear Ms. Clark in this case.

5 THE CLERK: Please come have a seat in the jury
6 box.

7 Number 59, Linda Dickard.

8 MR. MAULDIN: Your Honor, wasn't she excused? She
9 wasn't? Okay.

10 (WHEREUPON, a bench conference was held off the
11 record in the presence of the prospective jury panel,
12 but out of their hearing.)

13 MR. WILKINS: I move to strike her for cause.

14 THE COURT: So ordered.

15 Thank you, Ms. Dickard. You may be seated.

16 THE CLERK: Number 133, Jimmy Kirby.

17 (WHEREUPON, a white male stepped forward.)

18 THE CLERK: What says the State?

19 MR. WILKINS: Please present the juror.

20 THE CLERK: The defense?

21 MR. MAULDIN: Excuse Mr. Kirby in this case.

22 THE CLERK: Please have a seat.

23 Juror Number 121, Joshua Hembree.

24 (WHEREUPON, a white male stepped forward.)

25 THE CLERK: What says the State?

1 MR. WILKINS: Please seat the juror.

2 THE CLERK: The defense?

3 MR. MAULDIN: Swear Mr. Hembree.

4 THE CLERK: Please come have a seat in the jury
5 box.

6 Juror Number 84, Jaime Gamez.

7 (WHEREUPON, a white female stepped forward.)

8 THE CLERK: What says the State?

9 MR. WILKINS: Please seat the juror.

10 THE CLERK: The defense?

11 MR. MAULDIN: Swear the juror.

12 THE CLERK: Please come have a seat in the jury
13 box.

14 Juror Number 135, Nathaniel Koilpillai.

15 (WHEREUPON, a Asian male stepped forward.)

16 THE CLERK: What says the State?

17 MR. WILKINS: Please seat the juror.

18 THE CLERK: The defense?

19 MR. MAULDIN: Swear the juror.

20 THE CLERK: Please come have a seat in the jury
21 box.

22 Juror Number 76, Jennifer Fox.

23 (WHEREUPON, a white female stepped forward.)

24 THE CLERK: What says the State?

25 MR. WILKINS: Please present the juror.

1 THE CLERK: The defense?

2 MR. MAULDIN: Excuse Ms. Fox from this case,
3 please.

4 THE CLERK: Please have a seat.

5 Juror Number 17, Steven Bowen.

6 (WHEREUPON, a white male stepped forward.)

7 THE CLERK: What says the State?

8 MR. WILKINS: Please present the juror.

9 THE CLERK: The defense?

10 MR. MAULDIN: Swear Mr. Bowen.

11 THE CLERK: Please come have a seat in the jury
12 box.

13 Juror Number 202, Donna Ritchey.

14 (WHEREUPON, a white female stepped forward.)

15 THE CLERK: What says the State?

16 MR. WILKINS: Please present the juror.

17 THE CLERK: The defense?

18 MR. MAULDIN: Excuse Ms. Ritchey from this case.

19 THE CLERK: Please have a seat.

20 Juror Number 259, Angela Young.

21 (WHEREUPON, a white female stepped forward.)

22 THE CLERK: What says the State?

23 MR. WILKINS: Please seat the juror.

24 THE CLERK: The defense?

25 MR. MAULDIN: Swear Ms. Young.

1 THE CLERK: Please come have a seat in the jury
2 box.

3 Juror Number 198, John Rankin.

4 (WHEREUPON, a white male stepped forward.)

5 THE CLERK: What says the State?

6 MR. WILKINS: Please seat the juror.

7 THE CLERK: The defense?

8 MR. MAULDIN: Excuse Mr. Rankin from this case.

9 THE CLERK: Juror Number 57, Donna Dalonzo.

10 (WHEREUPON, a white female stepped forward.)

11 THE CLERK: What says the State?

12 MR. WILKINS: Please present the juror.

13 THE CLERK: The defense?

14 MR. MAULDIN: Excuse the juror from this case,
15 please, ma'am.

16 Madam Clerk, I think that's nine for me, is it
17 not?

18 THE CLERK: That's correct.

19 MR. MAULDIN: Thank you.

20 THE CLERK: Juror Number 244, Marlee Waldrop.

21 (WHEREUPON, a white female stepped forward.)

22 THE CLERK: What says the State?

23 MR. WILKINS: Please present the juror.

24 THE CLERK: The defense?

25 MR. MAULDIN: 244?

1 THE CLERK: That's correct.

2 MR. MAULDIN: Swear Ms. Waldrop.

3 THE CLERK: Please come have a seat in the jury
4 box.

5 Juror Number 68, Teresa Durham.

6 (WHEREUPON, a white female stepped forward.)

7 THE CLERK: What says the State?

8 MR. WILKINS: Please present the juror.

9 THE CLERK: The defense?

10 MR. MAULDIN: Swear this juror.

11 THE CLERK: Please come have a seat in the jury
12 box.

13 Now for the alternates.

14 179, Brittany Oglesby.

15 (WHEREUPON, a white female stepped forward.)

16 MR. MAULDIN: What was the number, ma'am?

17 THE CLERK: 175.

18 THE COURT: One and two on the alternates.

19 THE CLERK: What says the State?

20 MR. WILKINS: Please present the juror.

21 THE CLERK: The defense?

22 MR. MAULDIN: Swear the juror.

23 THE CLERK: Please come have a seat in the jury
24 box.

25 This is for Alternate Number 2.

1 Juror 260, Taylor Perry.
2 (WHEREUPON, a white female stepped forward.)
3 THE CLERK: What says the State?
4 MR. WILKINS: Please excuse the juror.
5 THE CLERK: Please have a seat.
6 Juror Number 181, Willie Parker.
7 (WHEREUPON, a white male stepped forward.)
8 THE CLERK: What says the State?
9 MR. WILKINS: Please present the juror.
10 THE CLERK: The defense?
11 MR. MAULDIN: Excuse the juror from this case;
12 please.
13 THE CLERK: Please have a seat.
14 Juror Number 95, Marianne Gonlag.
15 (WHEREUPON, a white female stepped forward.)
16 MR. WILKINS: Your Honor, the State would move to
17 strike for cause.
18 THE COURT: So ordered.
19 THE CLERK: Please have a seat.
20 Juror Number 235, Tyler Thompson.
21 (WHEREUPON, a white male stepped forward.)
22 THE CLERK: What says the State?
23 MR. WILKINS: Please present the juror.
24 THE CLERK: The defense?
25 MR. MAULDIN: Excuse the juror from this case,

1 please.

2 THE CLERK: Please have a seat.

3 Juror Number 10, Kari Barger on.

4 (WHEREUPON, a white female stepped forward.)

5 THE CLERK: What says the State?

6 MR. WILKINS: Present the juror.

7 THE CLERK: The defense?

8 MR. MAULDIN: Swear the juror.

9 THE CLERK: Please come have a seat in the jury
10 box.

11 THE COURT: All right. Thank you very much, Madam
12 Clerk.

13 Ladies and gentlemen of the trial jury, before we
14 swear you in for the trial of the case, I do want you
15 to go back to your jury room. The bailiffs will show
16 you there. Obviously, you know nothing about this
17 case. You may think you know something through what
18 you may have heard in the media, those of you who have
19 heard anything, and I'll give you an instruction about
20 that before you leave today. But you are not
21 authorized to talk about the case. You cannot talk
22 about anything you hear during the trial until I tell
23 you you can. And that will be at the end of the trial.
24 And the reason for that is, obviously, so you can keep
25 an open mind and listen to everything before you make a

1 decision, okay?

2 So at this time I'm going to have you go back to
3 your jury room. Of course you can introduce yourselves
4 to each other, exchange pleasantries, something like
5 that, get you something to drink, but don't talk about
6 this case. Okay? We'll get you back out here just as
7 soon as possible to finish up everything.

8 Thank you. You can have a seat back in your jury
9 room.

10 (WHEREUPON, the jury exited open court at
11 3:02 p.m.)

12 THE COURT: The rest of y'all who were not
13 selected to be on the trial jury, y'all are excused for
14 the day, but I've been advised that Judge Hall needs
15 y'all to report back tomorrow morning at 9 o'clock at
16 the main courtroom downstairs. Okay? So thank you.
17 You may leave for the day.

18 (WHEREUPON, the remainder of the prospective jury
19 panel left the courtroom.

20 THE COURT: Any matters of law regarding jury
21 selection from the State?

22 MR. WILKINS: None from the State, Your Honor.

23 THE COURT: The defense?

24 MR. MAULDIN: None from the defense, Your Honor.

25 THE COURT: All right. Thank you.

1 All right. While we're -- y'all can invite the
2 members of the media in so I can talk to them and they
3 can do what they're going to do.

4 While we're doing that, y'all go ahead and get
5 things set up.

6 THE BAILIFF: Without equipment?

7 THE COURT: They get two -- I already told them
8 this, but they should know: They get two video
9 cameras. They can bring radio recorder and two still
10 cameras. Okay? So there can be a total of four
11 cameras but two of which can only take pictures.

12 THE BAILIFF: You want them over there?

13 THE COURT: I want them in the back corner over
14 there.

15 And anybody else who wants to come in. It's a
16 public courtroom. They can come in.

17 MR. WILKINS: Your Honor, about a ten-minute break
18 to set up?

19 THE COURT: Yeah.

20 (WHEREUPON, a recess was taken from 3:05 p.m. to
21 3:16 p.m.)

22 THE COURT: All right. Anything else before we
23 bring the jury in?

24 MR. WILKINS: Not from the State, Your Honor.

25 MR. MAULDIN: Nothing from the defendant, Your

1 Honor.

2 THE COURT: All right. Now I will swear the trial
3 jury in when they first come in.

4 Madam Clerk, don't let me forget.

5 THE CLERK: Okay.

6 THE COURT: Then I'll have my little initial
7 charge to them, and then I'll turn the floor over to
8 y'all. Okay? Give me just a second.

9 Go ahead and bring them in.

10 (WHEREUPON, the jury entered open court at
11 3:18 p.m.)

12 THE COURT: There are no assigned seats. Just
13 like church, no assigned seats.

14 All right. All members of the jury are present.

15 Madam Clerk, if you will please swear in the trial
16 jury at this time.

17 (WHEREUPON, the jury was impaneled.)

18 THE COURT: Thank you, Madam Clerk.

19 Ladies and gentlemen of the jury, if you will
20 please look at me while I give you what is called an
21 initial charge or instructions about what you may be
22 expecting to happen today.

23 Now, and before we begin this trial, let me tell
24 you that this trial is going to be -- probably going to
25 be different from what you might expect. Many people

1 don't have the chance to attend actual court sessions
2 much less participate in them as you are doing now, and
3 they think that from watching TV or going to movies or
4 reading books that trials are always full of high
5 drama, intense action and riveting circumstances. Now,
6 while all of these things may be true at times, this
7 trial is not for entertainment, ladies and gentlemen.
8 It is a fundamental part of our democracy. This trial
9 is a search for the truth in an effort to make sure
10 that justice is done between the parties before the
11 Court. You know, searching for the truth and making
12 sure that justice is done can oftentimes be a slow and
13 deliberate process, the opposite of what you may have
14 seen or come to expect because of movies or TV.

15 Now, this courtroom, ladies and gentlemen, is a
16 place of honor dedicated to the protection and
17 preservation of citizens' rights through what many have
18 called the greatest justice system ever created. The
19 attorneys who are appearing before you are advocates
20 for the parties they represent. First and foremost
21 they're officers of this court, sworn to uphold the
22 integrity and fairness of our judicial system. Because
23 of that, you should expect them to be professional,
24 competent and ethical in their representation of their
25 clients' interests.

1 Now, remember, ladies and gentlemen, that you've
2 just taken an oath to try this case and to reach a fair
3 and just verdict so you are also expected to be
4 professional, reasonable and ethical. Thank you again
5 on behalf of the State of South Carolina for accepting
6 this important responsibility.

7 Let me kind of give you an idea, a basic outline
8 of how a trial proceeds. Okay? First, the State will
9 make an opening statement to you. An opening statement
10 is not evidence. It's simply an outline that the
11 lawyers will give you to help you understand what that
12 lawyer expects the evidence will show. The defense can
13 make an opening statement if they want to but they
14 don't have to, and I'll tell you more about that later
15 on in the trial.

16 But following opening statements, you will then
17 hear testimony and receive evidence in the case. This
18 will consist of testimony from various witnesses as
19 well as any physical exhibits which will be introduced
20 into evidence. The testimony will come from this
21 witness stand and evidence will be introduced that way.

22 Following all the testimony and the receipt of
23 evidence, the attorneys will again have an opportunity
24 to speak directly to you by what's called closing
25 statements or summations, or some people call them

1 closing arguments. This is an opportunity for the
2 attorneys to summarize the case from their respective
3 points of view, and again, these arguments are not
4 evidence.

5 Now, after all of that, and following these
6 closing statements, that's when I will instruct you on
7 the law of South Carolina as it pertains to the issues
8 which have arisen in this case. And when I have
9 completed my instructions to you, that's when you will
10 begin your deliberations... That's the first time you
11 will be able to talk about this case amongst yourselves
12 or with anybody. And you will do that until you reach
13 a verdict. Okay?

14 Now, as you know, this is a criminal case which
15 has been brought by the State of South Carolina who has
16 charged the defendant, Suzanna Brown Simpson, with two
17 counts of murder, one count of attempted murder, and
18 one count of possession of a weapon during the
19 commission of a violent crime. The charges against the
20 defendant is contained --- are contained in these
21 indictments. As I told you earlier, these indictments
22 are not evidence of anything. They're simply the
23 written description of the charges that have been made
24 by the State against the defendant. The defendant has
25 pled not guilty to these charges and is presumed

1 innocent unless and until proven guilty beyond a
2 reasonable doubt. I will define beyond a reasonable
3 doubt in much more detail later on, but I will tell you
4 now a reasonable doubt is that kind of doubt which
5 would make a reasonable person to hesitate to act.

6 Now, the defendant has the right not to testify
7 and never has to prove innocence or even present any
8 evidence. The burden of proof is always upon the State
9 of South Carolina.

10 Now, it will be your duty, ladies and gentlemen,
11 to decide from the evidence what the facts are. You
12 and you alone are the judges of the facts. You will
13 hear the evidence, decide what those facts are and then
14 you will apply those facts to the law which I will give
15 to you at the conclusion of the case. That's how you
16 reach a verdict. And in doing so, you must follow law
17 that I give you. I'm the judge of the law; you are the
18 judge of the facts. You must follow that law whether
19 you agree with it or not.

20 Please don't take anything I may say and do during
21 the trial as indicating what I think -- as what you
22 think I think of the evidence or what you think I think
23 your verdict should be. That's solely for you to
24 determine.

25 Now, ladies and gentlemen, I know you've seen it

1 on TV, read about it in books or whatever, seen about
2 it in newspapers, just like rules which govern sports
3 and other activities, we have certain rules in court
4 which are called rules of evidence which control what
5 can be received into evidence. And when a lawyer asks
6 a question or offers an exhibit into evidence and a
7 lawyer on the other side thinks that it's not permitted
8 by the rules of evidence, that lawyer may object, say
9 "Objection." You have all seen it, "Objection." So if
10 I overrule the objection, that means the question can
11 be answered by the witness or the thing may come into
12 evidence. If I sustain an objection, that means the
13 question cannot be answered or the thing cannot come
14 into evidence.

15 Now, whenever I sustain an objection or not let
16 something in, you must ignore the question or the
17 existence of the proposed exhibit and you mustn't guess
18 or speculate what the answer would have been or what
19 the exhibit would have shown. The reason we have these
20 rules of evidence is because we want to make sure you
21 get the best evidence possible to make your decision.
22 Okay? That's why we have these rules.

23 Now, sometimes it may be necessary for me to
24 request that you leave the courtroom while I discuss
25 certain legal issues with the lawyers. I have already

1 done that twice today. So you're aware of that. If
2 this occurs, don't speculate about what we're talking
3 about. This is simply a procedure that the law
4 requires when certain legal issues arise. Y'all
5 concern yourself with the facts. The lawyers and the
6 judge will concern themselves with the law. Okay?

7 There always may be occasions, and I'll do this as
8 often as possible to keep you from having to come and
9 go out of your jury room, I'll ask the lawyers to
10 approach the bench so I can discuss a legal issue with
11 them in private, and I'll make sure my mute button
12 works this time, and I'll do that, again, as often as
13 possible so y'all won't have to get up and down.
14 Again, we're not trying to keep anything from you or
15 hide anything from you. This is just simply a
16 procedure used by all lawyers and by all Courts to
17 determine and decide legal questions to make sure you
18 get the best evidence possible.

19 I'm almost done.

20 Ladies and gentlemen, in deciding the facts of
21 this case, you may have to decide which witnesses to
22 believe and which witnesses not to believe. That's
23 called credibility of witnesses. You can believe
24 everything a witness says, only part of it or none of
25 it.

1 Now, you're not going to be allowed to take notes
2 during the trial so please take -- pay very close
3 attention to the witnesses and listen to everything
4 that they say. Okay? And at the end of the trial
5 you're not going to have a transcript to consult. It's
6 very time consuming and costly for my court reporter to
7 have to print out certain areas of what witnesses said
8 and bring them back to you, so please pay close
9 attention to everything which happens and the testimony
10 as is given to you.

11 And, ladies and gentlemen, this is very important.
12 Listen very, very carefully to what I'm telling you
13 now. Until I advise you to begin your deliberations,
14 you must not and shall not discuss this case with
15 anyone including your fellow jurors. You can't discuss
16 it with your friends, you can't discuss it with your
17 family members and anyone else involved in this case.
18 Don't go on Twitter, don't go on Google, don't go on
19 social media, Snap Chat, news media. Y'all are aware
20 that there's news media in this courtroom. Okay? You
21 are under your oath as a trial juror. Your decision
22 must be based solely on the evidence and testimony
23 presented in this courtroom and only this courtroom.
24 You cannot and are not authorized to do any independent
25 research, go on Google and Google somebody's name and

1 look up information because if you do that, you violate
2 your oath as a juror, okay, and you're seriously
3 tainting these proceedings. Okay? Everybody is
4 entitled to their fair day and their day in court, and
5 it will be compromised if you do things that you're not
6 supposed to do. Okay?

7 So, please, during the trial do not read, listen
8 to, or watch any news reports about this case. And I'm
9 going to specifically say this includes anything that
10 may be in newspapers, on the Internet, radio, TV,
11 social media, et cetera. You must not consider
12 anything you may have read or heard about this case
13 outside the courtroom whether before or during the
14 trial. Okay?

15 Now, if anyone, ladies and gentlemen, attempts to
16 talk with you about this case in violation of these
17 instructions that I've just given you, please let me
18 know or let the bailiffs know and I assure you I will
19 handle that situation properly. Okay?

20 Now, it's important, ladies and gentlemen, lastly,
21 that you keep an open mind and not decide any issue in
22 this case until all the evidence has been presented,
23 the parties have made their closing arguments, and I
24 have instructed you on the law of this case. It is
25 your solemn responsibility to determine the guilt or

1 innocence of the defendant, and your verdict must be
2 based solely on the evidence presented in this
3 courtroom in this trial and on the law as I instruct
4 you during and at the close of trial.

5 Again, thank you very much for your service. We
6 will now proceed with opening statements.

7 Solicitor.

8 MR. WILKINS: Your Honor, thank you. May it
9 please the Court.

10 THE COURT: Yes, sir.

11 MR. WILKINS: Good afternoon ladies and gentlemen.
12 I've introduced myself to you before. My name is Walt
13 Wilkins, and this is Betty Strom, my deputy solicitor,
14 and we represent the State in this case.

15 First I want to thank you for your service as a
16 juror. I know you were sort of voluntold to be here
17 today, and you were lucky enough to get chosen in this
18 particular case. But someone once told me that serving
19 as a juror in a criminal or civil case is one of the
20 highest forms of service you can do for your county,
21 your country, and your state, so we thank you for being
22 here sitting in judgment.

23 As the judge said, everyone in here has a role.
24 We all have an important role to play. As I said, I'm
25 the State. We represent the State. We're presenting

1 the case against the defendant in this case, which is
2 Anna Simpson. She sits over there with her defense
3 lawyers, and they represent her. We have a court
4 reporter here. She's going to be taking down
5 everything that we say so we can establish a record of
6 everything that goes on here. And, of course, we have
7 the judge who has spoken with you, and he's a very
8 important person in this case. He even gets to sit a
9 little higher than the rest of us to show his
10 importance.

11 Ladies and gentlemen, you are the finders of fact.
12 You are the individuals who are going to decide the
13 ultimate question in this case. You are going to be
14 the fact-finders once this case has been presented to
15 you.

16 Now, the charges that you're going to be hearing
17 about and you're going to hear testimony about are the
18 charges that the judge discussed against the defendant.
19 There's two charges of murder -- those are the murder
20 of Female Child and Male Child -- the attempted murder of
21 Mike Simpson, and the possession of a weapon during the
22 commission of a violent crime. That is having a weapon
23 while you're committing those murders and those
24 attempted murders.

25 So those are the charges that you're going to be

1 hearing testimony about. And the judge will instruct
2 you on the legal definition of murder and those kind of
3 things. And you'll have that at the end, but I think
4 in this case it's a little different than our normal
5 cases that we have, and I think that once you hear the
6 State's presentation of all its evidence, you're going
7 to find that Anna Simpson did, in fact, shoot and kill
8 her two children, Female and Male Simpson, and attempt
9 to kill her husband, Mike Simpson. I don't think
10 you're going to have a hard time with that part of the
11 scenario.

12 In this case the defense, those representing Anna
13 Simpson, has asserted what's called an affirmative
14 defense. Now, affirmative defense is something that
15 the defense can produce to say she is not guilty
16 because of this defense. They have asserted the
17 defense of not guilty by reason of insanity. Not
18 guilty by reason of insanity.

19 And so as you learn more about this case, you're
20 going to get a verdict form once you have all this
21 information that comes in, and there's going to be four
22 choices on that verdict form. Because they have
23 asserted this affirmative defense, you're going to have
24 four options. So I want you to be thinking about these
25 four options as you're listening to testimony from both

1 sides and think about where those options play with the
2 evidence that you're going to be hearing.

3 You're going to have guilty, which means the State
4 has proven their case beyond a reasonable doubt. And
5 the judge will tell you what reasonable doubt means.
6 He says it makes you hesitate. If you don't hesitate,
7 beyond a reasonable doubt. There's not guilty meaning
8 not guilty. The State did not prove their case.
9 There's going to be a third option, guilty but mentally
10 ill, and there's going to be a fourth option, not
11 guilty by reason of insanity. Those are going to be
12 your four options that you're going to be deliberating
13 on. So I want you to have those in your head as you're
14 thinking about the testimony as you hear it.

15 Guilty but mentally ill -- and, again, the judge
16 will define these for you at the conclusion of the
17 testimony. But guilty but mentally ill means that
18 someone has mental illness. I mean, someone has some
19 diagnosed mental illness in their -- like a medical
20 condition, but that their mental illness caused or
21 contributed to their actions so that they could not
22 conform with the law. Meaning the mental illness kind
23 of kept them from not doing something to violate the
24 law. I know that sounds a little awkward, but the
25 mental illness contributed or kept them from not doing

1 something.

2 Not guilty by reason of insanity means the person
3 did not know legal or moral right from wrong and,
4 therefore, should not be held accountable and is not
5 guilty.

6 So the main issue that you're going to be dealing
7 with during the presentation of this evidence and
8 during your deliberations is going to be: Did Anna
9 Simpson know legal or moral right from wrong at the
10 time of the incident? Did she know legal or moral
11 right from wrong?

12 You're going to hear all kinds of testimony.
13 There's different kinds of testimony. There's direct
14 testimony that you're going to hear from witnesses. So
15 you're going to hear lay witnesses. You're going to
16 hear people who saw Anna Simpson almost immediately
17 after the incident. You're going to hear -- you're
18 going to hear from emergency room workers who talked to
19 her as well. You're going to hear from Pickens County
20 Sheriff's Office who are going to describe the crime
21 scene and what they found inside the house, how the
22 murders were conducted.

23 There will be evidence suggesting different types
24 of things, how Anna Simpson went about conducting these
25 murders. And you're going to have to take all that in.

1 That's direct evidence. There's also circumstantial
2 evidence.

3 Circumstantial evidence allows you to derive a
4 conclusion based on a number of factors. For example,
5 a good example of circumstantial evidence would be if
6 somebody walks through that door right there and
7 they're wearing a raincoat and umbrella and they're
8 wet, I'm going to conclude that it's raining outside.
9 Now I don't have any windows in here. I can't see it
10 raining outside. But if somebody comes in like that,
11 I'm going to assume that it's raining outside. That's
12 called circumstantial evidence.

13 Direct evidence, circumstantial evidence are both
14 just as powerful. You can take all of one, none of
15 all, however you want to do it. You get to decide what
16 evidence is important to you.

17 Thirdly, you're going to hear from expert
18 witnesses. Now, expert witnesses are qualified by the
19 judge, assuming they have the qualifications, and they
20 have degrees, extra degrees, so that they can opine,
21 they can say opinions as to something. And you get to
22 hear expert witnesses.

23 Just as circumstantial and direct evidence is
24 presented, expert testimony can be presented to you.
25 And you can take all of that expert testimony; you can

1 take none of that expert testimony. Because at the end
2 of the day, ladies and gentlemen, you and you alone get
3 to decide the weight of the evidence, what's important
4 to you in determining one of those four options that
5 will be on the verdict form. What's important to you.

6 The great thing about being a juror is you don't
7 leave your common sense at the door. You get to bring
8 it with you. You get to have it with you while you're
9 listening to testimony and deliberating, get to use
10 that life experience and that common sense in
11 evaluating witnesses, in evaluating the evidence and
12 coming to the ultimate decision because, again, at the
13 end of the day, you're going to be determining whether
14 Anna Simpson knew right from wrong at the time of the
15 incident. And when you do, when you look at all the
16 evidence -- circumstantial, direct, potential expert
17 testimony, I think there's going to be but one
18 conclusion that you're going to come to, and that is
19 that Anna Simpson knew right from wrong when she woke
20 up one morning, got some guns, shot her husband, shot
21 her two children and left the house in a car and was
22 found by EMS later. That's the conclusion that you're
23 going to come to. Thank you.

24 THE COURT: Thank you, Solicitor. Mr. Mauldin.

25 MR. MAULDIN: Your Honor, before my opening, I

1 would request the Court note an objection to the
2 discussion of the four verdict forms --

3 THE COURT: Yes, sir. Noted.

4 MR. MAULDIN: -- in light of pretrial.

5 THE COURT: Yes, sir. Noted.

6 MR. MAULDIN: And I would like an opportunity at
7 an appropriate time to put on the record my objection
8 to that.

9 THE COURT: Yes, sir. Absolutely.

10 MR. MAULDIN: Thank you, Judge.

11 On May the 14th, 2013, in the Dacusville
12 community, a breathtaking and horrific incident
13 occurred. These children, [REDACTED] she was
14 seven, and Male Child -- Female and Male Child [REDACTED] seven
15 and five years old, were shot and killed in their own
16 home and their father was seriously injured, Michael
17 Simpson, was seriously injured. It was an insane and
18 senseless act. That's what it was. It was an insane
19 and senseless act.

20 I was -- yesterday I was thinking about this
21 opening statement just trying to imagine what in the
22 world I can say. And it happened to be Father's Day
23 yesterday. This horrible event occurred -- today is
24 Monday after Father's Day. This tragedy that we're in
25 this courtroom about occurred three years ago on the

1 Monday night and Tuesday morning after Mother's Day.
2 The irony, the horrific -- it's just hard to comprehend
3 how something like this could have happened. But we're
4 going to proceed and we're going to talk about it.

5 You're going to hear evidence about how such a
6 thing that's just beyond comprehension could actually
7 happen to these two beautiful, innocent children.
8 First, let me say what the case is not about. There's
9 not going to be any alibi defense, somebody was
10 somewhere else. There's not going to be any
11 self-defense. There's not going to be any mistake.
12 Not going to be any of this who done it because this
13 case is not about who done it. Their mother and my
14 client, Anna Simpson, killed her children. So we're
15 going to get that out of the way right now. She killed
16 her children.

17 But how can that be? How can that be? It's
18 essentially against the laws of nature for a mother to
19 kill her children. A mother will step out in front of
20 a speeding train to protect her children. A mother
21 will jump off the highest cliff to shield her children.
22 A mother will stare death in the face to save her
23 children. So how can it be? What in the world
24 happened? What happened in that house over on Cherokee
25 Trail in Dacusville?

1 This case is about being criminally responsible,
2 about the state of mind of a person who clearly
3 violates a basic and fundamental rule of our civilized
4 society. This is a person who has done something that
5 is clearly a violation of a very, very fundamental and
6 basic, the most basic of principles in our society, the
7 sanctity of life.

8 What our law says -- we're a community that is
9 governed by rules of law. We go by the rules. The law
10 says X, Y and Z. And when a person violates one of the
11 principles or one of the rules, but it is established
12 that that person could not distinguish between right
13 and wrong conduct, then the law says that that person
14 should not be held criminally responsible. And that's
15 really what it is about.

16 The judge, as he mentioned to you, is going to go
17 through some specific details while instructing you
18 about how to measure that. But that's the point: What
19 was the state of mind of the perpetrator, the person
20 who committed the offenses? Because that's part of our
21 law. That is the rule.

22 Now, all I can do is ask you to be patient with
23 this case. There's going to be a lot of doctors
24 testifying about stuff that we never even think about,
25 a lot of complicated thises and thats and we understand

1 that, and I'm going to ask you to take a deep breath
2 and try to allow the testimony to give you guidance
3 about what you think the right thing to do is, what is
4 the right thing to do.

5 This will be, I'll assure, will be very hard work,
6 but we have selected you. We've gone through this
7 process this morning and early afternoon about juror
8 number this and juror number that and up, down and in
9 and out the room. We have gone through this agonizing
10 selection process because we wanted people who would
11 fairly and appropriately apply those rules of law to
12 the facts that you find to be, and the 12 jurors, two
13 alternates, have been chosen. It will be difficult
14 because you're going to hear heartbreaking testimony.
15 You're going to hear heartbreaking evidence and graphic
16 testimony about the death of two absolutely innocent
17 and beautiful children that will be very emotional, it
18 will be very graphic, and it will be very sad.

19 You have been chosen by the lawyers in this case
20 and sworn by the judge to attempt -- to attempt to do
21 what you can to judge this case without passion or
22 emotion, and I'm telling you it's going to be hard to
23 do, but that's really what your responsibility says.
24 You've got to attempt to maintain an impartial and
25 balanced evaluation of what you hear. And so -- and,

1 you know, I'm no magician. I can't say to you, "Don't
2 be emotional and don't be affected." We're all going
3 to be affected. We're all going to be affected at the
4 absolute caving in of this family's house, this
5 destruction.

6 You've been sworn as jurors to try to do it, and
7 that's what I'm going to ask you to do, just try to do
8 it. This case is not about legal trickery. It's not
9 about smoke and mirrors and trying to fool you. The
10 testimony that you're going to hear comes from the
11 reality, not the technicality. It's the real, gritty,
12 real world.

13 We know, we know, we know that mental illness is a
14 very part of our society. The judge passed out
15 individual forms for you to respond to and the reason
16 was because it is an uncomfortable subject to discuss.
17 There is a stigma. People want to deny, they want to
18 kind of turn their back, "Well, she's just not right,"
19 or, "It's going to be okay." You know, well, it's time
20 not to do that. And by passing those forms out, it
21 allowed you to express specific feelings that you had.
22 Well, it's time that we not turn our back and address
23 it.

24 A couple, few comments, and then I'll finish up.
25 Anna was born in North Carolina. She was adopted

1 when she was one month old. She was 31 days old, I
2 think it was, when she was adopted by Mike and Susan
3 Brown. Mike is there.

4 Raise your hand, Mike. That's Mike and Susan.
5 Those are her adopted parents.

6 She grew up in Taylors, a community in Greenville
7 County. Good God-fearing family. Went to Eastside
8 High School, finished Eastside High School, went to
9 Winthrop College, finished Winthrop College. Took five
10 years, but she finished, and married Mike Simpson right
11 over here, all right, who she had known since like the
12 fourth grade.

13 They got married. Female, their first born, was
14 born in 2006. Anna suffered a miscarriage the next
15 year, and Male Child was born in 2008. And the records
16 indicate that after each of these pregnancies, there
17 were major depressive episodes. She had major
18 depressive episodes after the conclusion of the
19 pregnancies. And what that was, it was like red flags
20 were kind of popping up, starting to pop up. Little
21 indicators. With the onset of this potential mental
22 illness, Anna began being treated and seen by a private
23 psychiatrist in Greenville. She would go to see the
24 private psychiatrist about monthly and he would meet
25 with them. And she was treated for bipolar.

1 But red flags continued to be -- things continued
2 to happen that were just kind of warnings that
3 something was not right. Anna then had flags, if you
4 will, of paranoia. And it began to escalate. Anna
5 talked with her husband Mike about, "We need to install
6 a camera because drug dealers live across the street
7 and they're coming into our house when we're not here."
8 It wasn't true. There were no drug dealers living
9 across the street. She imagined it. It was a
10 delusion. Mike installed a camera or a camera was
11 installed in the garage.

12 They had a ceiling fan, and Anna believed that
13 somebody put a bug so they could listen to the Simpson
14 family. So she took pictures of the ceiling fan and
15 went back to the store and compared the pictures of her
16 fan to the fans that were in the store on display. It
17 was not true. It was delusional. She was imagining it
18 but, to her, it was real.

19 July of 2012 Anna was worried that her in-laws
20 were mistreating the two children. Well, it wasn't
21 true. These are good people. These are good people.
22 God-fearing people. Every one of them. Everybody in
23 this case was good people. But she believed it and,
24 for her, it was real. For her, it was real.

25 She went to St. Francis and was hospitalized on

1 account of these delusions. There was a security guard
2 placed in the room with her. She was then transferred
3 from St. Francis to the Carolina Center for Behavioral
4 Health and she -- unfortunately, she only spent three
5 days there. They advised that guns be secured in a
6 safe at home. And, finally -- again, once again, Your
7 Honor, I appreciate the time.

8 And, finally, Mother's Day of 2013, Anna and
9 Michael and the two children went to lunch with Mike
10 and Susan. And Susan, the mother, was very distressed
11 because Anna, her observations about Anna, there was
12 just something boiling over. Things weren't right.
13 The next day, Monday, Anna took Female -- that's the
14 seven-year-old girl -- out of Dacusville Elementary.
15 Male had stayed home that day. Anna went over to
16 Dacusville Elementary and was getting Female out of
17 school because Female was sick. Female wasn't sick. She
18 wasn't sick. Anna was scared for her children. It
19 wasn't really a danger. It wasn't real, but Anna
20 believed it with all of her heart that the children
21 were in danger. She believed it was real. And less
22 than 24 hours later, Anna got out of bed, shot her
23 husband in the bed, went into the bedrooms of her two
24 beautiful children and shot them and killed them. She
25 then attempted to reload the gun so she could turn the

1 gun on herself and kill herself right there in that
2 house. Three times she attempted to kill herself, but
3 she loaded the gun with the wrong ammunition and it
4 wouldn't fire. She then went and got in a truck in the
5 driveway and, mimicking an accident that had happened
6 four months earlier right out in front of their house,
7 she attempted to kill herself by running into a tree.
8 She had what we'll show is a very violent car wreck.
9 Broke her back. This is not something, ladies and
10 gentlemen, that came up after the fact. This is not
11 something that was cooked up. This was a boiling pot
12 of crisis and red flags were everywhere.

13 On May, 14th, 2013, in Dacusville, a breathtaking
14 tragedy occurred. These two beautiful children were
15 shot and killed in their house. It was an insane and
16 senseless act. I will be asking you to stand up for
17 what is right in this case. It won't be easy. It will
18 take an act of courage. Thank you.

19 THE COURT: Thank you, Mr. Mauldin.

20 Is the State ready to proceed with its first
21 witness?

22 MR. WILKINS: Your Honor, the State is ready to
23 present actual testimony.

24 The State calls Scott Hart.

25 SCOTT HART,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: Have a seat and state your name for
3 the record, please.

4 THE WITNESS: My name is Scott Hart.

5 DIRECT EXAMINATION

6 BY MR. WILKINS:

7 Q All right. Mr. Hart, I'm going to make sure that
8 you speak into that microphone so this jury can hear
9 everything you say. Okay?

10 A Okay.

11 Q Thank you.

12 Mr. Hart, where are you employed?

13 A Self-employed right now at 312 Cherokee Trail.

14 Q And is that where you live?

15 A Yes, sir.

16 Q Is that in Pickens County?

17 A Yes.

18 Q And are you familiar with your neighborhood and
19 where you live?

20 A Yes.

21 Q All right.

22 A I have several rental properties around me, so I'm
23 pretty familiar with the neighborhood.

24 Q And did you know the defendant, Anna Simpson?

25 A Yes. Yes, sir. Ever since I lived there, they

1 were there.

2 Q So how long did you live across the street from
3 them?

4 A I lived there about ten years as of now.

5 Q And how long did you live where they were across
6 the street from you?

7 A They were there when I moved in, so.

8 Q Did you know Mike Simpson?

9 A Yes, sir.

10 Q Did you ever speak with him and talk with him as
11 well?

12 A Yes, sir.

13 Q And did you know their children?

14 A Yes.

15 Q About where is your house located compared to the
16 Simpson household?

17 A Just about right across the street.

18 Q I'm going to show you what's marked as State's
19 Exhibit 1 and ask you if you recognize this. Do you
20 recognize that photo?

21 A Yes, sir. It's an aerial view of the street and
22 the houses, ours and theirs.

23 Q Okay.

24 MR. WILKINS: Your Honor, State moves Exhibit 1
25 into evidence.

1 THE COURT: Any objection, Mr. Mauldin?

2 MR. MAULDIN: No objection.

3 THE COURT: Without objection, introduced into
4 evidence.

5 (WHEREUPON, State's Exhibit Number 1 was admitted
6 into evidence.)

7 BY MR. WILKINS:

8 Q All right. Mr. Hart, I'm going to put this photo
9 up here. And there is a laser pointer over there if
10 you want to use it. It's right there.

11 A Okay.

12 Q So can you show me where your house is located?

13 A If I can use the laser pointer. There's my house
14 right there.

15 Q Can you tell this jury where Mike and Anna Simpson
16 lived?

17 A Right there.

18 Q Okay. Now, I'm going to take you back to the
19 early morning hours of May 14th, 2013. Do you recall
20 that day?

21 A Yes, sir.

22 Q And you were living in that house right there you
23 just showed us during that time?

24 A Yes, sir.

25 Q Can you tell us what happened early that morning

1 on May 14th?

2 A As usual, we were up getting ready. My wife was
3 getting ready for work. She was in the shower at the
4 time, and I heard a commotion in the yard. And as the
5 gentleman here stated earlier, a few months earlier
6 there had been a wreck in my yard, that this sounded
7 very familiar. And so me, I went running out to see
8 what had happened. And right there is where the truck
9 hit the tree in the previous wreck. And so we went
10 out, and these trees here on the side were down, these
11 little smaller trees on this morning. And there was a
12 tree here that was down, and I seen Anna's truck over
13 here in the ditch, over in here over in this area.

14 Q And do you see her truck down here in that aerial?

15 A Right there.

16 Q Okay. So when you heard a commotion, do you
17 remember about what time it was?

18 A Roughly around 6:00 in the morning, 5:30, 6:00 in
19 the morning. Something like that. I can't remember
20 exactly, but sometime that -- yeah, that time frame.

21 Q Was it dark outside?

22 A Yes, it was dark still.

23 Q So what did you do?

24 A I immediately run outside, got in my truck and run
25 down so I could put headlights on the vehicle to get a

1 better view to it. And while I checked on whoever was
2 in the truck -- I used to be a paramedic, so I just
3 tried to get some light on it so I could see what was
4 going on better.

5 Q So where did you drive your truck to?

6 A Drove my truck to right here to put the headlights
7 on.

8 Q All right. I'm going to show you what's State's
9 Exhibit 2 and 3.

10 MR. MAULDIN: No objection.

11 THE COURT: Without objection, introduced as
12 State's 2 and 3 into evidence.

13 (WHEREUPON, State's Exhibit Numbers 2 and 3 were
14 admitted into evidence.)

15 BY MR. WILKINS:

16 Q Mr. Hart, I'm going to ask you to take a look at
17 this picture I'm putting over here. Do you recognize
18 that?

19 A Yes, sir. That is the truck.

20 Q Okay. And can you tell this jury what you arrived
21 to the early morning of the 14th? When you got out of
22 your car, what did you see?

23 A When I got out of the car, that door wasn't open
24 at the time. Anna was sitting in the driver's seat.
25 She was kind of slumped down. My daughter had arrived

1 at that time. She had come out, my daughter Amber. I
2 had her -- we were able to get the back door open, and
3 I had her get in the back and hold her neck, hold
4 c-spine while I was asking Anna questions as to her
5 condition and all.

6 Q Okay. So when you approached the defendant, what
7 did she say and do when you approached her?

8 A She was -- she called my name. She recognized me.
9 She was like, "Scott." She goes -- I said, "Are you
10 okay?" And she goes, "My back. My back hurts." And
11 she said, "Scott." I said -- it seemed strange because
12 she lived right beside of me and I have never seen them
13 that early in the morning.

14 And first thing I asked her was, "Where is Mike?"
15 And, "Where are the kids?" And she just frantically
16 was -- I don't know. I -- I don't know. She was just
17 real frantic saying she didn't know where they were.
18 And then she goes, "Am I going to be okay?" Whenever I
19 asked about Mike and the kids, it was, "Am I going to
20 be okay?"

21 Q Did she have any problems recognizing you?

22 A No, sir.

23 Q Did she call you by your first name?

24 A Yes. She called me Scott and actually even
25 grabbed my arm anytime I would try to walk away to talk

1 to -- once the firemen did get there, every time I
2 tried to walk away, she would grab me.

3 Q Grab you by the arm?

4 A Yes.

5 Q Would she say anything?

6 A "Scott, don't go." "Scott."

7 Q So she was asking you to stay with her?

8 A Yes, sir.

9 Q Okay. How long were y'all there until somebody
10 else showed up?

11 A It was hard to tell. Probably five to
12 eight minutes, maybe, before the EMS arrived or the
13 firemen arrived.

14 Q And what were y'all doing during that five to
15 eight minutes?

16 A I was asking her questions about just, you know, I
17 had her wiggle her fingers, her toes, just things I had
18 been taught to do, just checking her status of anything
19 broken, anything, you know, that was not working
20 properly. But she kept complaining about her back was
21 the biggest thing she would complain about.

22 Q Did you ask her about where her husband and kids
23 were?

24 A Over and over I would ask her. And every time I
25 would ask her is the only time she would ask -- she

1 would always get that frantic, "I don't know. I don't
2 know." And then she would go, "Am I going to be okay?"
3 And the only time she would ever say, "Am I going to be
4 okay," which was odd to me, was when I asked about Mike
5 and the kids. Never when I was asking about her back
6 or wiggling her hands or toes or, you know, anything
7 else.

8 Q Did she appear to be responding to any outside
9 voices that you were aware of?

10 A No.

11 Q Was she talking to somebody in the next seat that
12 didn't exist?

13 A No, sir.

14 Q Was she -- was your conversation with her --

15 A She was very coherent.

16 Q Coherent?

17 A Yes.

18 Q You had no problems communicating with her?

19 A No, sir.

20 Q She wasn't appearing to react to any hallucination
21 or anything like that, was she?

22 MR. MAULDIN: Objection; leading.

23 THE COURT: Sustained. Please hold off on the
24 leading.

25 THE WITNESS: Okay.

1 MR. WILKINS: I couldn't hear the objection. I'm
2 sorry.

3 THE WITNESS: As --

4 MR. MAULDIN: Objection; leading.

5 THE COURT: I sustained it.

6 MR. WILKINS: Okay.

7 THE WITNESS: As a former paramedic, I was trained
8 to look for coherency in people because it helped me to
9 realize if they had been knocked unconscious, their
10 mental state at the time. Everything seemed normal to
11 me at the time.

12 Q Okay. So what did you do after EMS arrived?

13 A When EMS arrived, I, of course, let them take over
14 with the c-spine. I had my daughter get out. I come
15 out, and I told the firemen that this was very strange.
16 And I asked when the police would get there because the
17 husband, who lived next door -- they lived next door,
18 the husband and the kids, couldn't find out from her
19 where they were, and that we need to check on them
20 right away. And I immediately went next door to the
21 house and knocked on the door and the windows and tried
22 my best to get someone to the door and no response.

23 Then I came back and told a fireman there that I
24 got no response, and he went to go check himself and
25 got no response and said the back door was opened. And

1 he called the police on the radio and had them on their
2 way out.

3 I also called 911 again and asked them when they
4 would get the police out, that something was very
5 strange going on.

6 Q Did -- were you able to see tire tracks in your
7 yard?

8 A Yes, sir.

9 Q I'm going to show you State's Exhibit 3. Do you
10 recognize those tire tracks?

11 A Yes, sir. That used to be a catalpa tree.

12 Q Was that one of your trees?

13 A Yes, sir.

14 Q And that was it -- what had happened to it?

15 A She ran over it with the truck when she come
16 through -- the wreck previously a few months earlier, a
17 boy had died. He had hit an oak tree which is right
18 beside that tree. But this time the tracks came just
19 to the left of the oak tree and took out some small
20 trees as it went down. And you can see she went -- the
21 oak tree was here, and she went right through, hit the
22 smaller trees and run down and run over in the ditch
23 down here.

24 Q Mr. Hart, if you could answer any questions
25 Mr. Mauldin may have for you. Okay?

1 A Okay.

2 MR. MAULDIN: I'm going to get my water.

3 THE WITNESS: I took a few drinks. Hope you don't
4 mind.

5 CROSS-EXAMINATION

6 BY MR. MAULDIN:

7 Q Mr. Hart?

8 A Yes, sir.

9 Q I'm going to show you some photos that have been
10 marked for identification at this point Defendant's
11 Exhibits 1 through 9.

12 I have shown them to the prosecutor, Your Honor.

13 I'm going to ask if you would recognize them or
14 can identify them.

15 MR. WILKINS: Your Honor, the State has no
16 objection to these.

17 THE COURT: Okay.

18 MR. WILKINS: If he tries to introduce them.

19 THE WITNESS: This is right before my house if
20 you're coming -- if you're coming toward the wreck
21 from, say, 183, from the Spinx.

22 BY MR. MAULDIN:

23 Q Well, I tell you what. I'm going to show it up
24 there so the jury will be able to see what you're
25 talking about.

1 A I do recognize that, yes.

2 Q I just want you to familiarize yourself with them.

3 A Okay.

4 Q All right. Mr. Hart, on the first eight
5 photographs, do you recognize those as photographs
6 taken regarding the tracking of the accident that you
7 testified to?

8 A Yes, sir.

9 Q And in Exhibit Number 9, once again, this is an
10 aerial photograph of that street that shows your house,
11 Anna's house, and the truck that was wrecked; is that
12 correct?

13 A Yes.

14 Q All right. Let's go -- I'm going to go through
15 very quickly.

16 This right here shows the actual position of the
17 truck. Do you see that?

18 A Yes, sir.

19 Q Off the road which was also demonstrated in
20 State's Exhibit Number 2?

21 A Uh-huh.

22 Q It shows your residence right here?

23 A (No audible response.)

24 Q And Anna's residence?

25 A Yes.

1 Q Now, the photographs that I'm going to show to you
2 now are in a sequence in an attempt to demonstrate the
3 happening of this wreck. The first photo is where it
4 showed where her tire tracks went off the road. And
5 that's up close to the front of her house, is it not?

6 A Yes, sir.

7 Q The second is a continuation. And that's not real
8 clear. Hopefully -- but the tire tracks on that
9 photograph right here and right here are where her
10 truck was going through your yard?

11 A Uh-huh.

12 Q All right. A little better view.

13 A I have to say here is a combination of tracks from
14 the wreck before as well as that one.

15 Q Okay. Okay.

16 A That is a culmination of two wrecks there as they
17 were going through.

18 Q So there were tracks that were still in your yard
19 from the previous wreck where a fellow got killed?

20 A Yes, sir.

21 Q He hit an oak tree in your yard?

22 A Yes, sir. That oak tree right there.

23 Q And he hit that tree, and these other marks are
24 Anna's truck?

25 A Correct.

1 Q And that tree, the tree he hit, is where?

2 A Here.

3 Q And the tree she hit is where?

4 A She hit half of this tree here. She went right
5 through here, only clipping half that tree.

6 Q And when she went past that tree, you can see the
7 tire tracks going right through to the right of that
8 telephone pole?

9 A Right. And to the left of the trees here, right
10 through here.

11 Q Went right between the tree and the telephone
12 pole?

13 A Yes, sir.

14 Q And that shows it even more clearly?

15 A Yes.

16 Q Those are her tracks, right?

17 A Yes, sir.

18 Q That other fellah that got killed, he didn't go
19 that far?

20 A No, sir.

21 Q And when she went by the tree -- that's your
22 driveway?

23 A Yes, sir. That's one of the driveways. That goes
24 to a mobile home park I have.

25 Q Going to the right is your driveway?

1 A Yes, sir. That's actually Hardy Trail is the name
2 of that road.

3 Q The --

4 A The driveway is actually called Hardy trail. It
5 goes to a mobile home park that I have.

6 Q Do those photographs accurately reflect the
7 accident of the truck that Anna was driving --

8 A Yes, sir.

9 Q -- and also some evidence of a previous wreck?

10 A Yes.

11 Q Now, a couple of other quick questions. You said
12 that whenever you referenced Mike or the children, she
13 was real frantic and kept repeating, "I don't know. I
14 don't know." Whenever you would say that, she would
15 get very frantic and repeat "I don't know"?

16 A The whole frame of mind would change completely,
17 yes, sir.

18 Q Change of mind. The state of mind would change?

19 A Yes, sir.

20 Q And this was also when she was holding you to
21 prevent you from leaving her?

22 A Yes. She did not want me to go, yes.

23 Q That's all. Thank you, sir.

24 THE COURT: Redirect?

25 REDIRECT EXAMINATION

1 BY MR. WILKINS:

2 Q Briefly, Mr. Hart, that oak tree you pointed to
3 before, she missed that tree, right?

4 A Missed the oak tree. Sure, did.

5 Q Thank you.

6 A And missed the other trees through the yard, too.

7 MR. WILKINS: Thank you.

8 THE COURT: Thank you, sir. You may step down.

9 Do y'all need a break?

10 Okay. Call your next witness.

11 MR. WILKINS: State calls Amber Hart.

12 AMBER HART,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Have a seat and state your name for
15 the record, please.

16 THE WITNESS: My name is Amber Hart.

17 DIRECT EXAMINATION

18 BY MR. WILKINS:

19 Q All right. Ms. Hart, again, I'm going to ask you
20 to make sure you speak into that microphone so we can
21 all hear you. I appreciate it.

22 Ms. Hart, where do you live?

23 A I live on 312 Cherokee Trail.

24 Q Is that the same place where --

25 A I live with my dad.

1 Q Is that your dad who just testified?

2 A Yes.

3 Q And, Ms. Hart, you live there currently now?

4 A I do.

5 Q Were you living there back in May of 2013?

6 A I was. I was still in high school.

7 Q What do you do now?

8 A I work at Greenville County Animal Care.

9 Q Now, I'm going to bring you back to May 14th, the
10 morning, early morning of May 14th, 2013. Do you
11 remember that day?

12 A I do.

13 Q Okay. Can you tell us what happened that morning?

14 A I woke up. I heard this loud noise. I thought it
15 was thunder outside, so I peeked out my window, and
16 there wasn't a cloud in the sky so I go running through
17 the house. And I open up the front door, and I see my
18 dad taking off the in the car. So I was like, Oh,
19 great. There must have been another wreck or
20 something.

21 So he drives down the road, and I was trying to
22 wave him down. I actually called 911 because I assumed
23 it was a wreck. He drives down the road and parks his
24 car, so I was like, Good. I don't have to chase him
25 far. I ran down there, and that's when I saw the

1 truck.

2 Q Do you remember about what time you called 911?

3 A I want to say it was about 6:30.

4 Q Was it dark outside?

5 A It was dark outside.

6 Q And so after you ran down your driveway, what did
7 you see?

8 A I didn't actually run down the driveway. I ran
9 through my front yard.

10 Q My apologies. So you ran through the side, sort
11 of cut your yard in half?

12 A Yeah, because I was actually chasing my dad's car.
13 And when I got to the car where he had shined the
14 headlights on the truck, I saw Anna in the truck. And
15 she was talking to my dad, calling him Scott. And I
16 was like, "Oh, my gosh, Dad. This is the neighbor."

17 Q Is that what you said to your dad?

18 A Yeah.

19 Q And so what did you do when you got there after
20 you saw them talking?

21 A We tried to open up the front door, and it
22 wouldn't budge, so we opened up the back and I climbed
23 in and held her head while my dad was doing some type
24 of medical something.

25 Q Were you able to get into the back of the car?

1 A I was.

2 Q And what did you do there?

3 A I held her head, so.

4 Q And during this, what was Anna saying?

5 A She was begging my dad not to leave. Every time
6 he would like back up to go up to the road or even just
7 back up the littlest bit, she would grab his hand,
8 "Please don't leave me. Please don't leave me." And
9 he was like, "It's okay. It's okay." And she was
10 complaining about her back hurting. And she kept
11 asking, "Am I going to be okay?" every time he'd ask
12 about Mike and the kids. She just -- I don't know.
13 "Am I going to be okay?" And, of course, comforting
14 her. "You're fine. You're fine. You're wiggling your
15 toes. You're moving your fingers. You should be
16 fine." And he would ask, "Where is Mike and the kids?
17 Where are they? We're worried about them." And, "I
18 don't know."

19 Q Did -- was she responding to any voices that
20 weren't there?

21 A No.

22 Q Were you able to have a coherent conversation with
23 her?

24 A Yes. The only time she ever looked away from my
25 dad is when she would look at me and ask me if she was

1 going to be okay.

2 Q How many times did she ask you if she was going to
3 be okay?

4 A Like maybe twice.

5 Q Okay. About how long were you there with her?

6 A The entire time my dad was. I was there maybe
7 like ten minutes at the most, and then another lady
8 came in a car. I thought she was EMS, so I was like,
9 "Oh, you're EMS. Thank God you're here." And she was
10 like, "Oh, I'm actually off duty." So she came down
11 and helped out until the actual paramedics and firemen
12 and all that got there. And then when they got there,
13 I also left with my dad, and I went back inside while
14 he knocked on the doors.

15 Q Ms. Hart, ask any questions defense counsel may
16 have for you -- I'm sorry, answer any questions.

17 MR. MAULDIN: I have no questions, Your Honor.
18 Thank you.

19 THE COURT: Thank you, ma'am. You can step down
20 and call your next witness.

21 MR. WILKINS: Your Honor, the State calls Keri
22 Finley.

23 KERI FINLEY,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE CLERK: Have a seat. State your name for the

1 record please.

2 THE WITNESS: My name is Keri Finley.

3 DIRECT EXAMINATION

4 BY MR. WILKINS:

5 Q Ms. Findlay, make sure you speak into that
6 microphone for us. Thank you.

7 A Okay.

8 Q Ms. Finley, by who are you employed?

9 A Greenville County EMS.

10 Q And how long have you been employed with the
11 Greenville County EMS?

12 A Eight years.

13 Q Back in May 14th of 2013, who were you employed
14 with?

15 A Greenville County EMS.

16 Q Were you working that morning?

17 A I had just gotten off at 5 o'clock in the morning.

18 Q That morning, on the 14th, did you have the
19 occasion to go to -- drive by a car wreck on Cherokee
20 Trail?

21 A I did.

22 Q Can you tell us about that?

23 A I was going my normal way home. I pulled up.
24 There was a young girl standing in the middle of the
25 road flagging me down so I stopped. I saw the pickup

1 truck in the ditch, and I got out, introduced myself,
2 asked what happened -- or when I walked up, she -- the
3 female that was driving the vehicle yelled, "My God, my
4 back. My God." I asked what happened, and she said,
5 "I don't know." I asked if EMS was on the way. They
6 had already called 911. I asked her what her name was.
7 She said "I don't know." I continued to ask what
8 happened.

9 The neighbor told me that they couldn't get the
10 kids or the husband to the door, so I said, "Where are
11 your kids? Where is your husband?" "I don't know."
12 EMS got there. I got in the backseat to help keep her
13 still as they popped the door open.

14 Q Did you ever see her respond to any
15 hallucinations?

16 A I did not.

17 Q Did you ever see her respond to any outside voices
18 that didn't exist?

19 A I did not.

20 Q Namely, in a nutshell, what all was she -- was she
21 complaining of her injuries?

22 A Her back. She kept saying her back hurt. I
23 kept -- I was behind her, behind the driver's seat,
24 trying to hold her still, keep her calm, and the only
25 time she would talk is if I would ask her a question,

1 and then she would say, "I don't know."

2 When the EMS got there, they started talking and
3 she said, "My name's Anna." And then when she asked
4 about the kids and the husband, it was, "I don't know."

5 Q If you will answer any questions Mr. Mauldin may
6 have.

7 MR. MAULDIN: I've got just one, Your Honor.

8 THE COURT: Okay.

9 CROSS-EXAMINATION

10 BY MR. MAULDIN:

11 Q Ms. Finley, now, you were on EMS but you were
12 coming home?

13 A I was coming home from work.

14 Q Were you at that time aware or are you aware now
15 that she had a broken back, that in the car wreck she
16 had actually broken her back?

17 A I was not aware of that. She just kept
18 complaining about her back.

19 Q That's all.

20 THE COURT: Any redirect?

21 MR. WILKINS: No, sir.

22 THE COURT: Thank you, ma'am. You can step down.

23 Let's take about a ten-minute recess, stretch your
24 legs a little bit, get a little something to drink.

25 We'll get you back in here. Don't talk about the case.

1 (WHEREUPON, the jury exited open court at
2 4:28 p.m.)

3 THE COURT: Anything before I go back to the
4 chambers?

5 MR. WILKINS: No, Your Honor.

6 MR. MAULDIN: No, Your Honor.

7 THE COURT: All right. We'll put your argument on
8 the record on that issue when I get back.

9 MR. MAULDIN: Yes, sir, please. Thank you.

10 (WHEREUPON, a recess was taken from 4:29 p.m. to
11 4:43 p.m.)

12 THE COURT: Mr. Mauldin.

13 MR. MAULDIN: Your Honor, I made a note of an
14 objection to the remark of the solicitor during his
15 opening statement, and I appreciate the opportunity now
16 to put that on the record.

17 THE COURT: Yes, sir.

18 MR. MAULDIN: In the statement by the solicitor,
19 he went at length to explain and describe the four
20 options that the jury would have in this case. He went
21 to define the guilty but mentally ill criteria, what
22 the jury would be asked to conclude in support of that,
23 and what I would describe as essentially provided the
24 jury with an invitation to begin the process of
25 practicing psychiatry.

1 We have put on the record vigorously our position
2 regarding that type of invitation to this jury. And in
3 light of particularly of this court's pretrial matters
4 involving what the verdict form may or may not show and
5 whether a statute was or was not applicable, I believe
6 that the opening was just simply like none of that had
7 happened. It was -- you know, the verdict form is
8 going to need to reflect the testimony and evidence in
9 the case. And anything that -- the jury has now been
10 for all intents and purposes, I'll use instructed, to
11 begin the process of developing whether or not Anna
12 Simpson was capable of conforming her conduct.

13 Well, there's no -- if you recall, Your Honor, in
14 my opening I tried to stay away from the law. And I
15 think that's a good policy because I don't know what
16 the evidence is going to say. And I just think that
17 this crossed the line. It made this jury begin to
18 speculate about what -- which of the four options, he
19 said it over and over again.

20 The remedy is a mistrial. We respectfully request
21 that the court declare the case a mistrial based upon
22 the inappropriate opening comments to this jury about
23 what verdict forms are or not going to be, particularly
24 in light of the pretrial rulings. Thank you.

25 THE COURT: All right. Thank you.

1 MR. WILKINS: Your Honor, the verdict form is by
2 law. I mean, I'm just reciting what the law was and
3 the options that they're going to have in every case
4 like this. It's by law. And that's merely laying out
5 their four options, ask them to take that -- use that
6 information as they're listening to testimony. To take
7 the testimony, you listen to it. I was actually --
8 didn't present a lot of testimony in my opening
9 statement, unlike defense counsel.

10 THE COURT: Anything else?

11 MR. WILKINS: No.

12 THE COURT: Anything else?

13 MR. MAULDIN: And to the extent that he says "by
14 law," if it's the statute he's depending upon, then I
15 once again take a position that's an absolute blatant
16 violation of the separation of powers and
17 unconstitutional. Thank you.

18 THE COURT: Yes, sir. And I believe it's 17-24-40
19 or 30. You got it? I've got it right here. All
20 right. 17-24-30 says, "In the prosecution for a crime
21 when the affirmative defense of insanity is raised by
22 the defendant, or when there is enough evidence of
23 that, the trier of fact," which in this case is the
24 jury, "shall find under the applicable law and the
25 verdict must so state whether the defendant is guilty,

1 not guilty, not guilty by reason of insanity, or guilty
2 but mentally ill."

3 And you're correct. In pretrial arguments you
4 discussed that that was a clear separation -- clear
5 violation of the separation of. Powers it's the
6 legislative branch telling the judicial branch or
7 telling the jury what they have to do, and so I did
8 take that under advisement, and I indicated that
9 regardless of what the statute says, if I think the
10 evidence doesn't show all four, that I think I have the
11 authority and the power to, you know, charge the jury
12 and give them a verdict form which does include
13 whatever findings they can make, whether it's all
14 three, whether it's two, whether it's one, whether
15 it's -- well, not one -- but whether it's two, whether
16 it's three, or maybe whether it's all four. So I did
17 take that under advisement, didn't make a ruling on it.
18 But I don't think him mentioning -- the solicitor
19 mentioning that in the opening statement so takes this
20 trial as to declare a mistrial, so I decline to grant a
21 mistrial. But you are protected in the record.

22 MR. MAULDIN: Thank you, Your Honor.

23 THE COURT: Anything else you want to say on that?

24 MR. WILKINS: No, sir, Your Honor.

25 THE COURT: All right. Y'all ready for the jury?

1 MR. WILKINS: Yes, sir.

2 THE COURT: Timing-wise. All right. Y'all see
3 what time, it is ten until 5:00. We're already in
4 traffic, okay.

5 So, you know, do y'all want to do two more?

6 MS. STROM: Yes, sir. We have two more available
7 to us.

8 THE COURT: Two more is what we'll do.

9 MS. STROM: 15, 20 minutes, tops, I think. Maybe
10 a little longer.

11 THE COURT: Then we've got tomorrow -- okay.
12 We'll talk about that afterwards.

13 All right. Let's bring the jury.

14 (WHEREUPON, the jury entered open court at
15 4:49 p.m.)

16 THE COURT: All right. All members of the jury
17 are present.

18 Ladies and gentlemen, it's my understanding we
19 have about two witnesses left, so we'll go ahead and
20 finish those today, and then we recess for the evening
21 and go from there. Okay?

22 All right. Solicitor.

23 MS. STROM: The State calls Jon Conway.

24 ///

25 JON CONWAY,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: Have a seat and state your name for
3 the record, please.

4 THE WITNESS: I'm Jon or Jonathan Conway.

5 DIRECT EXAMINATION

6 BY MS. STROM:

7 Q Mr. Conway, I need for you to speak into that
8 microphone. Keep your voice up so everybody can hear
9 you. All right?

10 A Yes, ma'am.

11 Q By whom are you employed?

12 A Greenville Memorial.

13 Q Greenville Memorial Hospital?

14 A Hospital, in the emergency trauma center.

15 Q What do you do there?

16 A I'm an RN.

17 Q And how long have you been an RN?

18 A I've been there for over eight years now.

19 Q And has all that time been working in the
20 emergency room?

21 A Straight out of school into the emergency room.

22 Q All right. I'm going to take you back to the
23 early morning hours of May 14, 2013. That would have
24 been the morning that they brought Anna Simpson into
25 the hospital?

1 A Yes.

2 Q Do you recall that day?

3 A I do.

4 Q All right. Were you working that day?

5 A I was.

6 Q All right. Tell us how it was that you became
7 involved in this event?

8 A We're assigned rooms in the morning, and so my
9 assignment was in critical care that day and --

10 Q So you were assigned to the critical care unit,
11 which would mean what? What would you do in critical
12 care?

13 A It can be more severe accidents, sick people,
14 anything that requires more in-depth attention.

15 Q So you're working that morning. You were assigned
16 a particular room. Anna Simpson was the patient in
17 that room?

18 A She was. She was in Room 3. I can even remember
19 that.

20 Q Okay. Tell us -- tell us about your interaction
21 with the defendant, Anna Simpson, when she came in.

22 A When I went into the room, I have to introduce
23 myself, tell the patient what my role is, that I'm
24 going to be her nurse that day and --

25 Q Did you do that in this case?

1 A I did.

2 Q Okay. What happened?

3 A I introduced myself, told her my name. I said I
4 would be her nurse, and she was still on a backboard
5 with a neck collar on, just standard EMS protocols.
6 And when I introduced myself, I always just say, "What
7 brought you in here today?" And she had a very flat
8 affect. She wouldn't speak up at first. She was just
9 sitting there or laying there.

10 And so I got closer to her. She was pretty much
11 just looking up at the ceiling because you're on a
12 backboard, and you're kind of immobile, and you have
13 that neck collar on. So I made eye contact with her,
14 and I said, "Can you tell me what brought you in here?"
15 and she was quiet again. And I said, "If you don't
16 talk to me, I can't help you." I said, "You're going
17 to be on this hard board, you can't move, I don't know
18 what your injuries are." I said, "You need to talk to
19 me if you would like me to help you any further."

20 Q What did she say?

21 A I expected her to tell me about the wreck, and she
22 said, "I shot my husband and my kids," and she said,
23 "And then I had an accident."

24 Q Did you talk to her anymore about that?

25 A Yeah. I got -- I kept trying to get her to talk

1 and tell me more what was going on, and she
2 basically -- I asked her why she shot her kids. I
3 said, "Why would you hurt your kids?" And she said,
4 "Because it's an awful world." And I responded, I
5 said, "Don't you think your husband and kids should
6 have had the decision to make -- decide if they thought
7 it was an awful world? Why didn't you just try to kill
8 yourself?" And she said, "I thought about it and I
9 tried, but I couldn't do it." And I said, "So you
10 didn't have a problem shooting them, but you couldn't
11 kill -- shoot yourself?" And she said, "No, I couldn't
12 pull the trigger." And I said -- I kind of kept -- I
13 was pretty frustrated, you know. It was kind of hard
14 hearing someone say they just shot their kids. So I
15 said, "I just don't see why you would shoot your kids
16 and not yourself," and then she said, "Well, I tried
17 but then it wouldn't shoot." So she said that. She
18 got in the truck. And she said that someone had died
19 close to their house not long before that, and she
20 would get in the truck and try to kill herself that
21 way.

22 Q This conversation that you're having with her
23 there in the critical care room, when she first came
24 in, what was she, if anything, providing to you about
25 what happened?

1 A What is it? I'm sorry.

2 Q Well, when you first talked to her and you say,
3 you know, why are you in this -- why are you here,
4 what, if anything, did she say to you?

5 A Well, she was just -- she wouldn't speak at all at
6 first. You know, there were police in the room. But
7 then when they were going to the doors and leaving, it
8 seemed like that's when she started talking to me.
9 She's just -- she was just telling me, you know,
10 about -- she had never even mentioned her back hurt or
11 anything, just that she just wanted off that backboard.
12 And that's why I kept saying, "I can't help you until
13 you talk to me" and stuff, and then she got into more
14 detail because we told her we still had to take her to
15 CAT scan and check her out and look for any injuries
16 and stuff.

17 Q Did she ever indicate to you that she did not want
18 to talk about the event?

19 A No. She was quiet at the beginning, but I was
20 surprised that she started telling me the events that
21 she did do. So she told me about it 'til I think the
22 police saw her talking to me, and they started coming
23 back into the room because I remember someone even
24 holding a tape recorder, and that's when she stopped
25 talking to me again. And then she wouldn't talk after

1 that.

2 Q I'm going to show you -- can I refresh his memory
3 with his statement that he gave to law enforcement?

4 MR. MAULDIN: I don't think he said he doesn't
5 remember. I mean, in order to refresh a witness'
6 memory, the witness has got to say, "I don't remember."

7 THE COURT: You can show him the statement.

8 BY MS. STROM:

9 Q Take a minute. Don't talk about what's in it,
10 just take a minute and read it. Okay?

11 A Okay.

12 Q Don't talk about it.

13 THE COURT: Objection noted.

14 THE WITNESS: I do remember that.

15 BY MS. STROM:

16 Q Okay. Having read -- reread your statement, that
17 was a statement you gave law enforcement that day,
18 correct?

19 A Yes, ma'am.

20 Q All right. And my question was to you: Did she
21 ever at any time ever indicate to you that she did not
22 want to talk about this event?

23 A This, it was at the very beginning she said, "I
24 don't want to talk about it." And that's when I kind
25 of made my threat, "If you don't talk to me, I can't

1 help you." Then she started telling me again. But
2 then later again she started saying, "I don't want to
3 talk about it anymore."

4 Q Thank you.

5 A Yes.

6 MS. STROM: Please answer any questions the
7 defense may have.

8 THE WITNESS: Okay.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION

11 BY MR. MAULDIN:

12 Q Mr. Conway?

13 A Yes.

14 Q How you doing today?

15 A I've been better, I guess.

16 Q Okay. She said, when you first began a
17 conversation with her, she's on a -- she has a broken
18 back, by the way. I guess you learned that?

19 A After she went to CAT scan, that's when we found
20 out she had a broke back.

21 Q So she's on one of these back board things with
22 the neck brace?

23 A Yes.

24 Q And you come in, and she says to you or you said
25 something to her and she said, "I don't want to talk

1 about it"?

2 A Right.

3 Q Okay. So we began with "I don't want to talk
4 about it," and then what we then ended up with was she
5 told you that, "I shot my kids, then my husband and
6 tried to shoot myself several times but couldn't do
7 it"?

8 A That's --

9 Q That's what she actually said to you, right?

10 A Yes.

11 Q And when you asked her -- so she said she tried to
12 shoot herself several times but couldn't do it?

13 A Yes.

14 Q I want to make sure the jury understands the exact
15 words.

16 A Okay.

17 Q Then you said something about the children, and
18 she said, "I didn't want them to live in this awful
19 world," is what she said to you. And she then said
20 that a man had died in the front yard in a previous
21 wreck and that she was attempting to crash her truck in
22 the same way that the man had done before?

23 A Yes.

24 Q Right? So there was absolutely no question, one,
25 that she didn't want to talk about it initially?

1 A She didn't want to talk about it to begin with.

2 Q She didn't want to talk about it when you first
3 approached, didn't want to talk about it, about
4 anything?

5 A Right.

6 Q But when you encouraged her to talk, she told you
7 she had shot her children, she told you she had shot
8 her husband?

9 A Yes.

10 Q She told you that she had attempted suicide with
11 the firearm several times, and she told you she had
12 attempted to mimic the car wreck that killed the man
13 three or four months before?

14 A She did.

15 Q Okay. Nothing further.

16 MS. STROM: Very briefly, Your Honor.

17 THE COURT: Yeah. Redirect.

18 REDIRECT EXAMINATION

19 BY MS. STROM:

20 Q This detail that she's giving you, does she just
21 blurt this out to you, or is this in response to your
22 questions?

23 A This was in response to my questions. And this
24 was also over probably 20, 30 minutes time, you know.
25 It's talking to her, trying to get her to tell me

1 what's going on, and then, you know, she would be quiet
2 for a while. And I had to kind of drag it out of her,
3 though.

4 Q And her answers to you, though, were appropriate
5 to what you were asking her?

6 A She answered every question, you know, when I got
7 her to speak, you know, completely clearly. She was
8 alert and oriented. She -- I also have to do my
9 questions that checks to see their mental status, you
10 know, like they're alert to person, place, and time.
11 She knew her name, she knew where she was, she knew
12 what day it was, you know. She spoke clearly. She
13 just didn't want to talk about it. And I noticed it
14 was more, to me, when the police were around than when
15 they weren't.

16 MR. MAULDIN: Your Honor, one moment. I believe
17 this went beyond the scope of redirect, so I do enter
18 an objection to that.

19 THE COURT: Okay. Objection overruled.

20 Anything on recross? She's tendered the witness.

21 MR. MAULDIN: No.

22 THE COURT: All right. Thank you, sir. You may
23 step down.

24 State call its next witness.

25 MS. STROM: Tommy Camp.

1 THOMAS CAMP,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE CLERK: Have a seat and state your name for
4 the record, please.

5 THE WITNESS: It's Thomas Camp.

6 DIRECT EXAMINATION

7 BY MS. STROM:

8 Q Mr. Camp, obviously you're employed with the
9 Pickens County Sheriff's Office?

10 A Yes, ma'am.

11 Q Wearing the uniform. How long have you been with
12 Pickens County?

13 A Right at five years, ma'am.

14 Q And do you have any previous law enforcement
15 experience, or what was your position before going with
16 the sheriff's office?

17 A I ran an insurance agency in Greenville since I
18 was 18, so family business.

19 Q All right. And in what capacity are you employed
20 with Pickens County? What's your job?

21 A I'm a road deputy, just patrol. Dacusville area
22 is my assignment.

23 Q As part of your duties, I want to take you back to
24 May 14th, the early morning hours of May 14th, 2013.

25 Were you working then?

1 A I was, yes, ma'am.

2 Q You were working that morning shift?

3 A Yes, ma'am.

4 Q How is it that you went out to Cherokee Trail?

5 A Okay. Initially, we go to what we call roll call
6 every morning before shift to find out what happened
7 during the night or find out what areas specifically we
8 need to specifically patrol. And I heard the accident
9 come over the radio and didn't think anything of it, so
10 we went on to our shift meeting.

11 Q When you say "coming over the radio," where are
12 you hearing that?

13 A It --

14 Q Dispatch?

15 A Dispatch, yes, ma'am. They had dispatched a
16 traffic unit to go out there to assist with traffic
17 until highway could show up on scene.

18 Q Do you know approximately what time was that?

19 A It was still dark. It was probably 5:30 or so.

20 Q When the accident was dispatched?

21 A Yes, ma'am.

22 Q What did you do then?

23 A Went on to the office and go over our BOLD, which
24 is be-on-the-lookout-for, items and go over the night
25 shift issues.

1 Q While you were in roll call, did you have occasion
2 to be dispatched out to the residence of Michael and
3 Anna Simpson?

4 A I did. Dispatch called. It didn't come out over
5 the radio. They called into our room by telephone and
6 talked to the lieutenant on duty and advised him that
7 Ms. Simpson had spoken to EMS, and EMS wanted us to do
8 a well-being check on Michael and the children at that
9 location. So he advised me to go lights and sirens and
10 they would follow shortly; so.

11 Q And did you?

12 A I did.

13 Q All right. And when you got to the residence,
14 that, of course, is in Pickens County, correct?

15 A Yes, ma'am, it is.

16 Q I'm going to show you State's Exhibits 4 and 5. I
17 have previously shown them to defense counsel.

18 I'm going to ask you first if you would just take
19 a quick look at those.

20 A Okay.

21 Q Are they true and accurate photographs of the
22 residence?

23 A Yes, ma'am, they are.

24 MS. STROM: Offer them into evidence.

25 MR. MAULDIN: No objection.

1 THE COURT: Without objection, introduce 4 and 5.
2 (WHEREUPON, State's Exhibit Numbers 4 and 5 were
3 admitted into evidence.)

4 BY MS. STROM:

5 Q When you get to the Simpson residence, tell this
6 jury what you did. What was the first thing you did?

7 A Turned my siren off and pulled into the driveway.
8 And I was approached by Dacusville fireman Tim Landers.
9 He advised me that he had found an open door leading
10 into the garage area, but he or no one had entered and
11 they were waiting on me to get there.

12 Q Okay.

13 A I told them to stay out of the way, stay back and
14 that my backup was on the way, so.

15 Q And what -- I take it you entered the residence?

16 A I did. I entered through the door next to the
17 garage door.

18 Q State's Exhibit 4. And there is a laser pointer
19 up there. I think you can --

20 A That door right there, ma'am.

21 Q You entered through that door?

22 A Yes, ma'am.

23 Q Where did you go?

24 A Cleared that garage area first to make sure there
25 was no one there. And then there's a door that leads

1 into like a kitchen or breakfast -- breakfast area.

2 Q State's Exhibit 5?

3 A Yeah. If I remember correctly, that screen door
4 was closed and that door was also closed. I knocked
5 and announced who I was, Pickens County Sheriff's
6 Office. And at that point I entered the residence.

7 Q To clarify, you did not take those photographs?

8 A No. Those are not my photographs.

9 Q Those were taken by SLED later when they came and
10 processed the scene?

11 A Yes, ma'am, I believe so.

12 Q I just want to make sure. The storm door was?

13 A Closed, as far as I remember, yes, ma'am.

14 Q And the hard -- the wooden door would have been?

15 A It was also shut. I knocked and entered. It was
16 unlocked.

17 Q It was unlocked?

18 A Yeah. There was no forced entry. I didn't see
19 any damage to any exterior doors.

20 Q Okay. So when you entered, tell us what you did.

21 A I, first off, opened the door and looked, and the
22 breakfast area, you could see the table and the chairs
23 right there. And as soon as I walked in, I could
24 hear -- at that point I didn't know what the noise was
25 but it was coming from the back of the house. It

1 was -- it was awful. It was -- later on I found out it
2 was from Mr. Simpson breathing, but you could hear it
3 from that doorway. It was labored breathing.

4 Q Labored breathing.

5 A And the kitchen is to the left. And I cleared
6 that and went toward the interior of the home clearing
7 it room by room.

8 Q Did you notice when you entered, were the lights
9 in the residence on or off?

10 A They were off, ma'am. I used my flashlight.

11 Q You had to use your flashlight to go through the
12 rooms?

13 A Yes, ma'am.

14 Q So you go through the kitchen, clear the kitchen,
15 then what do you do?

16 A There is another room to the left that's the front
17 of the house toward the front door, and there was a gun
18 safe to the right that was open with multiple guns
19 laying in the floor and some still in the safe and ammo
20 laying -- boxes of ammo laying all over the place and
21 scattered. That gets your heart rate up.

22 Q What did you do?

23 A Still didn't find anyone there. I could still
24 hear Mr. Simpson, but training teaching you to clear
25 room by room as you come to them. So I then went,

1 proceeded down the hallway, and there is a door to the
2 left, I believe, and it was locked. And I unlocked it,
3 opened it, and it was a set of steps that go down, so I
4 shut that door and locked that door back.

5 And then I entered [Male Child] room, found him there.
6 It was apparent that he was dead. He had -- his
7 eyeball was protruding from his eye socket. And he had
8 Spiderman stuff all in his room, Spiderman pajamas, and
9 he was tucked in his bed.

10 Q Did you notice any wounds to him?

11 A You could see the entry wound to the head area,
12 ma'am.

13 Q Okay.

14 A And I exited that room and then cleared -- across
15 the hallway was a bathroom, I believe. And then I
16 entered -- I believe her name is [Female] I believe I
17 entered [Female] room next, and Hello Kitty was all
18 about her room. And I remember seeing a bullet hole in
19 the wall, and I remember her -- her head slightly up,
20 and it was apparent she was dead also.

21 And I exited that room. I remember seeing shell
22 casings in both rooms. Laying -- one was on [Male Child]
23 bed and one was in the floor, and I believe in her room
24 I remember seeing one. But then I went to the master
25 bedroom and saw Michael laying there, and I cleared

1 that room. And I believe there was a master bathroom.
2 I cleared it. And I got on the radio and told my
3 lieutenant that I had one survivor and I needed EMS to
4 get there.

5 Q And did EMS come and remove him?

6 A They did pretty quickly after that, but my backup
7 arrived before they did and they re-cleared the house,
8 and I told Michael to hang in there. And then I
9 cleared the downstairs while they were upstairs.

10 MS. STROM: Just court's indulgence.

11 Thank you. Please answer any questions the
12 defense may have.

13 THE COURT: Mr. Mauldin.

14 MR. MAULDIN: Just a couple, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q Mr. Camp, when you went in the residence, you
18 mentioned that you noticed a safe, and I think you said
19 it was a gun safe?

20 A Yes, sir.

21 Q Is that what that --

22 A Yes, sir. One of those secured gun safes with a
23 combination.

24 Q So it actually is a safe that's designed to put
25 guns in it?

- 1 A Yes, sir.
- 2 Q Okay. And you said that the door of the safe was
3 open?
- 4 A Correct.
- 5 Q And your testimony was that there were multiple
6 guns. Do you have an estimate of how many guns were
7 involved?
- 8 A Not really. I mean --
- 9 Q Okay.
- 10 A -- probably five or six, at least.
- 11 Q Photographs were taken of that, were they not?
- 12 A Yes, sir.
- 13 Q And there would have been rifles and handguns?
- 14 A I believe there were shotguns and rifles and some
15 handguns also.
- 16 Q And handguns?
- 17 A Yes.
- 18 Q And there was an array of ammunition laid out --
- 19 A Yes, sir.
- 20 Q -- on the carpet in front of the safe, the door to
21 the gun safe?
- 22 A Yes, sir, that's correct.
- 23 Q Different types of ammunition?
- 24 A At a quick glance, yes, sir.
- 25 Q Is that what your recollection is? All right.

1 The last question I want to ask you: When you
2 came in and you came in through the door from the
3 garage, I think you said you heard a noise, didn't know
4 what it was at that point. And in your report, I think
5 you said that you heard Victim Number 1, who was
6 Michael Simpson, gasping for breath; is that what you
7 described, gasping for breath?

8 A Yes, sir. Yes, sir.

9 Q Okay. All right. That's all.

10 THE COURT: Any redirect?

11 MS. STROM: No, Your Honor.

12 THE COURT: All right. Thank you, sir. You can
13 step down.

14 Anything further from the State today?

15 MR. WILKINS: Nothing from the State.

16 THE COURT: All right. Thank you.

17 All right. Ladies and gentlemen of the jury, now
18 is a good time to stop for the afternoon. Again, I'm
19 going to remind all of you that you cannot talk about
20 this case with anybody, not even yourselves. If
21 somebody -- I'm not naive. I know many of you may be
22 married and your spouse says, "Are you on the jury?"

23 "Yes."

24 "Well, what happened?"

25 "Well, the judge told me I can't talk about it."

1 That's all you have to say, okay. Don't do any
2 independent research on the case. Do not watch any
3 news, read any newspapers about it, go on Facebook, go
4 on Google, Twitter, et cetera. Just don't do it. If
5 you do it, you are violating your oath as a juror,
6 you're going to mess up things, and you'll have to
7 answer to me. And I know y'all won't do that.

8 So having said that, we will recess until tomorrow
9 morning at 9:45 a.m., okay. I want y'all to be in your
10 jury room ready to go at 9:45. We'll be here a little
11 bit earlier dealing with some other matters so we can
12 probably get started with y'all at 9:45, okay.

13 Thank you very much. Y'all have a wonderful
14 evening.

15 (WHEREUPON, the jury exited open court at
16 5:16 p.m.)

17 THE COURT: Anything further?

18 MR. WILKINS: Not from the State.

19 MR. MAULDIN: Nothing further.

20 THE COURT: All right. Y'all be ready to go at
21 9:45 tomorrow morning.

22 (WHEREUPON, proceedings adjourned at 5:18 p.m.)
23
24
25

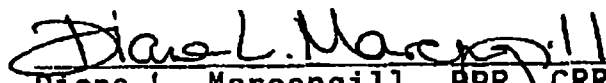
Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 20th day of June 2016.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2016


Diane L. Marcengill, RPR, CRR
Circuit Court Reporter

1 State of South Carolina
2 County of Pickens In the Court of General Sessions

3
4 State of South Carolina,

5

2014-GS-39-0396-98

6 -vs-

June 21, 2016

7 Suzanna Brown Simpson,

Volume 2 of 4

8 Defendant.

Pages 231 - 413

9

Transcript of Record

10

11

B E F O R E:

12

The Honorable Brian M. Gibbons, Judge;
13 and a jury.

14

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

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Betty C. Strom, Esquire
17 Attorneys for the State

18 John Mauldin, Esquire
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Diane L. Marcengill, RPR, CRR
24 Circuit Court Reporter

25

26

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For the Defendant:

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:48 a.m.)

4 THE COURT: All right. Good morning.

5 Lawyers, any issues before we bring the jury out?

6 MR. WILKINS: There's none from the State, Your
7 Honor.

8 MR. MAULDIN: None, Your Honor.

9 THE COURT: Okay. Let's bring the jury out.

10 (WHEREUPON, the jury entered open court at
11 9:49 a.m.)

12 THE COURT: All right. All members of the jury
13 are present.

14 Good morning, ladies and gentlemen. I hope you
15 had a nice evening. I know we're getting ready to work
16 first thing this morning, so thank you again for
17 serving as jurors.

18 Y'all ready to proceed?

19 MS. STROM: State is ready, Your Honor.

20 THE COURT: Call your next witness.

21 MS. STROM: State calls Kukilia Wallace.

22 KUKILIA WALLACE,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: Thank you, ma'am. If you would have a
25 seat and state your name for the record, please.

1 THE WITNESS: My name is Kukilia Wallace.

2 DIRECT EXAMINATION

3 BY MS. STROM:

4 Q Kukilia. I apologize for mispronouncing that.

5 A No problem.

6 Q By whom are you employed?

7 A I'm employed with the South Carolina Law
8 Enforcement Division, also known as SLED.

9 Q What do you do there?

10 A I'm a crime scene agent. My responsibilities are
11 to respond throughout the state to assist local, state,
12 and federal agencies as relates to processing crime
13 scenes.

14 Q How long have you been employed with SLED?

15 A I've been employed with SLED 11 years.

16 Q Has it all been in that capacity?

17 A No, it has not.

18 Q What capacity?

19 A I served for five years in the drug analysis
20 department, at which time I then transferred to the
21 crime scene department and have been doing that for the
22 last six years.

23 Q And what is your education, professional training
24 to hold that position?

25 A I have a bachelor's degree from the University of

1 South Carolina in chemistry. I've also completed basic
2 training at the South Carolina Criminal Justice Academy
3 where I completed 12 weeks of law enforcement training.
4 I've also received competency testing within the crime
5 scene discipline to include evidence collection and
6 documentation and report writing.

7 Q Have you ever been qualified in the courts of this
8 state as an expert in crime scene investigation and
9 collection of evidence?

10 A I have.

11 Q Approximately how many times?

12 A Three times.

13 Q Three times.

14 MS. STROM: Your Honor, at this time we would
15 offer Ms. Wallace as an expert in the area of crime
16 scene investigations and evidence collection.

17 THE COURT: All right.

18 Any further voir dire from the defense?

19 MR. MAULDIN: No objection.

20 THE COURT: Without objection, then she is
21 qualified as an expert in the field of crime scene
22 investigation and evidence collection.

23 Ladies and gentlemen of the jury, when someone
24 is -- normally when somebody testifies, they have to
25 testify about what they saw, heard, or smelled or

1 something of the like. There is an exception, however,
2 for those witnesses who we in court refer to as expert
3 witnesses. If someone is qualified as an expert
4 because of their education, their training, et cetera,
5 or their credentials, et cetera, they are allowed to
6 give opinion testimony, okay.

7 Now, just because someone is qualified as an
8 expert doesn't mean you have to accept their opinion.
9 You can weigh that and determine its credibility just
10 as you weigh and determine the credibility of all the
11 evidence when you begin to deliberate. But it's just
12 an evidentiary issue for you to consider.

13 Okay.

14 MS. STROM: Thank you, Your Honor.

15 Q Ms. Wallace, did you have an occasion to respond
16 to Cherokee Trail, the home of Anna and Mike Simpson,
17 back on May 14, 2013?

18 A Yes.

19 Q And how was it that you were called out to do
20 that?

21 A I received notification from SLED operations,
22 which is where all of the requests for crime scene go
23 to. They called us and indicated that we had a request
24 from the Pickens County Sheriff's Department in
25 reference to processing a crime scene. We then

1 responded.

2 Upon arrival, I made contact with -- may I refer
3 to my notes throughout my testimony?

4 THE COURT: Yes, ma'am.

5 MS. STROM: Yes.

6 THE WITNESS: I made contact with Chief Deputy
7 Hashe and Lieutenant T. Gilstrap with the Pickens
8 County Sheriff's Office.

9 BY MS. STROM:

10 Q Once you made contact -- what's the purpose of
11 making contact with the investigators out there?

12 A The purpose of making contact is to get all of the
13 initial information, what it is that they received at
14 the time of the incident or the time of call. We also
15 determine, based on the information that we receive,
16 how we're going to go about processing the scene.

17 Q And did you, in fact, process this scene?

18 A Yes, I did.

19 Q Tell this jury briefly, give us a walk-through of
20 what you did when you arrived.

21 A Upon arrival, as I said before, I met with Chief
22 Deputy Hashe and Lieutenant Gilstrap. The information
23 they provided to me was they had received a 911 call in
24 reference to a collision not too far from the
25 residence, which was 307 Cherokee Trail.

1 Upon arriving, there was a female in the vehicle.
2 During the time of them administering medical
3 attention, they received information that there were
4 two children and a male, adult male, in the house with
5 gunshot wounds.

6 Q Did you, in fact, proceed inside that residence?

7 A Yes, I did.

8 Q Where did you enter the residence?

9 A We entered the residence through the garage. Once
10 you enter through the garage, there's a door just in
11 front of the garage door that goes into the residence
12 which begins with the kitchen.

13 Q And tell us what you did once you went in.

14 A Well, upon arriving on scene, once we get the
15 initial information, we do what we call an initial
16 walk-through. Upon walking through the house, we
17 assess the evidence, we see where evidence is, what we
18 have, what we're going to do to process the scene.

19 So upon walking through the kitchen, the kitchen
20 appeared to be normal. There were two items of
21 evidence observed in the kitchen that I will discuss
22 later. We walked further through the house. There was
23 a living room just beyond the kitchen, appeared to be
24 normal, no disturbances there. There's a second living
25 room where we see a safe that's open with multiple

1 items of firearms-related evidence to include guns,
2 unfired bullets, fragments, cartridge cases up in that
3 area.

4 As we proceeded through, we saw both unfired and
5 fired cartridges in the foyer area. So we go through
6 the foyer area, we go into the hallway which leads to
7 all of the bedrooms in the house. First bedroom we
8 observed it to be maybe a storage area undisturbed.
9 Second bedroom is where the first victim was observed,
10 which was the young male victim. He was in the bed,
11 multiple gunshot wounds observed to the head.
12 Cartridge cases observed on the floor.

13 We proceed through the house. We go into the
14 third bedroom where we see the young female victim.
15 She's in the bed as well, multiple gunshot wounds to
16 the head. We also notice two bullet defects in the
17 wall near her bed. We also notice bullet defects in
18 the area where I told you the gun -- the safe was with
19 the gun and all of the firearms evidence located.

20 So we leave out of her room. We go into the
21 master bedroom. Male victim was transported to the
22 hospital so he was not -- the adult male victim was
23 transported to the hospital so he was not on scene, but
24 we did see multiple cartridge cases, fired cartridge
25 cases, and unfired cartridges in the bedroom.

1 Q And all this evidence that you're talking about,
2 the fragments, the cartridge casings and that sort of
3 stuff, you collected that, correct?

4 A I did.

5 Q All right. Let's just go through -- I think it
6 might be easier if we just go through each room
7 individually.

8 MR. MAULDIN: No objection.

9 THE COURT: Okay.

10 MS. STROM: This is State's Exhibit 88.

11 THE COURT: Do you want to introduce that?

12 MS. STROM: Yes, sir.

13 THE COURT: Without objection, introduced into
14 evidence.

15 (WHEREUPON, State's Exhibit Number 88 was admitted
16 into evidence.)

17 BY MS. STROM:

18 Q Let's go first, I believe you said you entered the
19 kitchen area first, 6, 7 and 8. And we had previously
20 shown these to Mr. Mauldin.

21 MR. MAULDIN: No objection.

22 MS. STROM: 6, 7, and 8 move them into evidence.

23 THE COURT: Without objection, introduced into
24 evidence.

25 (WHEREUPON, State's Exhibit Numbers 6, 7 and 8

1 were admitted into evidence.)

2 BY MS. STROM:

3 Q Just familiarize yourself with those.

4 A Okay.

5 Q You said earlier when you entered the kitchen that
6 there were items of note for you, that you made
7 particular notice of certain items?

8 A I did.

9 Q What were they?

10 A The items that I noticed in the kitchen was a
11 flashlight. And the flashlight had a strap on it so it
12 was something that you would attach to your head. So
13 it had the strap and then like a square-shaped light on
14 the front of it.

15 Q State's Exhibit Number 6. Can you point out to us
16 on this photograph what you're referring to.

17 A This is what I'm talking about right here.

18 Q So that's sort of a headlamp, a flashlight that
19 you wear on your head?

20 A Correct.

21 Q Do you recall if that were on or off when you saw
22 it?

23 A It was on.

24 Q It was on, okay. What else did you note?

25 A The next thing I observed was this cell phone that

1 was right next to it.

2 Q Uh-huh.

3 A We documented it, photographed it, but we did not
4 collect it. That was turned over to Pickens County
5 Sheriff's Office along with the light. However, we did
6 collect swabs for DNA from the light.

7 Q And show us on the diagram, if you will, where
8 these are collected.

9 A Both the light and the cell phone was here at
10 Marker A.

11 Q What else of note did you see in the kitchen?

12 A We also noticed a gun holster which was on the
13 other side of the stove.

14 Q State's Exhibit 8.

15 A Here.

16 Q All right. And, again, show us on the diagram.

17 A Marker B.

18 Q And I believe you said that was -- was that
19 collected by you or by someone else?

20 A That was collected -- let me verify -- that was
21 collected by someone else as well.

22 Q After the kitchen, where did you go?

23 A So from the kitchen, we go into what's marked
24 Living Room A. As I stated before, nothing out of the
25 ordinary here. We then go into this room, which is

1 living room -- marked Living Room Number 2. This is
2 the safe that I referenced earlier, and the guns and
3 ammo and firearms evidence was up in here.

4 Q Okay. Photographs 9 through 16.

5 MR. MAULDIN: No objection.

6 THE COURT: Without objection, those are
7 introduced into evidence.

8 (WHEREUPON, State's Exhibit Numbers 9 through 16
9 were admitted into evidence.)

10 BY MS. STROM:

11 Q All right. I need you to look at these just very
12 briefly. Just familiarize yourself with them.

13 A I recognize these.

14 Q Okay. Thank you.

15 MR. MAULDIN: Your Honor, with the solicitor's
16 permission, I'm going to maybe sit in that seat because
17 I'm blocked out over here.

18 THE COURT: That's fine.

19 MR. MAULDIN: Thank you, Judge.

20 BY MS. STROM:

21 Q State's Exhibit Number 9. Can you describe to us
22 what you're seeing and where it was on the diagram?

23 A So this is the safe in Living Room Number 2, and
24 this is it here on the diagram.

25 Q And I believe you said it was open, the safe was

1 open?

2 A Correct.

3 Q State's Exhibit 10.

4 A So what you're looking at here is the open safe
5 with all of the firearms evidence. There's still some
6 guns still within the safe, but where I say that
7 there's firearms evidence scattered about in the front
8 of it, all of this is what I'm talking about.

9 Q This is State's Exhibit 11. Just maybe a little
10 bit closer shot. What are those yellow markers we're
11 seeing in that photograph?

12 A The yellow markers that you're seeing in the
13 photographs are fragments of bullets.

14 Q Okay. But the markers themselves, is that
15 something you placed there?

16 A Yes. So what we do when we process the scene
17 after we have done the initial walk-through and we
18 photograph the scene as is, we'll go through and mark
19 items of evidence. So all of the yellow markers that
20 you see throughout the scene were markers that my team
21 placed within the scene to indicate that these are
22 items of interest in reference to this scene.

23 Q And did you collect those particular items?

24 A Yes, I did.

25 Q As well as some others?

1 A I did.

2 MR. MAULDIN: No objection.

3 MS. STROM: State's Exhibit Number 52, Your Honor.

4 THE COURT: Entered into evidence.

5 (WHEREUPON, State's Exhibit Number 52 was admitted
6 into evidence.)

7 BY MS. STROM:

8 Q I'm going to show you State's Exhibit 52. Ask you
9 to look at that.

10 A I recognize this.

11 Q You recognize it. What is it?

12 A This is a Walther P22 handgun with magazine which
13 was collected from this area.

14 Q All right. I'm going to show you State's Exhibit
15 Number 12, which is a close-up of that. Is that it?

16 A Yes. This is the handgun that I just described.

17 Q And I noticed from State's Exhibit 11 it's in a
18 slightly different position?

19 A That's correct. So what we do, as I stated
20 earlier, we document the evidence, photograph the
21 evidence as is. Because we want to render it safe to
22 make sure that we don't harm ourselves or anyone else
23 and for transport purposes, we move it to further
24 document it, to ensure that it's not loaded, and to
25 document any markings that's on it to include serial

1 numbers, make, model of the handgun.

2 Q Thank you. Did you also collect fragments from
3 that area?

4 A Yes, I did.

5 Q I'm going to show you -- just one second. I'm
6 going to show you State's Exhibit 54, 55, 56, 57 and
7 58. Take a look at those for me, please.

8 A I recognize these.

9 Q And are those items that you collected?

10 A Yes.

11 MS. STROM: I enter those into evidence. Offer
12 them into evidence.

13 MR. MAULDIN: Your Honor, we have no objection.
14 I'm assuming she is going to tie up where they were.

15 MS. STROM: Oh, sure.

16 MR. MAULDIN: But we have no objection.

17 THE COURT: Without objection, introduced into
18 evidence.

19 (WHEREUPON, State's Exhibit Numbers 54 through 58
20 were admitted into evidence.)

21 BY MS. STROM:

22 Q All right, specifically, Ms. Wallace, as to
23 State's Exhibit Number 54, which I believe you had
24 marked as an E; is that correct?

25 A State's Exhibit 54 is actually marked as D.

1 Q Oh, I'm sorry. All right. Well, let's look at
2 54.

3 A Okay.

4 Q Where was it recovered?

5 A It was recovered from this area right here.

6 Q All right. And on the diagram, where would that
7 be?

8 A On the diagram, it would be right in here.

9 Q All right. As to State's Exhibit 55?

10 A State's Exhibit 55 with Marker E, it's this area
11 right here, which is a bullet fragment. In relation to
12 the diagram, it would be right there near where Marker
13 D was.

14 Q As to State's Exhibit 56?

15 A 56, also Marker E, it's a copper jacket. Same
16 area that I previously point out -- pointed out.

17 Q State's Exhibit 57.

18 A State's Exhibit 57, Marker F, which is here,
19 bullet fragment, and it would be right there near where
20 Marker E would have been.

21 Q Then State's Exhibit 58.

22 A State's Exhibit 58 is Marker H.

23 Q And I don't see that on this photograph. Where
24 was it located?

25 A Okay. Marker H, here's the couch. Marker H was

1 up in here.

2 Q And you collected those items and submitted them
3 to the ballistics unit?

4 A I did.

5 Q In particular, in this area, you noticed -- I
6 think -- I can't remember the term you used, but did
7 you notice anything unusual about the wall near the
8 safe area?

9 A Yes. I noticed two defects in the wall.

10 Q State's Exhibit 16. Explain to what us what we're
11 seeing here.

12 A The two defects that I observed in the wall, here
13 and here. Based on the characteristics of it, it
14 indicated to me that this area was the exit of a
15 projectile.

16 Q And by projectile, what do you mean?

17 A A fired bullet.

18 Q So we have two bullet holes in the wall by the
19 safe?

20 A Correct.

21 Q And they are exiting by the safe?

22 A Correct.

23 Q Again, would you point out where that would be?

24 A So here's your safe. Talking about this wall
25 right here. You have the two defects.

1 Q After you went to -- let me -- I'm going to try
2 and keep these sort of separate since we have several.

3 After processing that room, where did you go?

4 A So we left out of Living Room A. We went into
5 this area, what we call the foyer area. We observed
6 additional firearms evidence.

7 MS. STROM: 17, 18, 19 we offer into evidence,
8 photographs.

9 MR. MAULDIN: No objection.

10 THE COURT: Without objection, entered into
11 evidence.

12 (WHEREUPON, State's Exhibit Numbers 17 through 19
13 were admitted into evidence.)

14 THE WITNESS: I recognize these photos.

15 BY MS. STROM:

16 Q Just if you would, just orient us as to what we're
17 seeing and where it is on the diagram, if you would.

18 A So what we're seeing, this is H that we talked
19 about earlier. Some additional fragments here. Then
20 you have marker -- Markers J, K, L and M in the foyer
21 area. And the scale tape that you see here on the
22 floor in the foyer area and also in the area where the
23 safe is, is suspected blood, possibly due to transport
24 when the adult male victim was transported by EMS.

25 Q And can you point out the front door so that we

1 can be oriented as to where we are?

2 A This is the front door.

3 Q And Markers D and E and these weapons we see right
4 here is what we saw previously?

5 A Correct.

6 Q Particularly -- okay. I'm going to show you in
7 particular -- just one second. I'm going to show you
8 State's Exhibit 59.

9 MR. MAULDIN: No objection.

10 THE COURT: All right. Entered into evidence.

11 (WHEREUPON, State's Exhibit Number 59 was admitted
12 into evidence.)

13 BY MS. STROM:

14 Q Do you recognize that?

15 A Yes, I do.

16 Q Where did you collect that?

17 A This item, which is an unfired cartridge, Marker
18 L, which is here.

19 Q State's Exhibit 18. Just an enlargement?

20 A This is a close-up of Marker L.

21 Q And you called it an unfired cartridge?

22 A Yes.

23 Q Is that a live round?

24 A Yes.

25 Q Show you State's Exhibit 60. Do you recognize it?

- 1 A I do.
- 2 Q What is it?
- 3 A This is a cartridge case collected from Marker M,
4 which is here.
- 5 Q State's Exhibit 19. An enlargement of that?
- 6 A This is a close-up of what's marked Marker M,
7 cartridge case.
- 8 Q And you're calling this a cartridge case. What's
9 the difference between a cartridge case and a live
10 round?
- 11 A A live round, it still has the bullet attached to
12 it. Cartridge case indicates to me that it's been
13 fired, the bullet has been ejected from it.
- 14 Q So that's a fired cartridge casing at Marker M?
- 15 A Correct.
- 16 Q Were you able to determine what caliber that was?
- 17 A Yes. Marker M here, the fired cartridge case, is
18 a 22-caliber cartridge case. Marker L, the live round,
19 is a 9mm.
- 20 Q Thank you.
- 21 And did you collect fragments from that area as
22 well?
- 23 A Yes, I did.
- 24 Q I'm going to show you State's Exhibit 61 and 62.
- 25 MS. STROM: Offer them into evidence.

1 MR. MAULDIN: No objection.

2 THE COURT: Without objection, entered into
3 evidence.

4 (WHEREUPON, State's Exhibit Numbers 61 and 62
5 were admitted into evidence.)

6 THE WITNESS: I recognize these.

7 BY MS. STROM:

8 Q And what are they?

9 A These are bullet fragments that were collected
10 from Markers J and K.

11 Q Thank you.

12 After processing and collecting the items from the
13 foyer, where did you go?

14 A So we left out of the foyer. We went into the
15 hallway. We observed additional firearms evidence here
16 at P, Q, and R, and here we observed the bullet holes
17 that we talked about earlier, right here on the other
18 side of the wall. Based on the characteristics of the
19 defect, we indicated or determined that this was the
20 entry of those bullet holes.

21 Q And when you say you found firearm evidence in the
22 hallway, are you talking guns or are you talking
23 ammunition and casings?

24 A I'm talking ammunition and casings here in the
25 hallway.

1 Q So there were no additional firearms, weapons
2 found in the hallway?

3 A No. All firearms evidence was found here.
4 Firearms, handguns, any weapons were found here in this
5 area.

6 Q I'm going to have you look at State's Exhibit 20
7 through 24.

8 MR. MAULDIN: No objection.

9 THE COURT: Without objection, entered into
10 evidence.

11 (WHEREUPON, State's Exhibit Numbers 20 through 24
12 were admitted into evidence.)

13 BY MS. STROM:

14 Q If you will take just a moment and familiarize
15 yourself with them.

16 A I recognize these.

17 Q Thank you. I'll put up State's Exhibit Number 20.
18 If you would familiarize us with what we're seeing in
19 State's Exhibit 20.

20 A So as I stated, there were ammunition, both live
21 and fired cartridge cases, here. Here at Marker P,
22 there's an unfired bullet, appears to be a 22-caliber
23 unfired bullet. Q is a 40-caliber cartridge case,
24 meaning it has been fired. And at R is another live
25 round, .22.

1 Q Show you close-ups of those. State's Exhibit 21.

2 What is that?

3 A A live .22 cartridge.

4 Q State's Exhibit 22?

5 A It's a cartridge case, 40-caliber.

6 Q And State's Exhibit 23?

7 A This is another live 22-caliber round.

8 Q I'm going to show you those items that we just
9 talked about.

10 State's Exhibit 63, 64, and 65.

11 MR. MAULDIN: No objection.

12 THE COURT: Without objection, those are entered
13 into evidence.

14 (WHEREUPON, State's Exhibit Numbers 63 through 65
15 were admitted into evidence.)

16 BY MS. STROM:

17 Q So you collected those items?

18 A Yes.

19 Q You also talked about the entrance wound -- I mean
20 the entrance into the wall, the defects in the wall?

21 A Correct.

22 Q Show you State's Exhibit 24.

23 A So these are the defects that I discussed earlier.
24 One here in the picture and the other one at the bottom
25 of the picture.

1 Q And in relation to where that picture is, that's
2 just on the other side of the gun safe?

3 A Correct. Here.

4 Q After processing the hallway, where did you go?

5 A After processing the hallway, we entered into
6 Bedroom Number 2. As I stated earlier about Bedroom
7 Number 1, nothing unusual was observed there. We
8 photographed it, but we did not collect anything of
9 evidentiary value from here.

10 Bedroom 2 was where the child male victim was
11 located. He was here in this bed, and there were
12 40-caliber cartridge cases observed in all of these
13 markers listed.

14 MS. STROM: I'm going to offer into evidence
15 items -- photographs State's Exhibit 25, 26, 27, 28, 29
16 and 30.

17 MR. MAULDIN: Those are the photos?

18 MS. STROM: Photos.

19 MR. MAULDIN: No objection.

20 THE COURT: Without objection, they're entered
21 into evidence.

22 (WHEREUPON, State's Exhibit Numbers 25 through 30
23 were admitted into evidence.)

24 MS. STROM: And then cartridge casings, State's
25 Exhibit 66, 67, 68 and 69.

1 MR. MAULDIN: No objection.

2 THE COURT: Entered into evidence.

3 (WHEREUPON, State's Exhibit Numbers 66 through 69
4 were admitted into evidence.)

5 THE WITNESS: I recognize these.

6 BY MS. STROM:

7 Q If you would, orient us again on the diagram as to
8 where we are on the diagram. What bedroom are we in?

9 A We're in Bedroom 2.

10 Q State's Exhibit 25. What are we seeing here?
11 Where are we in the bedroom?

12 A So, here's the door of the bedroom. We're taking
13 photographs into the room where you see Markers S near
14 the foot of the bed, T over by a bean bag, and U which
15 is over near the dresser so --

16 Q Will you point to those.

17 A So S here, T there, U here.

18 Q Again, these are just close-ups of each of those?

19 A This is Marker S, close-up of a 40-caliber
20 cartridge case. Marker T, close-up of a 40-caliber
21 cartridge case. Marker U, close-up of a 40-caliber
22 cartridge case.

23 Q And did you recover another cartridge case from
24 that area?

25 A I did.

1 Q And where was it?

2 A I recovered it from the bed, which is here at V.

3 Q State's Exhibit 30.

4 A Marker V on the bed is a 40-caliber cartridge
5 case.

6 Q And those are the cartridge cases that you have
7 there in front of you?

8 A Correct. And they all were collected in Bedroom 2
9 and all four of them are here.

10 Q After processing that room, Male Child's room, where
11 did you go?

12 A So I went from Bedroom 2 into Bedroom 3 where we
13 found the child female victim here in the bed with one,
14 two, three, four cartridge cases observed, 40-caliber
15 cartridge cases observed in the room. There was also
16 one in the clothes hamper that we found later on upon
17 doing a further search of the room for additional
18 evidence.

19 Q I'm going to have you look at State's 31, 32, 33,
20 34, 35, and 36 which are photographs.

21 MR. MAULDIN: No objection.

22 THE COURT: Introduced into evidence.

23 (WHEREUPON, State's Exhibit Numbers 31 through 36
24 were admitted into evidence.)

25 BY MS. STROM:

1 Q If you would take a look at State's Exhibits 31
2 through 36 and familiarize yourself with those.

3 A I recognize these.

4 Q Okay. Then I'm going to hand you State's
5 Exhibits 70, 71, 72, 73, and 74. Do you recognize
6 those?

7 A I do.

8 Q And are those items that you collected?

9 A Yes.

10 MS. STROM: Your Honor, we would offer them into
11 evidence at this time.

12 MR. MAULDIN: No objection.

13 THE COURT: Introduced into evidence.

14 (WHEREUPON, State's Exhibit Numbers 70 through 74
15 were admitted into evidence.)

16 BY MS. STROM:

17 Q As to -- I'm going to put up State's Exhibit 31.
18 Can you tell us where this is located? Show us on the
19 diagram, please.

20 A So 31 is located here, next to the hamper, which
21 is a 40-caliber cartridge case.

22 Q So it is a fired cartridge casing?

23 A Correct.

24 Q All right. State's Exhibit 33.

25 MR. MAULDIN: What was that number?

1 MS. STROM: The one before was 31, which is the
2 photograph.

3 MR. MAULDIN: Got you. Thank you.

4 BY MS. STROM:

5 Q Now, State's Exhibit 33, a photograph. What are
6 we seeing here?

7 A We see Markers X, Y and Z which are marking
8 40-caliber cartridge casings, meaning they have been
9 fired. And that's on this side of the bedroom door.

10 Q And you had mentioned -- you had talked about an
11 additional one was found in the clothes hamper?

12 A Correct.

13 Q Do you see the clothes hamper?

14 A Yes. The clothes hamper is here. So upon
15 conducting a further search of the residence for
16 additional evidence, the cartridge case was found in
17 this clothes hamper.

18 Q State's Exhibit 36.

19 A And it's that silver piece there just beyond the
20 mesh.

21 Q And those are the items, the actual cartridge
22 casings there that you collected?

23 A Correct.

24 Q When you processed -- when you finished processing
25 Female room, where did you go?

1 A We left out of this bedroom, then we went into the
2 master bedroom where we saw additional firearms
3 evidence to include live rounds and fired cartridge
4 cases.

5 Q I'm going to show you State's Exhibit 37 through
6 45 which are photographs.

7 MR. MAULDIN: No objection.

8 THE COURT: Without objection, introduced into
9 evidence.

10 (WHEREUPON, State's Exhibit Numbers 37 through 45
11 were admitted into evidence.)

12 BY MS. STROM:

13 Q If you will familiarize yourself with them.

14 A I recognize these.

15 Q Thank you.

16 I'm going to show you State's Exhibit 75, 76, 77,
17 78, 79 and 80.

18 MR. MAULDIN: No objection.

19 THE COURT: Without objection, introduced into
20 evidence.

21 (WHEREUPON, State's Exhibit Numbers 75 through 80
22 were admitted into evidence.)

23 BY MS. STROM:

24 Q These are the casings you collected from the
25 master bedroom?

1 A That's correct.

2 Q And if you will, using these photographs, State's
3 Exhibit 37, and also using the diagram, can you point
4 out to us where you collected these items?

5 A Okay. So we're in the master bedroom. 6, 7, 8,
6 those are 22-caliber cartridge cases that were
7 collected. 6, 7, 8 on the photo.

8 Q Okay. And I won't go through each close-up of
9 each one of those, but you collected additional casings
10 from that area -- from that room?

11 A Yes, I did.

12 Q Can you show us in this photograph and on the
13 diagram where they were collected?

14 A 9, 15, 16, here on the diagram. 9, 15, 16 there
15 in the photo.

16 Q And, again, what caliber casings, fired casings,
17 were found in the master bedroom?

18 A 22-caliber.

19 Q 22-caliber. And the fired casings in the
20 children's bedrooms were what caliber?

21 A 40-caliber.

22 Q Did you find any live ammunition in the master
23 bedroom?

24 A Yes, I did.

25 Q I show you State's 45. Can you tell us what we're

1 seeing in State's 45?

2 A Item 13 here, this is a live round, and that's
3 actually a 9mm live round, and there it is in the
4 photo.

5 Q And what's the black thing beside the live round?

6 A It's a holster, a gun holster.

7 Q Did you collect the gun holster?

8 A No, I did not.

9 Q I'm going to show you State's Exhibit 81.

10 MR. MAULDIN: No objection.

11 THE COURT: Introduced into evidence.

12 (WHEREUPON, State's Exhibit Number 81 was admitted
13 into evidence.)

14 BY MS. STROM:

15 Q Do you recognize 81?

16 A I do.

17 Q And what is 81?

18 A 81 is the item that we just discussed. It's a
19 live cartridge case -- a live cartridge, 9mm, collected
20 from Marker 13.

21 Q Thank you. So in total in the master bedroom, in
22 Mike's bedroom, there were six -- well, how many fired
23 .22 casings were there?

24 A A total of six collected from the master bedroom.

25 Q And one live-round of a 9mm?

1 A Correct.

2 Q In Female bedroom, how many fired cartridge
3 casings were there?

4 A Bedroom 3, there were a total of five 40-caliber
5 cartridge casings collected from this bedroom.

6 Q And in Male Child's bedroom?

7 A Bedroom 2, there were a total of four 40-caliber
8 cartridge cases collected from this bedroom.

9 Q Okay. Did you have an occasion to collect any
10 additional weapons in reference to this event?

11 A Yes. Upon conducting an inventory of all of the
12 firearm weapons that we had, I didn't find a 40-caliber
13 handgun. Based on the 40-caliber cartridge cases that
14 I collected from these two bedrooms, I knew there had
15 to be one somewhere.

16 So we went back to the collision scene to conduct
17 a further search, and that's where we found the
18 40-caliber handgun which was ejected from the vehicle
19 at the time of the collision.

20 Q I'm going to show you State's Exhibit 82. I'm
21 sorry. And State's 46, 47 and 48.

22 MR. MAULDIN: No objection.

23 THE COURT: Introduced into evidence.

24 (WHEREUPON, State's Exhibit Numbers 82, 46,
25 47 and 48 were admitted into evidence.)

1 THE WITNESS: I recognize these photos.

2 BY MS. STROM:

3 Q Let me ask you, as to State's Exhibit 82 --

4 A 62?

5 Q 82. If you would step down.

6 What do we see here?

7 A What you see here is a 40-caliber handgun. It's a
8 Glock 23 with cartridges here, and the cartridges that
9 are with it are actually 9mm cartridges with the
10 magazine..

11 Q And this weapon was found where? Where was it
12 collected?

13 A At the collision scene.

14 Q Thank you. You may retake the stand.

15 And with regard to that weapon, State's
16 Exhibit 46, what are we seeing?

17 A This is the 9mm cartridge -- I mean 9mm handgun
18 that was found at the collision scene.

19 MR. MAULDIN: Your Honor.

20 THE WITNESS: I'm sorry. I misspoke. It's a
21 40-caliber handgun that was collected at the collision
22 scene.

23 BY MS. STROM:

24 Q So it's a 40-caliber weapon?

25 A Correct.

1 Q All right. And then State's Exhibit 47?

2 A Same 40-caliber handgun, different position, just
3 for further documentation.

4 Q And then State's 48?

5 A This is a photograph of the magazine that was
6 collected from the 40-caliber handgun.

7 Q I want to -- and you said that was collected down
8 by the collision scene?

9 A Correct.

10 Q And you actually collected it and maintained it
11 with you?

12 A Yes.

13 Q I want to go back, Ms. Wallace, to the living room
14 area where the gun safe was. You collected another
15 weapon from that area, didn't you?

16 A I did.

17 Q I'm putting up State's Exhibit 17. What are we
18 seeing here?

19 A This is some additional firearms evidence that we
20 observed and documented. Here is a shotgun. This one
21 that you see is a .22 long rifle, and this one that
22 you're seeing is a -- let me refer to my notes for
23 that -- a 9mm handgun.

24 Q State's Exhibit 11 may be a little bit closer up
25 of that. As to the .22 handgun we're seeing there,

1 does it have a magazine in it?

2 A No, it does not.

3 Q Did you collect that .22?

4 A I did.

5 Q And as to the 9mm?

6 A That was collected, and it did have a magazine in
7 it.

8 Q I'm going to show you State's Exhibit 53.

9 MR. MAULDIN: No objection.

10 THE COURT: Without objection, introduced into
11 evidence.

12 (WHEREUPON, State's Exhibit Number 53 was admitted
13 into evidence.)

14 THE WITNESS: I recognize this.

15 BY MS. STROM:

16 Q And what are we seeing in that exhibit?

17 A So what you're seeing here is a 9mm handgun with
18 the magazine with it, and these are the cartridges that
19 were in the magazine upon collection.

20 Q And when you collected it, the magazine was in the
21 weapon?

22 A Correct.

23 Q Did you have an occasion, Ms. Wallace, to attend
24 the autopsies of Female Child [REDACTED] -- Female Child and

25 Male Child [REDACTED]

1 A I did.

2 Q And did you retrieve items of evidence from
3 Dr. Fulcher who performed those autopsies?

4 A Yes, I did.

5 Q I'm going to show you State's Exhibits 83 and 84.

6 MR. MAULDIN: Your Honor, as to -- I'm assuming
7 that the doctor would come in and complete admission of
8 these.

9 MS. STROM: Yes.

10 MR. MAULDIN: We have no objection for
11 identification purposes only at this point with
12 follow-up from the doctor.

13 THE COURT: Okay.

14 BY MS. STROM:

15 Q Do you recognize State's Exhibits Number 83 and
16 84?

17 A I do.

18 Q And from whom did you receive those?

19 A I received it from the doctor at autopsy.

20 Q Both of those items?

21 A I did.

22 Q And upon receiving those at autopsy, what did you
23 do with them?

24 A I transported them to the forensic services
25 laboratory at SLED. I submitted them to the firearms

1 department for further analysis.

2 Q And as to each of these items that we've discussed
3 here today -- the firearms, the casings, the live
4 rounds, you collected all of those?

5 A I did.

6 Q And did you maintain them in your custody until
7 you turned them over to SLED to the firearms
8 examination?

9 A Yes, I did.

10 Q And are they essentially in the same condition as
11 when you found them?

12 A Well, when the firearms examiner does do their
13 examination, they have to add lab numbers and things
14 for identification purposes on there. But as far as I
15 can tell, nothing has been changed from the last time I
16 had them.

17 Q And you did nothing with the evidence in between
18 the time that you collected it and turned it over to
19 firearms other than to label it and mark it?

20 A Correct.

21 MS. STROM: Court's indulgence.

22 THE COURT: Okay.

23 MS. STROM: Thank you. Please answer any
24 questions the defense may have.

25 MR. MAULDIN: Your Honor, if I could have a few

1 moments.

2 THE COURT: Yes, sir.

3 Would you like to take a break at this moment?

4 MR. MAULDIN: And it doesn't matter, Your Honor.

5 It might be a good idea.

6 THE COURT: Let's take about a ten-minute recess.

7 Y'all freshen up. Don't talk about the case. All

8 right? Thank you.

9 (WHEREUPON, the jury exited open court at

10 10:46 a.m.)

11 MS. STROM: Before we bring the jury back in,

12 along with State's Exhibit 88, which is the diagram,

13 I'm going to -- and we can do this outside the presence

14 of the jury. I don't think the jury needs to see this.

15 It's State's Exhibit 88A.

16 Q I ask you, do you recognize this?

17 A Yes.

18 Q Is that the legend that goes with State's

19 Exhibit 88?

20 A That's correct.

21 Q That you prepared?

22 A I did.

23 MS. STROM: Your Honor, we would admit 88A into

24 evidence as well.

25 MR. MAULDIN: No objection.

1 THE COURT: Without objection introduced into
2 evidence.

3 (WHEREUPON, State's Exhibit Number 88A was
4 admitted into evidence.)

5 MR. WILKINS: Fragments.

6 MR. MAULDIN: Your Honor, the State approached me
7 regarding the fragments that were removed at the
8 autopsy. At this point they were actually introduced
9 only for identification. We have no objection to that
10 being clarified and that they actually --

11 THE COURT: Coming all the way in. Okay. They're
12 in evidence then, those items which were previously
13 marked or introduced just for identification. Those
14 item numbers are?

15 MS. STROM: 83 and 84.

16 THE COURT: All right.

17 (WHEREUPON, State's Exhibit Numbers 83 and 84
18 were admitted into evidence.)

19 MR. WILKINS: Thank you, John.

20 THE COURT: Y'all ready for the jury?

21 MS. STROM: The State is ready.

22 THE COURT: All right. Bring the jury in.

23 (WHEREUPON, the jury entered open court at
24 11:00 a.m.)

25 THE COURT: All right. All members of the jury

1 are present.

2 And, Ms. Durham, I'm appointing you as the
3 Forelady of the jury. Thank you for volunteering for
4 that.

5 I always appoint. And it's going to be your duty,
6 as the foreperson of the trial jury, to preside over
7 the deliberations in the jury room. You will also be
8 the spokesperson for the jury and court. For example,
9 if y'all need a break or something like that, please
10 let me know. I'm looking to you for that.

11 You will also be the only juror who can sign and
12 mark on the verdict form, but you can't do that until
13 all of you have reached a unanimous verdict. And I'll
14 give you more specific instruction on that at the end.
15 So, again, thank you for serving in this capacity.

16 All right. Your witness.

17 MR. MAULDIN: Thank you, Judge.

18 CROSS-EXAMINATION

19 BY MR. MAULDIN:

20 Q Ms. Wallace, I'm going to ask you only a few
21 clarification questions, if I may. The information
22 that you have given the jury this morning indicates
23 that the two children in this case were killed with
24 40-caliber ammunition?

25 A Correct.

1 Q Your reconstruction indicates that the weapon used
2 in those two homicides was 40-caliber?

3 A Correct.

4 Q And the weapon that was used to injure or
5 seriously injure Mike Simpson, the husband, apparently
6 was a 22-caliber?

7 A Correct.

8 Q Is that right?

9 A Right.

10 Q All right. Now, the 40-caliber is entered as
11 State's Exhibit 82. I want to make sure I'm right
12 about that. Let's make sure we're talking about the
13 right thing.

14 A This is correct.

15 Q And a 40-caliber handgun, which is shown in the
16 photographs at the wreck scene, that's where that gun
17 was recovered?

18 A That's correct.

19 Q And that firearm -- and I beg the court's
20 indulgence.

21 Well, that firearm is shown in a photograph in
22 this big stack here somewhere on the side of the road.
23 Do you remember how far from the vehicle it was? Was
24 it just right outside the vehicle?

25 A I don't recall. Actually, the vehicle was already

1 towed by the time we found it.

2 Q Okay.

3 A It wasn't in the vehicle when we conducted the
4 search. Went back into the house, processed the scene.
5 We didn't find it there so we went back to the
6 collision scene to do a further search, and that's
7 where we found the 40-caliber handgun, in the brush
8 near where the vehicle was at the collision scene.

9 Q Well, I must be going blind, but I can't find the
10 photos that were introduced -- here we go. Here they
11 are. All right. That photo -- and you've got that
12 little pointer thing.

13 A Yes.

14 Q Show the jury. This is the type of weapon that
15 when you shoot it, it throws out the casing, right?

16 A Correct.

17 Q And it's different from a revolver. A revolver,
18 actually, the cylinder turns and retains the casing?

19 A That's correct.

20 Q So the casing flies out of the side of this gun?

21 A Correct.

22 Q Would you show the jury the area where a casing
23 would come out of the gun?

24 A This area right here.

25 Q Okay. So that spot that you're pointing to is how

1 a casing comes out. And on that handgun, this is --
2 well, okay. Okay. All right. I'm going to turn it in
3 the box and ask you to step down for just a moment,
4 please, ma'am.

5 In fact, Your Honor, may I be allowed to lift the
6 gun from the box?

7 THE COURT: Yes, sir.

8 BY MR. MAULDIN:

9 Q I'm going to ask, please, ma'am, if you -- if you
10 will show the jury where the casing comes out of this
11 gun when it's fired.

12 A It comes out of this area right here.

13 Q And it discharges in what direction?

14 A Well, the opening is to the right.

15 Q Okay. So it's going to come out and right?

16 A It comes out of the right, but in terms of flight
17 and everything.

18 Q Not real sure?

19 A Yes.

20 Q All right. Now, and the reason I ask those
21 questions, ma'am, is because you identified Location Q
22 right here.

23 A I can't see it. Q?

24 Q Yeah. There you go. You identified Location Q in
25 another one of those photographs as a 40-caliber

1 casing?

2 A Correct.

3 Q Which means that it is a casing that came out of
4 that gun, but we're not sure where the person, where
5 the gun would have been at the time that casing was
6 discharged, right?

7 A Correct.

8 Q So if a person, for example, were standing in this
9 doorway, it would make sense that the casing would fly
10 out to the left; is that right?

11 A Can you repeat that question?

12 Q If a person was standing in the doorway to Bedroom
13 3, do you see that? You see the doorway to Bedroom 3?

14 A I see the doorway to Bedroom 3.

15 Q There it is. And if a person was standing in that
16 doorway and discharged that weapon, the casing would
17 come out and to the left, which would explain the
18 position of Casing Q, right?

19 A There are different variables as to how that could
20 have happened, and I can't say without having been
21 there to determine where a person is standing, how this
22 got there. The only thing that I can say is this is
23 where it was when I arrived on scene.

24 Q So the fact of the matter is you can't say how it
25 got there, you can just say that's where it was?

1 A Correct.

2 Q Okay. Now, I'll hand you State's Exhibit 53. I
3 want you to once again identify that for the jury and
4 show the jury where it was located.

5 A So this is the 9mm handgun that I showed you all
6 previously, and that gun was located in front of the
7 safe.

8 Q Would you point to the 9mm handgun.

9 A This is it right here.

10 Q All right. And that was the condition of the 9mm
11 at the time you were doing your scene investigation?

12 A That's correct.

13 Q And the box there has the magazine and what
14 appears to me to be live rounds?

15 A Correct.

16 Q All right. And did you identify what type of
17 ammunition that was? Would you take a look at it to
18 make sure?

19 A It's 9mm ammunition.

20 Q All right. And so there was a 9mm in front of
21 that safe that had the magazine in it, and the magazine
22 contained 9mm ammunition?

23 A That's correct.

24 Q Okay. This third firearm was the 22-caliber, and
25 can you identify where the 22-caliber pistol was found?

1 A There were actually two 22-caliber guns in this
2 scene, one being here and then another one there.

3 Q All right. And in this box that has the second
4 one you identified, the one that's closest to the safe
5 door, that one, this box has a cartridge case. Do your
6 records show whether the cartridge was in that weapon
7 at the time it was recovered by you at the scene?

8 A Here in my records I have "with magazine."

9 Q I'll let you look at it. You just testify to what
10 you remember.

11 A So this was empty, didn't have any cartridge cases
12 it in. The magazine did not and neither did the gun.

13 Q All right. So the gun didn't have any ammo in it,
14 the magazine didn't have any ammo in it. Was the
15 magazine in the gun or not? That's my question.

16 A The magazine was in the gun.

17 Q All right. And in the gun, that gun, which is
18 40-caliber, which was found at the location of the
19 truck wreck, it appears that there is a magazine up in
20 the butt of that gun, does it not?

21 A That's correct.

22 Q Would you point to the jury what I'm talking
23 about.

24 A This is the magazine of the gun right there.

25 Q And the magazine is what holds the ammunition?

1 A That's correct.

2 Q And that magazine is demonstrated in State's
3 Exhibit 48, is it not?

4 A Yes.

5 Q And what kind of ammunition was that?

6 A That was 9mm ammunition.

7 Q So it is fair, then, to conclude without any
8 question that this 40-caliber pistol was reloaded with
9 9mm ammunition and thereafter would not fire, right?

10 A I'm not a firearms examiner. Firearms examiner
11 could answer that question for you further. However, I
12 can attest to when I found the gun and I collected it,
13 it was a 40-caliber handgun that had 9mm ammunition in
14 it.

15 Q And, in fact, let me look here just one moment. I
16 was looking through my notes -- well, there was an --
17 where is L?

18 A L is here in the foyer area of the residence.

19 Q And L -- I don't want to get too close to you,
20 ma'am. L is an unfired 9mm cartridge or whatever you
21 would call it?

22 A That's correct.

23 Q Did you -- I was looking through my notes to see
24 if you found any other unfired 9mm ammunition laying
25 around anywhere. How about at 13? Take a look at your

1 Number 13 which is at the door of the master bedroom.

2 A Number 13.

3 Q All right. And what was that?

4 A That also was a 9mm unfired round.

5 Q All right. So there's unfired 9mm ammunition at
6 least in two locations of this house that are just
7 laying on the carpet. There is a 40-caliber pistol
8 loaded with 9mm ammunition located at the car wreck,
9 and one more time Exhibit Number 82. I want to make
10 sure we're not getting these guns mixed up. 82 is the
11 gun that was found at the car wreck?

12 A That's correct.

13 Q And the live rounds that are in that box with that
14 exhibit were taken out of that magazine, right?

15 A That's correct.

16 Q And how many live rounds are there?

17 A There are a total of five.

18 Q And the magazine for that firearm holds more than
19 five cartridges, doesn't it?

20 A Correct.

21 Q And if a person attempted to fire that weapon with
22 misloaded ammunition and that ammunition was discharged
23 without going off, then the magazine would have had
24 less and less ammunition in it, wouldn't it?

25 A It would.

1 Q And that would explain why we've got at least two
2 locations where there was an effort to fire that gun
3 with misloaded ammunition in that house before the gun
4 was located at the wreck?

5 A I can't say that there was an effort to fire it.
6 Again, I collected the evidence based on what I
7 observed. I'm not a firearms examiner, but if there
8 are any questions related to that, the firearms expert
9 would be able to answer those questions for you.

10 Q All right. Well, we'll let him answer those,
11 then. Thank you.

12 All right. That's all, Your Honor.

13 Thank you.

14 THE COURT: Any redirect?

15 MS. STROM: No, sir, Your Honor. We'd ask that
16 Ms. Wallace be allowed to be excused.

17 MR. MAULDIN: No objection.

18 THE COURT: Thank you, ma'am. You can step down.
19 You are free to leave.

20 State may call its next witness.

21 MS. STROM: State calls Suzanne Cromer.

22 SUZANNE CROMER,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: Thank you, ma'am. If you would have a
25 seat and state your name for the record, please.

1 THE WITNESS: My name is Suzanne Cromer.

2 DIRECT EXAMINATION

3 BY MS. STROM:

4 Q Ms. Cromer, by whom are you employed?

5 A I'm employed by the South Carolina Law Enforcement
6 Division, commonly referred to as SLED.

7 Q In what capacity are you so employed with them?

8 A I am a firearm and tool mark examiner in the
9 forensic services laboratory.

10 Q What is your education and professional training
11 that allows you to do that kind of work?

12 A I have a bachelor's degree from Clemson
13 University. I did some graduate work at the University
14 of South Carolina. During that time I did an
15 internship in the firearms department at SLED. I was
16 hired on at SLED. I had completed their in-house
17 training program, which is a three to five-year intense
18 study program, more of an apprenticeship, if you will,
19 where we take written tests, oral tests, practical
20 exercises and prepare cases for other court-qualified
21 firearms examiners.

22 Upon completion of all the sections in our
23 training manual, we are given a comprehensive final
24 exam, essay, terms, and actual mock casework. That is
25 also graded by our training officer and then by our

1 lieutenant before we are allowed to start our own
2 casework unsupervised.

3 I have taken classes with the Association of
4 Firearm and Tool Mark Examiners. We call it AFTE.
5 It's an international organization for our profession.
6 You have to apply for membership. I have been granted
7 membership. They meet once a year for a week-long
8 seminar to discuss relevant topics in our field. I
9 have attended several of those conferences. I have
10 also taken extra workshops with them such as machine
11 gun conversion, barrel making, ethics, Hi-Point firearm
12 familiarization. I've taken workshops with the South
13 Carolina chapter of the International Association of
14 Identification, most recent being a three-day shooting
15 scene reconstruction workshop. I have taken classes
16 with the Bureau of Alcohol, Tobacco and Firearms on
17 serial number restoration and the integrative ballistic
18 identification system, which is a computer database for
19 images of cartridge cases. I've toured several gun
20 manufacturers as well as tool manufacturers.

21 Q How long have you been with SLED in total?

22 A 17 and a half years.

23 Q How long have you been working cases on your own?

24 A Since 2004. I started our training program in
25 February of 2000.

1 Q So have you been qualified in the courts of this
2 state before as an expert?

3 A Yes, I have. I've been qualified approximately 92
4 times in the field of firearm and tool mark
5 identification.

6 MS. STROM: Your Honor, at this time we would
7 offer Ms. Cromer as an expert in firearms and tool
8 marking identification.

9 MR. MAULDIN: No objection.

10 THE COURT: Without objection so qualified.

11 Ladies and gentlemen of the jury, remember what I
12 told you about what an expert is, what an expert can
13 do, okay.

14 BY MS. STROM:

15 Q Ms. Cromer, if you would, please explain to me and
16 the others in very layman's terms what it is that you
17 do.

18 A What I do is called firearms identification. A
19 lot of people incorrectly term it ballistics, but it's
20 called firearms identification. What we're doing is
21 we're looking at ammunition components -- bullets,
22 cartridge cases, shotgun shells, waddings, pellets to
23 determine whether they were fired by or loaded into and
24 extracted from a specific firearm.

25 If we do not have a firearm, we can look at the

1 rifling that's left on a bullet. And a rifling is
2 what's put in the firearm by the gun manufacturer to
3 put rotary motion on the bullet. Very similar to a
4 quarterback throwing a football. They want it to go
5 into a tight spiral so it will go more accurately
6 towards its target. And that rifling gives us a wealth
7 of information. It's made up of a series of raised and
8 depressed areas, lands and grooves, that we can look
9 at. We can look at the number of lands and grooves.
10 We can look at which way that bullet is spinning, to
11 the left or to the right. We can look at the caliber
12 and potentially give investigators a list of firearms
13 that could have fired that bullet.

14 If we don't have firearms, we can actually analyze
15 the evidence from the scene and tell them potentially
16 how many firearms could have fired it.

17 Q And if you actually do have a firearm, what are
18 you able to do with it?

19 A We microscopically compare test specimens that we
20 fire from that firearm to our evidence, our unknowns,
21 and we come up with one of four conclusions. We can
22 say positive, it was fired by that gun; negative, no,
23 it wasn't fired by that gun; unsuitable, it's too
24 damaged, it doesn't have any of those markings that we
25 need for identification purposes, or we can say

1 inconclusive. We can't rule a firearm out, but there's
2 not enough information for us to say whether it was
3 fired by that or not.

4 Q If you will bear with me. Did you have an
5 occasion to be involved in conducting examinations on
6 certain pieces of evidence related to this case?

7 A Yes, I did.

8 Q Show you first -- let's deal with the weapons
9 first. I'm going to show you State's Exhibit 52. Is
10 that the weapon that you received?

11 MR. MAULDIN: What's that number?

12 MS. STROM: 52.

13 THE WITNESS: What I'm doing is I'm looking for my
14 markings on this firearm. Whenever I receive a
15 firearm, I mark it on the barrel, the slide, and the
16 magazine well with my lab number, my item number, and
17 my initials.

18 Yes. State's 52 is an item of evidence that I
19 received in this case.

20 BY MS. STROM:

21 Q Item 52 has previously been testified as being
22 this weapon here collected. What can you tell us about
23 Item 52?

24 A Item 52 is a Walther model P22 semiautomatic
25 pistol in .22 long rifle-caliber.

1 Q When you say it is an automatic, tell us about
2 that.

3 A It's a semiautomatic.

4 Q Excuse me, semiautomatic. I apologize.

5 A Meaning to fire this firearm, you would load the
6 magazine, place it in the magazine well, you pull the
7 slide back, and that would allow the unfired cartridge
8 to come into the chamber of the firearm. So then all
9 you have to do to fire this gun is pull the trigger.
10 So one pull of the trigger will fire a bullet, it works
11 the slide backwards, it will eject the fired cartridge
12 case, and then when the slide comes to its rearmost
13 position, it's under spring tension. So then it will
14 fly forward pushing another round from the cartridge or
15 from the magazine into the chamber of the gun. So
16 semiautomatic means one pull of the trigger, one fire.

17 Q And it ejects the casings of the fired
18 cartridge -- I mean a fired cartridge?

19 A Yes. It will eject the fired cartridge case.

20 Q What examinations or testing did you do as to that
21 weapon?

22 A When I receive a gun, the first thing I do is I
23 photograph it. I take pictures, I note it, I do a
24 visual inspection. Then I will note its rifling in the
25 gun barrel like we talked about, how many lands and

1 grooves it has and what direction of twist. Then I
2 will take the firearm -- I test the safeties to make
3 sure that they work. And then I will take this firearm
4 and fire ammunition that was similar to what I received
5 in the case into what we call a bullet recovery tank.

6 Our bullet recovery tank at SLED is a vertical
7 tank. We're on the second floor of our laboratory.
8 The tank goes all the way down to the first floor and
9 it's full of water. So we shoot into the tank of water
10 so it will slow down that bullet without adding or
11 taking away from any of the markings by the firearm,
12 then I will compare those test specimens to each other.

13 Q Okay. You did that with regards to this weapon?

14 A Yes, I did.

15 Q Did you find it to be in good working order?

16 A Yes. I found this firearm was in working order.

17 Q I'm going to show you some casings that were
18 collected from the scene. Bear with me just one
19 second. These are State's Exhibits 75 through 80 which
20 were previously testified as casings coming from our
21 scene, collected from the master bedroom. Ask you,
22 will you look at each one of those, please?

23 A Okay. These were all evidence that I received in
24 this case. They are also still contained in a sealed
25 container with my initials and seal date.

1 Q I want to back up. When you received that Walther
2 .22, can you tell me if it was loaded or unloaded?

3 A At SLED we have a policy that no firearm enters
4 the laboratory loaded. As you can imagine, if it's in
5 a box and it's loaded, somebody could drop it, it could
6 go off, we could have an accident. So no firearms
7 should come into the laboratory loaded. So whenever I
8 receive a gun, it should be unloaded.

9 Q But the person who collects it at the scene will
10 maintain the magazine with that weapon?

11 A They should, that's correct.

12 Q And when you received this Walther .22, how did it
13 come to you?

14 A It came in this container with the magazine.

15 Q And no ammunition?

16 A No ammunition.

17 Q Thank you. With regards to the casings recovered
18 from the master bedroom, what, if anything, can you
19 tell us about those casings?

20 A First off, State's Exhibit 75, 76, 77, 78, 79 and
21 80 are all fired .22 long or long rifle-caliber
22 cartridge cases. Long and long rifle .22, 22-caliber
23 ammunition. You can have .22 short, .22 long, .22 long
24 rifle. And the only difference between .22 long and
25 long rifle is actually the length of the bullet that's

1 loaded into them. So when they're fired, I can't
2 determine whether it had a long or long rifle bullet in
3 it. So these were all fired .22 long or long
4 rifle-caliber cartridge cases, and I microscopically
5 examined the firing pin impressions on these cartridge
6 cases to the cartridge cases are the test fires that I
7 fired from this weapon, and I determined in my opinion
8 that these were fired by this gun.

9 Q And would that be proper ammunition for that gun?

10 A Yes, it is.

11 Q Also collected from that master bedroom was
12 State's Exhibit No. 81. You have that in front of you?

13 A Yes, I do. And, again, it's still in a sealed
14 container with my initials and seal date.

15 Q And for reference purposes, it was collected from
16 the master bedroom at Marker 13?

17 A That is what it's labeled, Marker 13.

18 Q Thank you.

19 What can you tell us about that ammunition?

20 A This is an unfired 9mm-caliber Luger cartridge.

21 Q Unfired?

22 A Unfired.

23 Q And did you do any examination or microscopic
24 examination of it?

25 A I just determined that it was an unfired

1 cartridge.

2 Q Thank you. You can put that in there.

3 I am going to show you State's Exhibit Number 82.

4 Do you recognize it?

5 A Yes, ma'am, I do. State's Exhibit 82 was my Item

6 62. It is a Glock Model 23 .40 S&W caliber

7 semiautomatic pistol.

8 Q And, again, semiautomatic -- one pull of the

9 trigger, it ejects a casing and another round goes into
10 the chamber?

11 A That's correct.

12 Q And did you conduct any testing on it to determine
13 if it was in proper working order?

14 A Yes, I did. And I determined that it was in
15 proper working order. The Glock is a little different
16 from the Walther in that the Walther had external
17 safeties. The Glock has only internal safeties, so I
18 checked those safeties after test firing, but this
19 firearm was in working order.

20 Q And what do you mean by these safeties?

21 A The Glock firearm has three internal safeties -- a
22 firing pin safety, a drop safety, and a trigger safety.

23 Q And they were all in working order?

24 A That's correct.

25 Q When you received that weapon, obviously it was

1 unloaded, but did it come with a magazine and
2 ammunition?

3 A Yes, it did. It came with a detachable box
4 magazine and five total 9mm cartridges. Hold on one
5 second. Three of them were unfired and two were
6 misfired.

7 Q All right. Explain that to the jury, please.

8 A A misfire occurs when a firing pin strikes a
9 cartridge primer but it doesn't go off. It doesn't
10 detonate. And there are a lot of factors why a firearm
11 will misfire such as you're shooting the wrong caliber
12 ammunition for the firearm or the ammunition was a
13 little too small and it fell down the chamber. Or it
14 could be ammunition problems, defective ammunition.
15 But for whatever reason, these cartridge cases
16 displayed a slight firing pin impression that had
17 identifiable markings on them to be compared to the
18 firearm.

19 Q Could you tell which firearm, which pistol fired
20 those two misfired nines?

21 A Okay. Yes. These two misfired 9mm-caliber
22 cartridges were misfired by this firearm. And what I
23 did was I test fired this firearm, test fired it four
24 times with 40-caliber ammunition, and then I set aside
25 five rounds of 9mm to shoot in this firearm. Four

1 times it went off fine, it fired the 9mm-caliber
2 ammunition. One time it misfired. And I
3 microscopically compared those to this gun and
4 determined that they were struck by this firing pin.

5 Q So the misfired -- you said you had two misfired?

6 A That's correct.

7 Q Okay. And they were fired by that weapon?

8 A They were misfired by this weapon.

9 Q Excuse me, misfired. That's correct, misfired by
10 that weapon.

11 Ms. Cromer, you talked about earlier when a bullet
12 is fired from that gun, a casing will eject. When a
13 bullet is misfired, does it automatically eject?

14 A No, it does not. The ejection of a cartridge
15 takes the burning of the gases that happens from being
16 fired. So you build up all that pressure, it's going
17 to push the bullet down the barrel, but it's also
18 pushing the slide backward which causes ejection. So
19 if it's misfired, it's not going to leave the firearm
20 until it's manually removed.

21 Q So a misfired bullet would have to be manually
22 removed from the weapon?

23 A A misfired cartridge, yes.

24 Q A misfired cartridge. And how do you manually
25 remove that?

1 A In this firearm, you do it by working the slide.
2 You would pull the slide back to allow it to fall out.

3 Q With regards to that 40-caliber, I show you what's
4 been marked as State's Exhibits 66, 67, 68, 69, and
5 they have previously been testified to as cartridge
6 casings coming from Bedroom 2, being Male Child [REDACTED]
7 bedroom.

8 A State's Exhibit 66, 67, 68 and 69 were all fired
9 40-caliber cartridge cases. And, again, they're all
10 still in a sealed container with my initials and seal
11 date. What I did with these was microscopically
12 compared them with the test specimens that I fired from
13 the firearm and found sufficient agreement to conclude
14 in my opinion that they were fired by this gun.

15 Q Thank you. Bear with me. I don't want to get
16 them confused.

17 Thank you. State's 70, 71, 72, 73 and 74, let me
18 show you those.

19 A State's Exhibit 70, 71, 72, 73 and 74 were all
20 40 -- fired 40-caliber cartridge cases that I received
21 in this case, and I microscopically compared them to
22 the test specimens that I fired from this firearm and
23 concluded that they were fired by this firearm.

24 Q I'm going to show you State's Exhibit 53. 53 has
25 been testified to as being the 9mm weapon found there

1 in front of the safe. How did it come to you?

2 A I received all my evidence in this case from
3 Lieutenant Wallace of the crime scene department.

4 Q And did it come with a magazine?

5 A Yes, it did.

6 Q And how many rounds will that magazine hold?

7 A This magazine will hold, I believe it's 14. Let
8 me check my notes.

9 Q Sure.

10 A Yes. This magazine will hold 14 rounds. And how
11 I do that is I actually physically load the magazine
12 until no more will go into it.

13 Q And did you receive ammunition with that magazine?

14 A Yes, I did. I received 14 rounds of 9mm Luger
15 caliber ammunition.

16 Q Did you conduct any testing on this to determine
17 if it was in working order?

18 A Yes, it was.

19 Q And it was?

20 A It was.

21 Q I don't recall if I asked you, Ms. Cromer, so I
22 apologize. As to the 40-caliber weapon that was found
23 down near the vehicle, how many rounds will that
24 magazine hold?

25 A Check my notes for a moment. This magazine will

1 hold 13 .40 Smith & Wesson caliber cartridges.

2 Q Thank you.

3 Court's indulgence for just one second.

4 Did you also -- well, we've gone through cartridge
5 casings from the master bedroom, cartridge casings from

6 Male Child's bedroom, and the cartridge casings from

7 Female bedroom. Did you also receive fragments and

8 what would be considered part of ammunition, part of
9 fired ammunition?

10 A Yes, I did.

11 Q All right. I'm going to show you State's Exhibits
12 50 through 58.

13 A Again, I recognize these as evidence I received in
14 this case. They're all in sealed containers with my
15 initials and seal dates still.

16 Q And let's go through each one of those, please.

17 A State's Exhibit 54 was my Item 1. It is a lead
18 bullet core -- a lead bullet core. If you think about
19 jacketed ammunition, when I say "jacketed ammunition,"
20 I -- the easiest thing I can compare it to is an M&M if
21 you think about it. The M&M has the chocolate in the
22 middle and the hard candy shell on the outside. So the
23 chocolate in the middle or the lead core is not going
24 to come in contact with the rifling in the gun barrel.
25 That will be the hard shell or the jacket.

1 So this is what we call a core fragment, so it was
2 unsuitable for identification with a specific firearm;
3 however, it was most consistent with being a core from
4 a 40-caliber projectile.

5 Q And that was previously testified, the marker on
6 it, from Ms. Wallace?

7 A It was labeled Marker D.

8 Q Marker D, which she previously testified came from
9 the Living Room 2. All right.

10 Now, as to 55.

11 A 55 was my Item 2. It was labeled from Marker E.
12 This is a lead fragment. It also was unsuitable for
13 identification. It's just too small. It did not have
14 any of those individual markings that I needed.

15 Q Were you able to conduct any further testing on it
16 to see what it was more consistent with or most
17 consistent with?

18 A No. I could not determine the caliber of Item 2.
19 Or my Item 2, State's Exhibit 55.

20 Q As to State's Exhibit 56?

21 A State's Exhibit 56 was my Item 3. It is a fired
22 copper bullet jacket, and it was -- excuse me. Hold on
23 one moment. Let me check my notes. It also was
24 compared to the 40-caliber test bullets that I fired
25 from the Glock because it was 40-caliber and it was

1 inconclusive with those test specimens due to a limited
2 markings of -- limited markings that corresponded with
3 each other, I could not rule out the Glock firearm as
4 firing this, but I could not say that it did either.

5 Q But it is a 40-caliber jacket?

6 A Yes, it is. And when I examine fired components,
7 it has like a step. You first have to determine the
8 caliber. Could it have been fired by that gun? Then
9 you look at the rifling. This displayed four of the
10 lands and grooves that I needed, but it had room for
11 six. It was right-hand twist, which was similar with
12 the Glock. Then it also had polygonal rifling.
13 There's two types of rifling, conventional and
14 polygonal. All of these factors made it consistent
15 with the Glock.

16 Q State's 57?

17 A State's 57 was my Item 4, and it was labeled "from
18 Marker F." And it is a lead fragment that was
19 unsuitable for identification, but it also had some
20 what we call copper wash or copper plating to it which
21 was consistent with some of the unfired .22 long rifle
22 caliber ammunition that I found in this case.

23 Q So that was more consistent with the .22
24 ammunition?

25 A Just based on construction.

1 Q Okay. State's Exhibit 58?

2 A State's Exhibit 58 was my Item 6. Again, the same
3 thing with State's Exhibit 57. It was too small to
4 make any conclusion about its caliber, but it did
5 display some of that copper wash or copper plating that
6 was consistent with the .22 ammunition I received in
7 this case.

8 Q Thank you.

9 MR. MAULDIN: Where was that located?

10 MS. STROM: Can you tell me the markers again?

11 THE WITNESS: State's Exhibit 57 was from Marker
12 F, and State's Exhibit 58 was from Marker H.

13 MR. MAULDIN: H.

14 THE WITNESS: H.

15 MS. STROM: Which was previously testified as
16 coming from the Living Room 2.

17 Court's indulgence one second, Your Honor.

18 THE COURT: Okay.

19 MS. STROM: Just double-checking my numbers here.

20 Q I'm going to show you State's Exhibit 61 and 62
21 which were previously identified by Ms. Wallace as
22 fragments collected from the area of the foyer.

23 A Okay. State's Exhibit 61 and 62 were my Items 8
24 and 9, again still in sealed containers with my
25 initials and sealed date.

1 Q And what are you able to tell us about each one of
2 those?

3 A Okay. They were both, again, lead fragments that
4 were too small for me to identify a caliber and they
5 were unsuitable for identification, but they also both
6 displayed that same copper presence just as the
7 22-caliber ammunition I received in this case.

8 Q Two other items that were collected from the
9 foyer, State's Exhibit 59. What can you tell me about
10 State's Exhibit 59?

11 A State's Exhibit 59 was my Item 10 labeled from
12 Marker L --

13 Q Marker L.

14 A -- still in a sealed container with my initials
15 and seal date. It is a misfired 9mm Luger caliber
16 cartridge that I compared back to the 9mm rounds that I
17 fired or misfired from the Glock and determined that it
18 was struck by the firing pin of the Glock that I
19 received in this case.

20 Q And, again, for it to be located in the foyer, it
21 would have had to have been manually ejected from the
22 weapon?

23 A That's correct.

24 Q I'm going to show you State's Exhibit 60 which was
25 also testified as being collected from the foyer.

1 A State's Exhibit 60 was my Item 11. Again, still
2 in a sealed container with my initials and seal date,
3 and it is a fired .22 long or long rifle caliber
4 cartridge case. And I compared this back to the
5 test-fired rounds that I fired from the Walther P22 in
6 this case and determined that it was fired by that
7 Walther.

8 Q Just a couple more. I'm going to show you State's
9 Exhibit 63, 64, and 65. These were all previously
10 testified as coming from and being collected from the
11 hallway of the residence.

12 A Okay.

13 Q What can you tell us about each one of those?

14 A Okay. State's Exhibit 50 or -- excuse me, 63 was
15 my Item 14, and, again, still in the sealed container
16 with my initials and seal date. It is an unfired .22
17 long rifle caliber cartridge.

18 Q And what mark -- what marker? Does it say on
19 there which marker it came from?

20 A Marker P.

21 Q And that is an unfired .22?

22 A That's correct.

23 Q All right.

24 A State's Exhibit 64 labeled from Marker Q, my Item
25 15, is a fired 40-caliber cartridge case that I

1 determined to be fired by the Glock that I received in
2 this case.

3 Q And the Glock is the 40-caliber weapon?

4 A That's correct.

5 Q Okay.

6 A State's Exhibit 65 was a misfired .22 long rifle
7 round or cartridge labeled from Marker R, my Item 16,
8 and I compared this to the rounds that I fired from the
9 Walther.

10 Give me one moment, please.

11 And I determined that this firing pin impression
12 was made by that Walther P22 that I received in this
13 case.

14 Q And as to the misfired .22 that we just talked
15 about, again, would that have had to have been manually
16 ejected?

17 A Yes, it would have had to have been manually
18 removed from the firearm.

19 Q And I know that previously Ms. Wallace talked
20 about that she also recovered a -- collected this .22
21 long here. You received that weapon as well, did you
22 not?

23 A Yes, I did.

24 Q Okay. And did you test fire it?

25 A Yes, I did. I test fired it with a

1 laboratory-supplied magazine.

2 Q And -- because it did not come with a magazine?

3 A That is correct.

4 Q And did you find any indication that it was
5 involved with any of these casings or evidence here?

6 A No, I did not.

7 Q I'm going to show you State's Exhibit Number 83
8 and ask you, can you identify it?

9 A State's Exhibit 83 was my Item 52.

10 Q And that's been previously testified as being
11 recovered from the autopsy?

12 A That's correct.

13 Q Of Female [REDACTED]?

14 A From autopsy of Female [REDACTED].

15 Q What, if anything, did you do with that?

16 A This was -- I determined it to be a 40-caliber
17 fired bullet jacket, and then lead fragments. I
18 determined that this was -- that it was consistent with
19 40-caliber; therefore, the only firearm that it could
20 have been fired from that I received was the
21 40-caliber.

22 Give me a moment.

23 And I concluded that there was enough of those
24 individual identifying markings from the rifling left
25 to conclude that this bullet was fired by the Glock

1 that I received.

2 Q The Glock 40-caliber?

3 A That's correct.

4 Q Thank you.

5 State's Exhibit 84?

6 A State's Exhibit 84 was my Item 53. It is two
7 copper jacket fragments from the autopsy of Male
8 [REDACTED]

9 Give me one moment, please.

10 I microscopically compared this jacket to test
11 fires that I fired from the Glock with inconclusive
12 results. There just wasn't enough of those individual
13 markings to say whether or not it was definitively
14 fired by that firearm.

15 Q Thank you.

16 MS. STROM: Court's indulgence, Your Honor.

17 THE COURT: Uh-huh.

18 MS. STROM: Thank you. Please answer any
19 questions the defense may have.

20 MR. MAULDIN: One moment, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. MAULDIN:

23 Q All right. Ms. Cromer, I was asking your
24 colleague, Ms. Wallace, about the act of semiautomatic
25 ejecting, and I think you were in the courtroom during

1 those questions, were you not?

2 A Yes, sir, I was.

3 Q All right. The 40-caliber involved in this case
4 is a semiautomatic, and it does eject the casings?

5 A That's correct.

6 Q And it ejects them, according to the photograph --
7 do you wish for me to show you the photograph, or do
8 you need it?

9 A I have not seen it.

10 Q Okay. All right. Here it is. I got lucky that
11 time. All right. That's the photograph. And it shows
12 what I'll -- I don't know what they call it. What do
13 they call the little thing there on the side of the gun
14 where the ejection occurs?

15 A The ejection port.

16 Q Port. Okay. And the port on this particular
17 40-caliber is on the right side of the 40-caliber; is
18 that right?

19 A That's correct.

20 Q Okay. And so when the casings are ejected, they
21 would eject generally in that general direction?

22 A They are made to come out of the ejection port.
23 There are many different factors for ejection,
24 depending on how you're holding the firearm, if you're
25 holding it in the proper orientation, if you're holding

1 it with the ejection port facing the ground, if you're
2 holding it with the ejection port face up. We do not
3 do ejection pattern testing for all of those reasons.
4 It's trying to re-create something that we don't -- we
5 weren't there, we don't know. And ammunition factors.
6 Different ammunitions have different pressures,
7 different powers so they will go different lengths.

8 Also, when you're talking about ejection pattern
9 testing, when that cartridge does leave the firearm,
10 you don't know what it hit, what it bounced off of.
11 Anyone who's shot numerous times will know sometimes
12 they fly back and hit you. Sometimes you can't find
13 them. So there are multiple factors or ejection
14 patterns.

15 Q Okay. Now, I want to ask a couple of questions
16 about 52, State's Exhibit 52, and I'll use 53 as -- to
17 demonstrate. 52 is the 22-caliber. And that box
18 contains the firearm and the magazine but does not
19 contain any ammunition?

20 A No, sir. I did not receive it with any
21 ammunition.

22 Q All right. So you received it exactly like you're
23 holding it there, right?

24 A That's correct.

25 Q All right. And put that one back. 53 is the 9mm

1 that was laying on the floor in front of the safe.

2 That box has what in it?

3 A It has a Browning model high powered 9mm-caliber
4 semiautomatic pistol, a magazine, and 14 unfired
5 9mm-caliber cartridges.

6 Q Okay. So -- and that's the condition -- well,
7 let's see. When you got this thing, was that magazine
8 inside the gun with the bullets inside of it or was it
9 basically in the condition --

10 A It was basically in this condition. Like I said
11 before, we do not allow loaded firearms into the lab.

12 Q So the firearm may have been in a different
13 condition when it was recovered, but when it got to
14 you, it was in the condition that it's in today?

15 A That's correct.

16 Q All right. So, is it fair, then, to conclude that
17 52 was recovered with no ammunition?

18 A If it would have been found with ammunition, I
19 would believe that it would have been in the box with
20 it.

21 Q Right. Right. In other words, if there was
22 ammunition in it at the time it was found to be
23 consistent with all this other stuff, then the
24 ammunition would be in there, right?

25 A It should have been in there, or I should have

1 received ammunition that was labeled with the firearm.

2 Q And you did not?

3 A I did not.

4 Q All right. Okay. So it's fair to assume then
5 that 52, the 22-caliber, was empty?

6 A As I received it, it was empty, yes.

7 Q Now, 82 is the Glock. And you have testified that
8 it is your opinion that this particular firearm is the
9 firearm that was involved in the shootings in Bedroom
10 Number 2 and Bedroom Number 3 involving these children?

11 A Yes, it is.

12 Q And the ammunition that's in that box was
13 delivered to you at the same time. Just take a look,
14 make sure. Is that what was given to you?

15 A Yes, it was.

16 Q All right. And there are five cartridges in
17 there. Five cartridges?

18 A That's correct.

19 Q And you said that three of those would have been
20 unfired; there has been no attempt by that weapon to
21 fire those three?

22 A There's no indication of any firing pin impression
23 on three.

24 Q And the other two were misfired by that weapon?

25 A That's correct.

1 Q And they actually had to be manually removed,
2 which would lead one to believe that a person would
3 have attempted to fire, misfire, take that cartridge
4 out, attempt to fire, misfire, take that cartridge out,
5 right?

6 A That's correct.

7 Q But it seems to me if the picture is correct and
8 the magazine was in the gun, that they would, once
9 again, reload it into the same gun?

10 A If they were found in the magazine, that would be
11 correct.

12 Q Okay. All right. So they were attempted to be
13 fired, they were misfired, they were unloaded, they
14 were put back in the same gun again and attempted
15 again?

16 A I do not know that. I can only attest to they
17 were misfired by that firearm.

18 Q Three of them unfired, two of them misfired?

19 A That's correct.

20 Q And just a last follow-up on that. When you get
21 the magazine, it would be real nice for us to know --
22 it's going to be hard for me to describe this. If you
23 don't understand this question, let me know.

24 Speaking from Exhibit Number 82, this is the
25 magazine that came with 82?

1 A That's correct.

2 Q And it would be nice for us -- when you load this
3 magazine, you put the bullets right here on the top and
4 you press them down?

5 A Yes. You put the unfired cartridges in the top
6 and press them down.

7 Q And then press them down. And so the last one in
8 the bottom of this thing -- or the one in the top is
9 the next one that's going to be fired?

10 A That's correct.

11 Q Right, because they push up, okay. But when
12 you've got this, you have no way of saying whether the
13 misfired cartridges were at the top, had been put in
14 there, or whether they were at the bottom, there's just
15 no way to know that?

16 A No. I could not tell because they were already
17 unloaded from the magazine.

18 Q You just got three and two?

19 A That's correct.

20 Q All right. Location L on this diagram right here
21 in the foyer, there is a misfired 9mm?

22 A That's correct.

23 Q And your testing indicated that that misfired 9mm
24 actually was misfired from the 40-caliber that's
25 Exhibit 82 that we have been talking about?

1 A That's correct.

2 Q And do you happen to recall whether -- I mean, did
3 you make a visual comparison -- is that ammunition
4 consistent with each other?

5 A Yes, it was.

6 Q Okay. Okay. All right. In the hallway, I'm
7 particularly interested in Q, which is a fired
8 40-caliber casing. You with me?

9 A Yes, sir.

10 Q That casing was fired by that 40-caliber, Exhibit
11 Number 82?

12 A That's correct. In my opinion.

13 Q And the casing is where the bullet part of it's
14 already has been shot and that casing has been ejected?

15 A From the Glock.

16 Q And how it got where it is, nobody knows?

17 A That's correct.

18 Q Now, the last -- well, hang on a minute. Let me
19 ask these people if this is going to be my last
20 question, so hold on.

21 You used the term conclusive or inconclusive a
22 number of times, and I'm trying to make sure I
23 understand the distinction. This pen is red. That is
24 conclusive, right?

25 A That's right.

1 Q That would be conclusive. Inconclusive would mean
2 that it could be something other than red?

3 A Correct. When I use "inconclusive" as part of a
4 conclusion, even if I watched you fire a bullet into
5 that wall and pulled that bullet out of that wall,
6 unless I have the markings that match to the test
7 specimens from the firearm that you have, I can't say
8 it was fired, even though I saw you do it. It would be
9 inconclusive. If it doesn't have those microscopic
10 markings that I'm looking for, then it would be
11 inconclusive.

12 Q And the reason I ask that is because there was a
13 good bit of testimony about consistencies, that is,
14 characteristics that were consistent, consistent. But
15 they're still inconclusive. I mean, this is either red
16 or not. And I'm saying that they may have
17 characteristics, but it's either a yes or a no, not a
18 maybe in your business, right?

19 A I'm not sure I follow you.

20 Q All right. All right. When you express an
21 opinion that something is conclusive --

22 A Right.

23 Q -- that is definite. That's definitely your
24 opinion?

25 A That's correct.

1 Q Anything less than conclusive is indefinite, isn't
2 it?

3 A When I was talking about consistent with,
4 consistent with ammunition received in the case,
5 consistent with, those are visual -- visual
6 observations. Like consistent, the gold plating or the
7 brass washing, it was consistent with the 22-caliber
8 ammunition. I can't say that it was 22-caliber
9 ammunition. But it was visibly consistent with what I
10 received in that case.

11 Q All right.

12 A So I couldn't say --

13 Q That's the best you can come up with?

14 A That's correct.

15 Q All right.

16 I've got nothing further.

17 THE COURT: Any redirect?

18 MS. STROM: No, sir, Your Honor. We ask that
19 Ms. Cromer be excused and allowed to go back to
20 Columbia.

21 MR. MAULDIN: No objection.

22 THE COURT: Thank you, ma'am. You may step down.
23 You are free to leave.

24 All right. Now is a good time. Do y'all have a
25 short 15-minute witness or do you want to go ahead and

1 break for lunch?

2 MS. STROM: I don't foresee the next witness as
3 being that long, but I just can't anticipate cross,
4 Judge.

5 THE COURT: Do y'all want to break now or go on a
6 little bit longer? It's 12:15. It's your choice.

7 JURY FOREMAN: We're good.

8 THE COURT: You want to keep going?

9 JURY FOREMAN: Yeah.

10 THE COURT: Call your next witness.

11 MS. STROM: State calls Tony Robinson.

12 TONY ROBINSON,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Thank you. Please have a seat and
15 state your name for the record.

16 THE WITNESS: Tony Robinson.

17 DIRECT EXAMINATION

18 BY MS. STROM:

19 Q Mr. Robinson, by whom are you employed?

20 A I'm with the Pickens County Sheriff's Office.

21 Q In what capacity are you with the Pickens County
22 Sheriff's Office?

23 A I'm lieutenant over the forensic unit of the
24 sheriff's office.

25 Q How long have you been with Pickens County?

1 A 27 years.

2 Q 27 years, okay. Did you have an occasion to be
3 involved in the investigation that occurred at Cherokee
4 Trail, the home of Anna and Mike Simpson?

5 A I did.

6 Q Tell me, what was your involvement in that? Did
7 you actually go to the scene?

8 A I went to the scene early that morning on the 14th
9 of May.

10 Q There's previously been testimony about items
11 located within the kitchen area. Were you in the
12 courtroom when Ms. Wallace testified?

13 A I was.

14 Q You heard her speak specifically about different
15 items of evidence that she observed in the kitchen?

16 A I did.

17 Q Specifically, we're looking at State's Exhibit
18 Number 6. Do you recall going into the kitchen?

19 A I did.

20 Q And did you observe also the items contained
21 therein?

22 A Yes, ma'am.

23 Q I show you State's Exhibit Number 85. Do you
24 recognize State's Exhibit 85?

25 A Yes, ma'am.

1 Q Did you collect State's Exhibit Number 85?

2 A I did.

3 Q And when you collected that, did you collect it
4 from the kitchen counter?

5 A From the kitchen counter, yes, ma'am.

6 Q And when did you collect that?

7 A The night of May 14th.

8 Q What did you do with it when you collected it?

9 A I took it back to the Pickens County Sheriff's
10 Office and secured it in evidence, and that's where
11 it's been ever since.

12 MS. STROM: We move State's Exhibit Number 85 into
13 evidence.

14 MR. MAULDIN: No objection.

15 THE COURT: Without objection, introduced.

16 (WHEREUPON, State's Exhibit Number 85 was admitted
17 into evidence.)

18 BY MS. STROM:

19 Q Show you State's Exhibit Number 66. Do you
20 recognize it?

21 A I do.

22 Q And did you collect 66?

23 A Yes, I did.

24 Q And I'm putting on the overheard State's Exhibit
25 Number 8. Is that where you collected it? Is that

1 from where you collected it?

2 A That's the kitchen counter on the other side of
3 the stove.

4 MS. STROM: We offer that into evidence.

5 MR. MAULDIN: No objection.

6 THE COURT: Without objection, introduced.

7 (WHEREUPON, State's Exhibit Number 66 was
8 previously admitted into evidence.)

9 BY MS. STROM:

10 Q What is State's Exhibit 86, excuse me?

11 A It's a holster, a pistol holster.

12 Q And when you recovered that, did you compare that
13 holster to any of these weapons we have in evidence
14 today?

15 A I did.

16 Q And which one of those fit?

17 A This holster is made for that Walther P22.

18 Q The Walther .22?

19 A Yes.

20 Q Did you attempt to load the other weapons in that
21 holster?

22 A I did.

23 Q Did they fit?

24 A None of the other weapons collected fit that
25 holster.

1 Q I'm going to show you State's Exhibit Number 87.

2 Do you recognize State's Exhibit 87?

3 A I do.

4 Q Did you collect that item?

5 A I collected that item, yes, ma'am.

6 Q Did it remain in your custody in the Pickens
7 property and evidence?

8 A It has been in evidence ever since.

9 MS. STROM: Your Honor, we offer that into
10 evidence.

11 MR. MAULDIN: No objection.

12 THE COURT: Introduced.

13 (WHEREUPON, State's Exhibit Numbers 86 and 87
14 were admitted into evidence.)

15 BY MS. STROM:

16 Q What is State's Exhibit 87?

17 A It's a 22-caliber bullet.

18 Q Showing you State's Exhibits 49 and 50 and ask do
19 you recognize those?

20 A Yes, I do.

21 Q Did you take those photographs?

22 A I did.

23 Q Are they true and accurate representations of the
24 ammunition?

25 A Yes, ma'am.

1 MS. STROM: We offer those into evidence.

2 MR. MAULDIN: No objection.

3 THE COURT: Introduced.

4 (WHEREUPON, State's Exhibit Numbers 49 and 50
5 were admitted into evidence.)

6 BY MS. STROM:

7 Q You have a laser pointer there. I'm putting
8 State's Exhibit 49 up on the overhead. Can you show us
9 where the ammunition is, please?

10 A It's right here.

11 Q And State's Exhibit Number 50.. What is that?

12 A That's just a closer-up photograph of the round.

13 Q And where -- can you locate on this diagram for us
14 where you recovered that item?

15 A It was -- that round was actually in the sink in
16 the laundry room, which is right around here.

17 Q Thank you.

18 Please answer any questions the defense may have.

19 CROSS-EXAMINATION

20 BY MR. MAULDIN:

21 Q Mr. Robinson, I've only got a couple of questions.

22 When a person or a law enforcement officer or
23 investigator or something arrives at a crime scene,
24 items are where they are, but there's really no way for
25 you, for example -- and I'm thinking about this

1 22-caliber shell that was in that laundry basket. You
2 have no idea when in terms of time frame something like
3 that would have gotten in that spot?

4 A That's correct. I don't know when it got there.

5 Q And the holster on the kitchen counter, this one,
6 again, all you do is you come in there, and it's a
7 static situation and you place things and position
8 things, but you have no way of knowing how long
9 something may have been in that position?

10 A That's correct.

11 Q Okay. When you were conducting also your
12 investigation in this incident, I think you went with
13 Detective Taylor to the residence of an individual by
14 the name of Nathan Stegall?

15 A I did.

16 Q And, of course, without saying what his address
17 is, you were with Officer Taylor when he went to that
18 location?

19 A Yes, sir.

20 Q And I believe you took a photograph of
21 Mr. Stegall's smart phone?

22 A I did.

23 Q And that photograph was taken in order to preserve
24 the text message that was on the smart phone?

25 A That's correct.

1 Q All right. Thank you. I don't know what number
2 my exhibit -- do you keep up with that?

3 MS. STROM: No objection.

4 (WHEREUPON, Defendant's Exhibit Number 10
5 was marked for identification.)

6 BY MR. MAULDIN:

7 Q I'm going to show you, Officer Robinson, what has
8 been marked as Defendant's Exhibit No. 10 and see if
9 you recognize it.

10 A I do.

11 Q What is that?

12 A That's a photograph of the phone and the message
13 on the phone.

14 Q And it's a photograph of Nathan Stegall's smart
15 phone; is that right?

16 A Yes, sir.

17 Q And it shows a text message?

18 A It does.

19 Q All right. And what does the text message say?

20 A "Hell on Earth."

21 Q All right. I want to put that up on the little
22 Elmo. Is that a fair and accurate representation of
23 Mr. Stegall's smart phone?

24 A Yes, sir.

25 Q I don't understand why that's not showing on

1 there.

2 THE COURT: Can y'all see that? Okay.

3 BY MR. MAULDIN:

4 Q Can you read this --

5 Your Honor, would you ask the jury if they can
6 read the actual text?

7 THE COURT: Can you read the text?

8 They indicate they can.

9 BY MR. MAULDIN:

10 Q All right. Officer Robinson, this says, it has
11 the name "Anna Simpson" as the sender of the text?

12 A That would be my understanding, yes, sir.

13 Q Right. And the text was apparently sent to
14 Mr. Stegall's phone?

15 A Yes.

16 Q And the text from Anna Simpson says, "Hell on
17 Earth, question mark"?

18 A Yes, sir.

19 Q All right.

20 MR. MAULDIN: That's all. Thank you.

21 THE COURT: Did you want -- did you wish to
22 introduce that exhibit?

23 MR. MAULDIN: Yes.

24 MS. STROM: It was without objection.

25 THE COURT: Without objection, introduced as

1 Defendant's Exhibit 10, I believe.

2 (WHEREUPON, Defendant's Exhibit Number 10 was
3 admitted into evidence.)

4 MR. MAULDIN: Thank you, Judge.

5 THE COURT: Any redirect?

6 MS. STROM: No, sir, Your Honor.

7 THE COURT: Thank you, sir. You may step down.

8 Do you have another witness?

9 MS. STROM: Judge, I actually think this might be
10 a good time to break.

11 THE COURT: Okay. We're going to break now. So
12 what we're going to do, ladies and gentlemen of the
13 jury, we're going to break for lunch. I want you back
14 in your jury room at 2:00 p.m.

15 During lunch remember what I said yesterday when I
16 was talking to the whole group of you. Pickens is a
17 small community. Some of you may choose to go eat
18 lunch around here at various places. You may see some
19 familiar faces from in this courtroom. Do not speak to
20 anybody at all about anything, even pleasant, innocent
21 conversations can be easily misconstrued.

22 While you're on your lunch break, don't go on your
23 smart phone if you have one and start Googling
24 information or looking up news reports or what's on
25 Twitter about this case or anything. Don't do any

1 independent research, okay. Just don't. If it's on
2 the paper, the newspaper, the printed paper, don't read
3 it. Because, remember, your verdict has to be based
4 solely from the evidence and the information presented
5 in this courtroom and within this courtroom alone, and
6 that is your sworn duty as a juror. Okay? So we'll
7 see you back at 2:00 p.m. Y'all are free to leave at
8 this time.

9 I want everybody else in the courtroom to stay
10 here for about five minutes while we make sure the jury
11 gets out so we won't have any interaction on the stairs
12 or the elevator, okay. The jury is free to leave.

13 (WHEREUPON, the jury exited open court at
14 12:30 p.m.)

15 THE COURT: Anything from the lawyers that we need
16 to address at this time while we're waiting?

17 MS. STROM: Nothing from the State.

18 MR. MAULDIN: No, Your Honor.

19 THE COURT: All right. Thank you. We'll just
20 remain at ease in the courtroom. Y'all can talk to
21 whatever you want, just give them an opportunity to get
22 out of the courthouse. Okay? Thank you.

23 (WHEREUPON, lunch recess was taken from
24 12:31 p.m. to 2:00 p.m.)

25 THE COURT: Anything before we bring the jury in?

1 MR. WILKINS: Not from the State, Your Honor.

2 MR. MAULDIN: No, Your Honor.

3 THE COURT: Okay.

4 (WHEREUPON, the jury entered open court at
5 2:00 p.m.)

6 THE COURT: All right. All members of the jury
7 are present. I hope you had a good lunch. We'll move
8 right into it this afternoon.

9 Y'all may call your next witness.

10 MR. WILKINS: Thank you, Your Honor. The State
11 calls Nate Stegall.

12 NATHAN STEGALL,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: Thank you, sir. If you would please
15 have a seat and state your name, if you would.

16 THE WITNESS: My name is Nathan Stegall.

17 DIRECT EXAMINATION

18 BY MR. WILKINS:

19 Q Mr. Stegall, I appreciate you being here, and make
20 sure you talk into that microphone so this jury can
21 hear you.

22 Mr. Stegall, where are you employed?

23 A I'm employed at the Greenville-Spartanburg
24 Airport.

25 Q What do you do for them?

1 A I'm a police sergeant with the police department.

2 Q How long have you been doing that?

3 A Since 2001.

4 Q I'm going to ask you, did you ever know Mike and
5 Anna Simpson?

6 A Yes, sir, I did.

7 Q Can you tell us a little bit about your
8 relationship with them and how long you've known them?

9 A I've known Mike and Anna since approximately the
10 late '90s -- '98, '99, just friends. Mikey and I went
11 hunting and fishing and doing those kind of things
12 together.

13 Q Did you ever do anything with them as a couple?

14 A Yes. A lot of times Anna tagged along with us,
15 the group, so she could be included in it.

16 Q Okay. So how would you describe your relationship
17 with them in general?

18 A Just, in general, the best of friends. On the
19 weekends that I had my daughter, I would take my
20 daughter over to their house to let my daughter play
21 with Female and Male Child

22 Q So would you say you had a good bit of interaction
23 with them?

24 A Yes, a very good bit.

25 Q I'm going to draw your attention to May 13th,

1 2013. On that day, did you have an opportunity to
2 interact with Mike and Anna Simpson?

3 A Yes, I did.

4 Q Can you tell this jury how that came about?

5 A Well, I guess, in our group of friends, I'm the
6 guy without a truck. So I was going to Mikey's house
7 to borrow his truck to run some errands and do some
8 stuff I needed to do this afternoon.

9 Q Okay. So how did you arrange that?

10 A I had called Mike and, you know, said, "I need to
11 borrow your truck." And, well, of course, as always,
12 he said, "No problem. Just go over there and Anna will
13 have the key."

14 And I went over there to pick up the truck and go
15 about my business, but we couldn't locate the key for
16 the vehicle.

17 Q Now, you said you went over there. Which house
18 did you go to?

19 A To their house on Cherokee Trail.

20 Q Cherokee Trail, okay. So what happened when you
21 got there?

22 A When I got there, it was just a normal afternoon.
23 I remember **Male Child** chasing **Female** around the truck with a
24 water gun giving her a hard time like he always did.
25 And, you know, I got with Anna. It was like, "Well, I

1 need to get this" -- after some small talk, you know,
2 it was like "Well, I need to get going and get this
3 stuff done," and she couldn't locate the key to the
4 truck. It had been misplaced.

5 So at that point I called Mike, and I was like,
6 "Hey, we can't find the key." And he was like, "It's
7 no problem. I'm going to lunch break, I'll run one up
8 to you." He had the spare with him.

9 Q Okay. So were you waiting on Mike to come back
10 with a spare key?

11 A Yes, sir, I was. He was -- he was coming home
12 from his job in Powdersville to bring the key.

13 Q What were you doing while you were waiting for
14 Mike to rush to the house?

15 A Well, while I was waiting, I was just sitting on
16 the bench watching Male and Female play and, you know,
17 trying to have a little bit of small talk with Anna.

18 Q Okay. Tell us about your interaction with Anna.
19 What was it like?

20 A It was very -- that afternoon, it was very short.
21 I would say contrite. You could tell she was
22 aggravated and just like, as I would describe, just an
23 angry wife. So things were just kept short and simple.
24 I didn't want to be put into the situation or get
25 involved with anything.

1 Q Did you have any extensive conversation with her
2 or just more light conversation?

3 A Just light conversation about the kids and how my
4 daughter was doing and, you know, when was the next
5 time they're going to get to see each other and things
6 like that.

7 Q Was your interaction with her coherent?

8 A Yes.

9 Q Did you have any trouble communicating with her?

10 A No, none whatsoever.

11 Q Did you have any feelings that something was wrong
12 with her?

13 A Not that something was --

14 MR. MAULDIN: Your Honor, I object to that. If
15 he's asking --

16 THE COURT: Repeat your question, Solicitor.

17 MR. WILKINS: The question was: Did you have any
18 feeling that there was anything wrong with Anna?

19 MR. MAULDIN: That's speculation. That's total
20 speculation.

21 THE COURT: Objection overruled.

22 THE WITNESS: At that time I couldn't tell that
23 there was anything wrong with her as far as what I
24 would -- what I would say would be something that would
25 cause danger, but I could tell she was highly agitated

1 and, you know, typical of husband-wife argument-type
2 scenario.

3 BY MR. WILKINS:

4 Q Were you aware of her and Mike having a
5 disagreement, or were you aware of any disagreement
6 they were having?

7 A No, not of any disagreement they were having.
8 They had talked on the phone in reference to the keys
9 and stuff, but not anything specific that I could
10 testify to.

11 Q So about how long did it take for Mike to arrive?

12 A Approximately between 30 and 40 minutes. He was
13 coming from 153 in Powdersville all the way to
14 Dacusville, so I would say about 30 minutes.

15 Q And what happened once Mike arrived?

16 A When Mike got there, of course the kids flocked to
17 him because daddy was home, and then Anna had came over
18 and they had an exchange of some sort. And I was
19 sitting there still sitting on the bench trying to stay
20 out of the way, and Mikey had given me the key. And I
21 was, you know, "Y'all have a great afternoon. I'll see
22 you when I get back."

23 Q While you were waiting on Mike to get there, what
24 was Anna's interaction with her children?

25 A It was one of sorts that **Male Child**, he -- not that he

1 was rambunctious, but he was really, really high
2 strung, and he was giving his sister a hard time,
3 squirting her with the water gun and, you know, just
4 being a boy. And, you know, it was -- it -- there
5 wasn't really any discipline issued out. It was to the
6 point of, "Hey, quit doing that." You know, "I don't
7 want to have to tell your dad you have been bad when he
8 gets home," that type of deal.

9 Q After you left with the truck, where did you go?

10 A I had to run several errands including the dump,
11 and I had picked up some Sheetrock and stuff like that.

12 Q And did you return the truck?

13 A Yes, I did, later that afternoon.

14 Q And what did you do when you returned the truck?

15 A When I returned the truck, I waited until Mikey
16 got home because I picked up some Sheetrock and he was
17 going to have to help me unload it because it was too
18 big and too awkward for me to do myself. So I waited
19 until he got home from work and saw him and we got
20 everything unloaded and taken care of, and that was it.

21 Q Did he mention to you anything -- did he mention
22 to you anything any problems or issues he was having?

23 A No.

24 MR. MAULDIN: Your Honor -- Your Honor, that would
25 be hearsay. He's asking this witness about a

1 conversation with a third party.

2 THE COURT: Sustained.

3 MR. MAULDIN: That's hearsay.

4 THE COURT: Sustained.

5 Rephrase your question.

6 BY MR. WILKINS:

7 Q Did you give the keys back to Mike?

8 A Yes, sir, I did.

9 Q Did you have -- don't tell me what he said. Did
10 you have any further conversations with Mike once --
11 after you gave him the keys?

12 A No, sir, nothing that would pertain to what we
13 spoke about.

14 Q And did you leave the house then?

15 A Yes, sir, I did.

16 Q Okay. Did you ever have any further contact with
17 Mike or Anna after you left the house that day?

18 A That evening is when I got the text message that
19 counselor showed the court earlier.

20 Q Okay. All right. Mr. Stegall, I'm going to show
21 you what's already been admitted into evidence as
22 Defense Exhibit 10. Do you recognize that?

23 A Yes, sir, I do.

24 Q Okay. Is that a picture of your cell phone?

25 A Yes, sir, it is.

1 Q Okay. And what was the text message that you
2 received on the night of May 13th?

3 A On the night at 9:11 p.m. Verizon time, I got a
4 text message from Anna that said "Hell on Earth" with a
5 question mark.

6 Q And when did you respond?

7 A At 9:39 Verizon time I responded with "huh?" Just
8 h-u-h, question mark.

9 Q Okay. Were you familiar with Mike's guns and
10 ammunition and his ownership of guns?

11 A Yes, sir, very much.

12 Q Did you know that he owned guns?

13 A Yes.

14 Q Had you gone hunting with him before?

15 A Yes, sir, multiple times.

16 Q Do you know -- and if you don't know, answer you
17 don't know -- do you know if he kept his gun safe
18 locked or not?

19 A It was diligently locked.

20 Q Answer any questions Mr. Mauldin may have.

21 CROSS-EXAMINATION

22 BY MR. MAULDIN:

23 Q Mr. Stegall, and I just missed what you said, they
24 were always locked or unlocked?

25 A I said the safe was diligently locked.

1 Q Okay. So the guns were routinely, at least,
2 routinely secured?

3 A Yes.

4 Q Okay. Now, let me ask a few questions about your
5 interaction. And when we're talking about the 13th,
6 we're talking about the Monday?

7 A Yes.

8 Q And this -- did this occur on Monday afternoon,
9 the interaction between you and Anna?

10 A Yes, it did.

11 Q It was a Monday afternoon at her residence?

12 A That's correct.

13 Q Okay. I've written these comments as you were
14 going along that she -- that Anna was aggravated, you
15 used that term, that she was not acting as her normal
16 self?

17 A I didn't state that.

18 Q Or not normal?

19 A I didn't state that either.

20 Q Oh, all right. You did not want to be put into
21 anything, and that is -- you didn't want to -- you
22 didn't make any inquiry about why she was aggravated;
23 is that fair to say?

24 A That is fair to say.

25 Q All right. And she was clearly agitated. I think

1 you said "agitated"?

2 A I did.

3 Q Okay. The bottom line, while folks can speculate
4 about what would or would not have been aggravating
5 somebody, agitating somebody, we really have no real
6 idea what was causing her to be agitated, right?

7 A That's correct.

8 Q There was no -- there was no statement to you by
9 her or anybody else, here's why she's aggravated?

10 A You're correct.

11 Q That's right. Okay. And I appreciate that.

12 One other question I've got. This was May the
13 13th, which would be a spring day, day after Mother's
14 Day. Do you recall whether -- and I don't know what
15 your habit is and so I'll just ask you, do you recall
16 whether or not you were wearing sunglasses?

17 A I do not recall.

18 Q Okay. Do you wear sunglasses -- some people wear
19 them, some people don't.

20 A Yes, I do.

21 Q Could you have been or is it possible that you
22 were wearing sunglasses that day when you were over at
23 Anna's house?

24 A It is possible.

25 Q Okay. All right.

1 One moment.

2 All right. And this text that you received from
3 Anna shows on the text Monday, so that was the same day
4 that you described to us that you saw her when she was
5 aggravated, agitated, but you don't know why?

6 A That's correct.

7 Q And this is that same -- that was later that same
8 evening and that was the text from her?

9 A Yes, sir.

10 Q All right. I apologize, Mr. Stegall. This is the
11 first and only text that you've ever -- that you ever
12 received from Anna Simpson, wasn't it?

13 A To my recollection, I would say so, but I couldn't
14 swear to the court.

15 Q Let me -- I'm going to just refresh him.

16 I'm going to show you this document, let you look
17 it over just to refresh your memory, sir. All right.

18 Now, we'll repeat that question. This is the
19 first and only text that you've ever gotten from Anna
20 Simpson?

21 A As far as my recollection goes, yes.

22 Q All right. That's all.

23 THE COURT: Any redirect?

24 MR. WILKINS: No redirect, Your Honor.

25 THE COURT: Thank you, sir. You may step down.

1 MS. STROM: Your Honor, we'd ask he be excused.

2 THE COURT: Any objection?

3 MR. MAULDIN: No. He's under subpoena by us as
4 well, so we do agree to excuse him.

5 THE COURT: Okay. You can be excused, but you're
6 still subject to being called by the defense. Okay?
7 Thank you, sir.

8 State can call its next witness.

9 MR. WILKINS: Your Honor, the State calls Kevin
10 Sanders.

11 KEVIN SANDERS,

12 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

13 THE CLERK: If you would have a seat and state
14 your name for the record, please.

15 THE WITNESS: My name is Kevin Sanders.

16 DIRECT EXAMINATION

17 BY MR. WILKINS:

18 Q Mr. Sanders, make sure you speak into that
19 microphone so the jury can hear you.

20 A Yes.

21 Q Where are you employed?

22 A S&S Home Improvement.

23 Q How long have you been employed there?

24 A Since 1994.

25 Q And do you have any children?

1 A Yes.

2 Q How many children do you have?

3 A I have two, a girl and a boy.

4 Q And where do you live?

5 A I live --

6 Q I don't need your specific address, but in what
7 county?

8 A In Easley.

9 Q Do you have any children that were attending the
10 Dacusville Elementary School back in 2013?

11 A Yes, sir.

12 Q I'm going to take you back to May of 2013. Do you
13 recall having any interaction with the defendant, Anna
14 Simpson, on that day?

15 A Yes, sir.

16 Q Do you remember where that was?

17 A That was in the school office.

18 Q And can you tell this jury why you were there at
19 that school?

20 A I was getting an early dismissal for my son to go
21 see a baseball game he was attending.

22 Q And so can you tell this jury what happened when
23 you were there to get your son out of school, out of
24 the Dacusville Elementary School?

25 A I'm arriving, walking in right after Ms. Anna is

1 walking in, and we both were signing our kids out. And
2 one of the odd things that was said was a reason for
3 getting your kid out. And she kind of said to her son
4 that the reason why we getting the daughter out is you
5 sick. And the little boy just blurted out, saying
6 that, "I'm not sick, Mom," and --

7 Q So let me back you up. So you saw her inside the
8 school?

9 A Yes, sir.

10 Q Is there an area you go to to sign your children
11 out?

12 A Yes, sir. The office.

13 Q Where is that area?

14 A The office.

15 Q It's the office?

16 A Yes, sir.

17 Q Were y'all both signing your children out about
18 the same time?

19 A About the same time.

20 Q Okay. And when you were doing that, did you have
21 some conversation with her?

22 A Not at that time. I was just behind her in line.

23 Q You were behind her in line?

24 A Yes.

25 Q So what was she doing when she was in front of

1 you?
2 A She was filling out the paper for early dismissal.
3 Q For early dismissal?
4 A Yes.
5 Q And was she talking to anybody?
6 A Yes.
7 Q Who was she talking to?
8 A I believe to the secretary of the office.
9 Q Okay. And what was she saying to the secretary of
10 the office?
11 A I don't recall that. I just -- I think that the
12 secretary asked her the reason you have to fill out on
13 the paper, and that's what was kind of said.
14 Q So what did Anna say?
15 A That her boy had been sick, and she wanted to get
16 the girl out because she thought she may be sick, too.
17 Q And the son who was with her at that time --
18 A Yes, sir.
19 Q -- what did he say?
20 A He said, "Mom, I'm not sick," just called her out
21 right there on the spot, you know.
22 Q And did you say anything?
23 A No, I didn't say anything.
24 Q So what happened after this exchange inside the
25 office?

1 A Well, after we signed the papers and all, the
2 secretary leaves to go get the kids for early
3 dismissal. And she was walking back and forth and kind
4 of real, I guess, impatient and just wondering what's
5 taking so long and stuff like that. Just a different
6 atmosphere that she had. And she realized when she
7 seen her kid coming, the kid was going upstairs to get
8 some items, backpack, I'm assuming, but --

9 Q Was she able to see her child walk by?

10 A Yes, sir. Yes, sir. And she thought that she was
11 coming to her immediately and turned and go up the
12 steps. And she was just like really in a hurry or
13 something. And she was wanting to know what was taking
14 so long. So I just suggested, "Hey, they got to go get
15 their backpacks."

16 Q That's what you said to Anna?

17 A Yes, sir. I sure did. I said, "They probably
18 going to get their backpacks and then come down for
19 early dismissal." And she mentioned the fact, "Where
20 she's going to go, she don't need no backpack." That's
21 what she said.

22 Q Did her daughter actually come out and meet her?

23 A Yes. After coming down the steps and retrieving
24 their backpack.

25 Q Did your son come down as well?

1 A Yes, sir.

2 Q So what did y'all do after your children arrived
3 to you in the office?

4 A We exited the building and was walking out to the
5 front curb where we parked. I was telling my son that
6 we was going to have a good day, Upper State
7 Championship baseball game. And she spins around real
8 angry and said, "What did you say to me?" And I said,
9 "Ma'am, we was talking to my little boy about a
10 baseball game today," and we went about our business.

11 Q Did you have any further conversation --

12 A No, sir.

13 Q -- with her there?

14 A No, sir..

15 Q Did you see Ms. Simpson having any or answering to
16 any voices that weren't there?

17 A No, sir.

18 Q Was she responding appropriately to questions that
19 were asked of her?

20 A Yes, sir.

21 Q Was she cognizant of her surroundings and what was
22 going on?

23 A Yes, sir.

24 Q Did she recognize her child as she walked by the
25 door?

1 A Yes, sir.

2 Q Did she --

3 MR. MAULDIN: Your Honor, I'm going to have to
4 object to the leading form of the question.

5 THE COURT: Okay.

6 MR. MAULDIN: Objection.

7 THE COURT: All right. Sustained.

8 BY MR. WILKINS:

9 Q Mr. Sanders, what was your overall impression of
10 Ms. Simpson's interaction?

11 A She was just real impatient, something didn't feel
12 right, wasn't acting real -- I don't want to say
13 normal. Just very in a hurry and "let's get it and go"
14 attitude.

15 Q All right. Answer any questions defense counsel
16 may have for you.

17 CROSS-EXAMINATION

18 BY MR. MAULDIN:

19 Q Mr. Sanders, I've got a few questions for you.
20 These are the notes that I've jotted down, and I want
21 to make sure I'm accurate --

22 A Yes, sir.

23 Q -- with what I heard you say --

24 A Yes, sir.

25 Q -- on direct examination. The jury, we need to

1 make sure it's as accurate as possible..

2 Your description early in your testimony was that
3 it was just a different atmosphere, that it was just a
4 different -- she was acting strangely, that it was a
5 different atmosphere, is what I wrote down. You said
6 that?

7 A Yes, sir.

8 Q Is that accurate?

9 A Yes, sir.

10 Q That she was very impatient, pacing back and
11 forth?

12 A Yes, sir.

13 Q That she seemed to be in a real hurry?

14 A Yes, sir.

15 Q And then you said just a moment ago something just
16 didn't feel right, and that was what your impressions
17 were about this experience you were having with her?

18 A Yes, sir.

19 Q You gave a statement to law enforcement, and the
20 date of the statement was May the 22nd 2013, so that
21 would have been about a week after the incident you
22 were interviewed by the police?

23 A Yes, sir.

24 Q And I think at that time you stated that Simpson
25 was acting very strangely, and she was extremely...

1 uptight and on edge. Is that a fair description?

2 A Yes, sir.

3 Q Okay. I'm going to ask you one other thing about
4 that statement you gave to law enforcement,
5 Mr. Sanders.

6 Just a moment ago you said that she -- that **Female**
7 was coming and then went another direction. And your
8 statement to Anna -- it was obviously she was agitated
9 about this, right?

10 A Yes, sir.

11 Q Okay. And you said to Anna, "She's probably going
12 to get her bookbag." And when Mr. Wilkins was asking
13 you the questions, what I understood you to say that
14 Anna said to you was, "Well, where she's going, she
15 won't need her bookbag." Is that what you just
16 testified to just a minute ago?

17 A Yes, sir.

18 Q All right. All right. "Well, where she's going,
19 she won't need her bookbag." That's what you testified
20 to; is that correct?

21 A Yes, sir. Yes, sir.

22 Q And this is June of 2016. It's three years after
23 the incident?

24 A Yes.

25 Q On May the 22nd, it was about a week after the

1 incident; is that correct?

2 A Yes, sir.

3 Q And you were having an interview with the law
4 enforcement people about this encounter with
5 Ms. Simpson. You knew that law enforcement needed to
6 know as much information as you could give them, right?

7 A Yes, sir.

8 Q And you need -- that information needed to be
9 accurate?

10 A Yes, sir.

11 Q Best that you could give them? All right.

12 I want to show you the statement you made to law
13 enforcement. Mr. Sanders, I want you to look where I
14 have bracketed with the blue pen. You see those
15 brackets?

16 A Yes, sir.

17 Q I want you to read that to yourself and then look
18 up when you're through. Just read that to yourself and
19 look up when you're through.

20 Regarding the bookbag, you said that Anna Simpson
21 said to you, "Well, she doesn't need her bookbag. We
22 just need to go." Did I read that correctly?

23 A Yes, sir.

24 MR. MAULDIN: Nothing further, Your Honor.

25 THE COURT: Any redirect?

1 MR. WILKINS: No, sir, Your Honor.

2 THE COURT: All right. Thank you, sir. You can
3 step down.

4 Call your next witness.

5 MR. WILKINS: Thank you, Your Honor.

6 The State calls Alison Simpson.

7 ALISON SIMPSON,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE CLERK: Thank you, ma'am. If you would have a
10 seat and state your name for the record, please.

11 THE WITNESS: My name is Alison Simpson.

12 DIRECT EXAMINATION

13 BY MR. WILKINS:

14 Q Ms. Simpson, where do you live?

15 A I live on Terre Haute Drive.

16 Q Who do you live with?

17 A I live with my husband and my son.

18 Q Who is your husband and your son?

19 A My husband is John Simpson. My son is Michael
20 Simpson.

21 Q Is Michael Simpson the victim of the case that
22 we're talking here today?

23 A Yes, he is.

24 Q And do you know Anna Simpson?

25 A I do.

1 Q And who is she?

2 A Anna was married to Michael. She's my
3 daughter-in-law.

4 Q So that would make her your daughter-in-law?

5 A Yes.

6 Q Tell this jury a little bit about how long you
7 have known Anna.

8 A I first met Anna after she left high school and my
9 son met her -- well, he met her in school but he kind
10 of got to dating after, and I met her when he brought
11 her home, which is probably 20 years ago.

12 Q And I'm assuming you were there through their
13 courtship and marriage?

14 A Yes.

15 Q Were you at their wedding?

16 A Yes, I was.

17 Q And did you maintain a relationship with Mike and
18 Anna once they got married?

19 A Yes.

20 Q Can you tell us a little bit about your
21 relationship with them after they got married?

22 A They were fine. They seemed like a happy couple.

23 Q How often --

24 A As far as I know.

25 Q How often did you interact with them?

1 A We spoke to Michael two, three times a week. I
2 didn't see Anna very often because at that time she was
3 working.

4 Q I'm assuming you were there for the birth of their
5 children?

6 A Yes -- not -- after they were born.

7 Q After they were born?

8 A Yes.

9 Q Okay. And since they had children, what kind of
10 relationship did you have with Anna and Mike and the
11 children?

12 A Pretty good. We saw a lot of the children.

13 Q Were you able to -- how often were you able to see
14 the children?

15 A It depends. Sometimes more, sometimes less. You
16 know, a week or a month.

17 Q So let's go up until a year before this incident.

18 A Okay.

19 Q Were you able to interact with the children a
20 decent amount?

21 A Not as much as I would like because the only time
22 I saw the children mostly was when Michael brought them
23 to our house because Anna rarely ever brought them to
24 the house.

25 Q And would you see Anna and Michael and the

1 children on holidays?

2 A Yes. At Thanksgiving, Christmas, times like that.

3 Q Normal times?

4 A Pretty much.

5 Q I want to take you to -- well, let me ask you
6 this. Would your interaction with your
7 daughter-in-law, Anna Simpson, how would you describe
8 it?

9 A I would describe it as a little difficult.

10 Q Why is that?

11 A Because Anna disagreed with me most on a lot of
12 stuff, and she was very, very selfish.

13 Q In what way?

14 A I think she always thought about herself all the
15 time and she would even put herself before her children
16 like for having shots and going to the dentist, stuff
17 like that.

18 Q So who would do those things?

19 A I don't understand your question.

20 Q You said that she would put herself before going
21 to the doctor or going to the dentist?

22 A Yeah.

23 Q Would somebody else do those things for her?

24 A No. She would eventually get around to doing it.
25 And when she thought she kind of wanted to.

1 Q Did you ever have any concerns about Anna's mental
2 health?

3 A After she came back from the behavioral place, I
4 did talk to her mom one time and I said to her, "Is
5 Anna able to take care of her children?" And, "Would
6 she harm them in any way?" And Anna's mom said she
7 would never hurt her children.

8 Q I'm going to take you to the day before -- I'm
9 going to take you to May 13th --

10 A Okay.

11 Q -- 2013 --

12 A Okay.

13 Q -- which is the day before this incident.

14 A Right.

15 Q Did you ever have a conversation with Anna Simpson
16 that day?

17 A I did.

18 Q Do you remember when that conversation occurred?

19 A Between -- I think between 6:00 and 6:30.

20 Q Can you tell us about that conversation?

21 A I can. I answered the phone and she asked me if
22 she could ask me a question.

23 Q So she called you on the telephone?

24 A She called me.

25 Q Okay.

1 A And I said, "Yes, you can ask me anything." And
2 she said, "Why don't you come up and see us as much as
3 you used to," or, "Why don't you help as much?"

4 Q And when she said, "Why don't you help as much,"
5 what did you think she meant by that?

6 A Probably taking --

7 MR. MAULDIN: Excuse me one moment, please, ma'am.
8 I think that calls for speculation.

9 THE COURT: All right. Interpose an objection
10 there.

11 Rephrase your question or ask your question again.

12 MR. WILKINS: The question was: What did you
13 think she meant by help with the kids? Or help, I
14 think, is what she said.

15 THE COURT: Is there an objection to that?

16 MR. MAULDIN: Speculation.

17 THE COURT: Sustained.

18 MR. WILKINS: Okay.

19 Q So, again, what did Anna ask you?

20 A She asked me what I just said, why didn't we go to
21 their house as much.

22 Q And what was your response?

23 A My response was that the children were growing up
24 and they didn't need as much help as they did and that
25 the house was pretty well finished because we used to

1 go up a lot when and John would help Michael with
2 woodworking and stuff like that. And that was mostly
3 done, and the children's school, and so we really
4 didn't need to go up as much.

5 Q Okay. And was that the end of your conversation?

6 A She said, "Oh." And then she said, "I just wanted
7 to say hello."

8 Q Okay.

9 A And that was pretty much the end of the
10 conversation.

11 Q Did y'all have an occasion to talk again?

12 A We did. About 20 minutes later, I thought maybe
13 she might like to go to the Pickens Flea Market with
14 me, and I asked her would she -- I called her back and
15 asked her would she like to go, and she said, "Well,
16 that sounds good. I'll let you know." And we put the
17 phone down, and that was the last time I spoke.

18 Q That was the last time you spoke to Anna?

19 A Yes.

20 Q Okay. Your son, Michael Simpson, was shot as
21 well; is that correct?

22 A Yes, he was.

23 Q Can you tell us a little bit about what his
24 current condition and what happened to him, what his
25 injuries were?

1 A Michael has --

2 Q Take your time, Ms. Simpson.

3 A Michael has a TBI which is like a very, very
4 serious head injury. He lost his peripheral vision.
5 He has seizures. He has lost the use of his left side.
6 He can't remember short-term memory. He remembers a
7 few things from when he was little. He doesn't
8 initiate conversation. We mostly have to initiate
9 conversation with him. I think he is paralyzed on his
10 left side. And he's very flat in his personality and
11 stuff. And he also has a bullet at the back of his
12 left eye that they could not move.

13 Q Ms. Simpson, if you will answer any questions
14 Mr. Mauldin may have for you. Okay?

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q Ms. Simpson, I only have a few questions for you.

18 A Okay.

19 Q You mentioned early in your testimony with
20 Mr. Wilkins, you mentioned that it was not until after
21 the Carolina Center for Behavioral Health
22 hospitalization --

23 A I believe it was.

24 Q -- that you actually noticed a significant change?

25 A Yes.

1 Q Is that about the right timing?

2 A Pretty much.

3 Q And, in fact --

4 A Well, when you say "significant change," what do
5 you mean by that?

6 Q Well, I think that you said that you noticed a
7 change?

8 A I did.

9 Q After her release from the health -- behavioral
10 health?

11 A I don't think I said that.

12 Q Okay. Well, then, let me ask you about that.

13 A Okay.

14 Q You recall she was hospitalized in, let's see,
15 early August, I think, at St. Francis, maybe late July,
16 early August of 2012?

17 A Yes.

18 Q She spent some days at St. Francis Hospital and
19 then was transferred to the Carolina Center. You
20 recall that?

21 A Yes.

22 Q Okay. And after days at the Carolina Center, she
23 was then released?

24 A Yes.

25 Q And she went back home to Dacusville?

1 A Yes.

2 Q And at some point very soon, and I don't have the
3 actual dates of the trip, but Mike, your son, went to
4 Africa on a hunting trip?

5 A Yes, he did.

6 Q And that was right -- that was after Anna had
7 gotten out of the behavioral health?

8 A I can't remember the dates.

9 Q Yeah. But it was -- and if she got out in August
10 of '12, then that trip to Africa was sometime during
11 August of '12?

12 A It was sometime during August, but I can't
13 remember the dates.

14 Q Okay. Okay. And while Mike was in Africa, do you
15 recall getting a telephone conversation from Anna when
16 she asked you --

17 A Uh-huh.

18 Q -- if Mike was coming back to them?

19 A Yes. I remember that.

20 Q You remember that conversation --

21 A Yes. Yes.

22 Q -- when Anna, the wife and mother, was asking her
23 mother-in-law --

24 A Uh-huh.

25 Q -- if her husband, your son --

1 A Uh-huh.

2 Q -- was going to come back to his family?

3 A Yes. Well, to her.

4 Q Huh?

5 A To her.

6 Q Right. And that -- correct me if I'm wrong, that
7 you felt that that was a strange conversation?

8 A Yes, I did.

9 Q And you called Anna's parents about that call and
10 told them about that you thought that was bizarre for
11 her to ask a question about whether Mike was ever
12 coming back?

13 A I know I talked to Susan sometime, but I'm not
14 sure if it was at that time.

15 Q Right. And that conversation, the conversation
16 you had with Susan, who is Susan Brown, that's Anna
17 Simpson's mother, that conversation was about how
18 strange the call from Anna was?

19 A I can't remember if it was that time or not.

20 Q Okay. And then the other thing, let me ask you,
21 you said that the evening of the 13th of May --

22 A Uh-huh.

23 Q -- the conversation was -- and let me see, make
24 sure I've got -- you say that Anna called you?

25 A Uh-huh. She did.

1 Q Would that have been unusual? Did she call you
2 very often?

3 A Every now and again.

4 Q Every now and then?

5 A Yeah.

6 Q Okay. But she called you?

7 A She did.

8 Q And she said -- and this is what I jotted down,
9 and I'm just making notes -- why can't you help more?

10 A No. She didn't say that. She said, "Why don't
11 you come and see us more?"

12 Q Okay. Why --

13 A Don't. She didn't say "why can't." She said,
14 "Why don't you come and see us?"

15 Q Okay. "Why don't you"?

16 A Yeah.

17 Q And she used the term "help"?

18 A She said, "Why don't you come and help us?"

19 Q "And help us"?

20 A "Anymore," or, "as much as you used to."

21 Q Okay. Thank you, ma'am. Thank you.

22 A Yes.

23 THE COURT: Any redirect?

24 MR. WILKINS: No, Your Honor.

25 THE COURT: Thank you, ma'am. You may step down.

1 You may call your next witness.

2 MS. STROM: The State calls Susan Brown.

3 Susan Brown.

4 THE COURT: Is Susan Brown in the courtroom?

5 MR. MAULDIN: Your Honor, the question has been
6 raised whether Susan Brown is under subpoena. I don't
7 know if it necessarily makes any difference, but there
8 is a question about whether she is a subpoenaed
9 witness. You might ask her.

10 THE COURT: Okay.

11 MS. STROM: I did not put her under subpoena. I
12 assumed she would be here. If she is here in the
13 courtroom, I can call her as a witness.

14 THE COURT: Okay. Thank you.

15 Swear her in.

16 MR. MAULDIN: We acknowledge that.

17 SUSAN BROWN,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE CLERK: Thank you, ma'am. If you would have a
20 seat and state your name for the record, please.

21 THE WITNESS: Susan Brown.

22 DIRECT EXAMINATION

23 BY MS. STROM:

24 Q Ms. Brown, I know this is difficult, and I realize
25 this is difficult, and so I'm just going to ask you

1 just some straightforward questions. Okay?

2 You're obviously related to Anna. You're her
3 mother?

4 A Right.

5 Q And after this incident, after this event, you
6 gave a statement to the police. I believe you
7 described to the police some conversations that you had
8 been having with Anna prior to this day?

9 MR. MAULDIN: Your Honor, I have to object to the
10 form of the question.

11 THE COURT: All right. Thank you.

12 Ladies and gentlemen of the jury, let's head on
13 back to your jury room. I've got to take up some
14 matters with the lawyers. Don't talk about the case.

15 (WHEREUPON, the jury exited open court at
16 2:46 p.m.)

17 THE COURT: All right. First, let me hear your
18 objection, then I can determine whether we need to
19 proffer the witness or not.

20 MR. MAULDIN: Ms. Brown is a lay witness called by
21 the State on direct. She is going to have to couch her
22 questions in an open-ended form and not lead or make
23 speeches about her questions. I mean, she just needs
24 to ask the question instead of giving what I would
25 describe respectfully as editorial communications to

1 the witness.

2 THE COURT: All right.

3 MS. STROM: My question was going to be prior to
4 this event did she have conversations with Anna Simpson
5 that gave her concern.

6 MR. MAULDIN: Well, and that's a good question.

7 THE COURT: Then if she says yes, then your
8 follow-up question is going to be, "What were they?"
9 And then she describes what they were and then we're
10 all there.

11 MR. MAULDIN: And that's right. But I just think
12 that we've got to have, at least in my view, Your
13 Honor, with all due respect, there will have to be
14 discipline regarding the form of the question.

15 THE COURT: I'm with you on that, but let me pull
16 up something real quick. Hang on.

17 Okay. All right. I'm going to refer -- both
18 y'all are excellent trial attorneys. Y'all have tried
19 many, many cases. Rule 611 is the operative
20 evidentiary rule. You know, I'm in charge of the mode
21 and the order of interrogation and presentation. That
22 means I can allow some leading questions, and I intend
23 on doing that because we have to facilitate this
24 discussion to try to make it presentable to the jury.
25 So I'm going to allow the State to make some leading

1 questions which they can be absolutely leading, but.
2 then again, I'm going to let you do it also. Okay?

3 And so, you know, all is fair in love and war.
4 We're going to be fair here, and we're going to get
5 this jury the information they need so they can make an
6 intelligent decision on the issue.

7 So we're all on the same page?

8 MS. STROM: Yes, sir.

9 THE COURT: I don't think we need to proffer.

10 They may be taking a full break.. Do y'all want to
11 take five minutes? Maybe after the lunch. So y'all go
12 ahead and take five minutes, restroom break, do
13 whatever you need, refresh, and then we'll pull back
14 up.

15 Madam witness, if you need to step down, run to
16 the restroom, get a cup of water; okay.

17 (WHEREUPON, a recess was taken from 2:50 p.m. to
18 2:57 p.m.)

19 THE COURT: Ready for the jury?

20 MS. STROM: State's ready.

21 (WHEREUPON, the jury entered open court at
22 2:57 p.m.)

23 THE COURT: All right.

24 MS. STROM: Thank you, Your Honor.

25 Q Ms. Brown, I'm going to direct your attention to

1 May 13th, 2013. Did you have a conversation with your
2 daughter that day over the phone?

3 A I had several conversations.

4 Q You had several, okay. And, specifically as to
5 conversations you had with her that evening, I believe
6 you had one -- well, when did you talk to her?

7 A I talked to her maybe 10:30 or 11:00 in the
8 morning.

9 Q And what was that conversation about?

10 A Very bizarre. Question -- I answered the
11 telephone. The question, you know, "Mom, I have a
12 question for you. Did you and dad really want me?" I
13 said, "Of course we wanted you. You know all about
14 that." And that was basically it. That's what she
15 wanted to know. That was a very bizarre question to
16 ask me.

17 Q And that was in the morning?

18 A That was in the morning.

19 Q Okay. Did you have any other conversations with
20 her that afternoon?

21 A Maybe 12:30.

22 Q Okay.

23 A Answered the telephone. Another very bizarre
24 question. It almost didn't sound like her, the tone
25 that she used. And she wanted to know did I tell her

1 that I really thought my mother, her grandmother, and
2 my sister, her aunt, were better off in Heaven. And I
3 said, "You know how they both suffered. And, yes, I
4 still say that they're better off in Heaven."

5 Q Did you have any more conversations with her?

6 A There was another call.

7 MR. MAULDIN: Ms. Brown, could you pull a little
8 closer.

9 THE COURT: Could you slide up to the microphone.

10 THE WITNESS: I could, sure.

11 There was another call.

12 BY MS. STROM:

13 Q When was that?

14 A And that must have been 1:30. And she was talking
15 very fast, nonstop about the evils of the world and how
16 you couldn't protect yourself, you couldn't protect
17 your children from the evils of this world. And that
18 was the main gist of that conversation.

19 Q And I believe you had at least two more
20 conversations, did you not?

21 A I did.

22 Q When were those?

23 A One was at maybe 5:45 in the afternoon, and that
24 was -- we were in the car. My husband and I were on
25 the way to a meeting and she sounded so happy. She

1 sounded like herself but just thrilled. And she said,
2 "Mike and I have talked, and we're going to sit down
3 and talk to somebody. We're going to sit down and talk
4 just -- just about things that we need somebody to talk
5 to." And I said, "I think that's wonderful." And she
6 said, "We may talk to Alison." And she may have said
7 "Alison and John," I'm not sure.

8 Q And those would be Mike's parents?

9 A Mike's parents. And I said, "That's wonderful
10 that you can talk to them." And she said, "Well, I
11 have one question." She said, "Do you trust Alison?"
12 And I said, "You know I trust Alison." And she said,
13 "Well, that's good." And I was going through the door,
14 a meeting that I was going to, and I said, "I've got to
15 go," and we hung up.

16 Q And did you have any further conversation with
17 her?

18 A I had a further conversation at 8:45. We were
19 back home by then. And that one, her voice was as sad
20 and low as it had been happy and high two, three hours
21 before.

22 Q What was the conversation?

23 A And I said -- when she said, "Mom," I said,
24 "What's wrong?" And she said, "I can't take care of
25 the children anymore." I said, "What do you mean?"

1 You're a good mother. What do you mean you can't take
2 care of the children anymore?" She said, "Well, I just
3 stare into space all the time. Mike says I just stare
4 into space all the time." And I said, "But what
5 happened that you all were going to talk to somebody,
6 you were going to talk to Alison and John." And she
7 said, "Well, we're not." And about that time one of
8 the children came up to her and she said, "I've got to
9 go." She says, "It's time to put kids to bed," and, "I
10 love you." And that was the last.

11 Q That was the last conversation you had that night?

12 A That was the last conversation.

13 Q Thank you.

14 Please answer any questions the defense may have.

15 THE COURT: Mr. Mauldin.

16 CROSS-EXAMINATION

17 BY MR. MAULDIN:

18 Q Ms. Brown, I counted five telephone calls that you
19 summarized for the jury today. Would that have been
20 unusual that you would have had five telephone calls
21 from Anna in one day?

22 A Very unusual.

23 Q How often would you normally speak to her, say,
24 daily or weekly, whichever?

25 A Every other day probably.

1 Q Okay. Okay. So I guess it's fair to say that
2 receiving five calls in less than 12 hours would have
3 been a very rare event?

4 A Very rare.

5 Q And if I made my notes correctly, it appears that
6 you literally were talking to a different person on
7 every one of these calls but you were talking to the
8 same person, that's Anna?

9 A Right.

10 Q She asked if you really wanted her. That would
11 have been when you adopted her. Is that what you
12 understood?

13 A Correct. Uh-huh.

14 Q That was when she was 30 days old?

15 A Uh-huh. And she's always known that whole story
16 and loved to hear it over and over and over.

17 Q That you wanted her?

18 A Yes.

19 Q Did that story about being adopted reassure her or
20 tend to reassure her?

21 A On that telephone call?

22 Q Not on this one, but just in general.

23 A Oh, yes.

24 Q You call at 12:30. She did not sound like
25 herself?

1 A (Shaking head.)

2 Q The call at 1:30, she was talking very fast,
3 nonstop about the evil of the world and about the need
4 for her to protect her children?

5 A Yes.

6 Q At 5:45 she was happy and high. At 8:45 she was
7 sad and low?

8 A Yes.

9 Q That's a summary of the calls you've described?

10 A Yes.

11 Q I'm going to ask you a few questions while you're
12 on the witness stand about the developing of her
13 difficulties particularly in the last year or year and
14 a half prior to the incident, just how -- what you
15 noticed about the escalation of her problems..

16 Do you recall when Mike's sister -- and Mike I
17 refer to Mike Brown's sister.

18 A Yes, sir.

19 Q Do you recall when Mike's sister up in Asheville
20 was having her 90th birthday?

21 A Yes.

22 Q That was the summer of 2012?

23 A That's correct.

24 Q Do you recall going to that event?

25 A I did.

1 Q And who was with you?

2 A Anna and Female and I drove together, and my
3 husband and his brother drove together.

4 Q All right. And that trip to Asheville immediately
5 preceded her being hospitalized at St. Francis for a
6 psychotic episode; is that correct?

7 A Correct.

8 Q Can you tell the jury the connection between that
9 event in Asheville and your coming back and noticing
10 Anna's behavior and what happened that night to lead to
11 her being hospitalized at St. Francis?

12 A Yes. On the drive up to Asheville, she was
13 talking nonstop, nonstop, things that did not make
14 sense, number patterns, all kinds of things that just
15 nothing -- nothing connected from one thing to another
16 to another to another, talking about friends that she
17 had talked with but it wasn't their voice coming out of
18 their mouth, it was somebody else's voice coming out of
19 their mouth. Very, very bizarre things.

20 The afternoon after we got to Asheville, her
21 behavior was odd but we were around other family
22 members that we're not around that often. And I'm not
23 sure that they noticed it as much as her dad and I did.

24 Driving back, it was the same thing, just talking.
25 I don't know any way to describe it except out of her

1 head, just bizarre. We got to Travelers Rest and we
2 tried to persuade her to come on home with us.'

3 Q Why did you feel like she needed to come home with
4 you?

5 A Well, Mike, her Mike, her husband, and Male were
6 at the lake that weekend with his parents, and Anna and
7 Female were having a girls weekend. That's the way it
8 was supposed to be. And because of the way she was
9 acting, I wanted her to come on home with us, just
10 spend the night with us because I knew something was
11 really wrong. She said no, she -- they would go on.

12 They'd go on to their house. And they went on to
13 Dacusville and we went on to our house in Taylors.

14 We didn't hear anything until midnight and she
15 called. And again it didn't sound like her at all.
16 And she just said, "Turn the lights on. We're coming.
17 We're coming to your house," and she was real frantic.
18 And I said, "Why?" She said, "Because this house just
19 isn't safe." And I said, "But what do you mean it's
20 not safe?" She said, "I -- I can't explain it. It's
21 just not safe. We've got to get out of here."

22 Q All right.

23 A "And we're leaving."

24 Q So this call and as a result of that call, did
25 Female Child and Anna stay -- come over to y'all's house and

1 stay?

2 A Yes.

3 Q And then the next day with a continuing -- with
4 this erratic behavior continuing, and as a result did
5 you feel it necessary to contact a doctor about it, and
6 as a result of that doctor call, did you -- where did
7 you take Anna?

8 A Took her to the emergency room at St. Francis on
9 the east side.

10 Q All right. And did you have her admitted?

11 A She was admitted.

12 Q At St. Francis?

13 A Uh-huh.

14 Q And do you recall when she was admitted -- and
15 that -- do you remember the date or about the date of
16 that?

17 A It was the very last of July. It was probably the
18 31st of July because that's when the birthday is.

19 Q Okay. And do you remember how many days she
20 stayed at St. Francis?

21 A She stayed at St. Francis about five days.

22 Q And during the time that she stayed at St. Francis
23 as a result of this episode that she had, psychotic
24 episode?

25 MS. STROM: Objection, Your Honor. There's been

1 no testimony as to the characterization of the episode.

2 MR. MAULDIN: It's cross-examination.

3 THE COURT: Just rephrase your question.

4 BY MR. MAULDIN:

5 Q All right. Did you understand that she was
6 hospitalized in St. Francis because of a psychotic
7 episode?

8 A Yes.

9 Q All right. And as a result she stayed five days.
10 During the time she was in St. Francis Hospital, did
11 they have a security guard staying in the room with
12 her?

13 A They did. They had him right outside the door and
14 the door could not be closed.

15 Q So the door had to stay open?

16 A He stood at the door.

17 Q And a security guard was positioned right outside
18 her door. After five days at St. Francis, was she then
19 transferred to the Carolina Center For Behavioral
20 Health?

21 A She was. During that five days at St. Francis,
22 they kept telling us they -- she needed to go to a
23 special hospital, but there were no beds available,
24 that they had tried calling all hospitals and there was
25 not a bed available. And finally there came one at

1 Carolina Behavioral.

2 Q Okay. And that lead to her going to that
3 hospital, and she stayed at that hospital how long?

4 A About three days.

5 Q And then she was sent home?

6 A (Nodding.)

7 Q All right. That was August of 2012?

8 A Yes.

9 Q All right. Ask you a few questions about specific
10 references and ask if you are familiar with these
11 references, and if so, explain to the jury. If not,
12 just that you don't know.

13 Are you familiar with the ceiling fan in their
14 house and her taking photos of that ceiling fan?

15 A Yes, I am.

16 Q All right. I want you to explain to the jury what
17 that was about.

18 A She thought someone was following her. She
19 thought someone was listening out and had everything
20 bugged, her phones and computer and finally she decided
21 probably in the ceiling fan, so she took pictures of
22 the ceiling fan and then went to Lowe's to find the
23 exact ceiling fan to look at it real good and see if it
24 had all the same parts and looked like the one in her
25 house.

1 Q Do you remember about when that was? Was that
2 before the hospitalization at St. Francis, after the
3 hospitalization, if you remember just --

4 A I don't remember.

5 Q All right. Do you recall the references to drug
6 dealers living across the street and the deer camera?

7 A The deer camera?

8 Q I mean the drug dealers across the street and the
9 camera that had something to do with the garage?

10 A Okay. I remember that she thought not only were
11 there drug dealers across the street, but they were
12 watching her. They seemed to know when she came and
13 went all the time. And she was hoping to get cameras
14 installed so it might prove if somebody was watching
15 her or coming into the yard or even coming into the
16 house. She felt that there were times when they would
17 leave the house and somehow somebody would get in.

18 Q All right. I'm going to ask you a few final
19 questions, Ms. Brown. I'm going to ask --

20 MR. MAULDIN: Let's get a number, please, ma'am.

21 (WHEREUPON, Defendant's Exhibit Numbers 11
22 12 and 13 were marked for identification.)

23 BY MR. MAULDIN:

24 Q I'm going to ask you, Susan, if you recognize
25 these three photographs, please, ma'am.

1 A Yes.

2 Q All right. When were these photographs taken?

3 A They were taken on the evening of Mother's Day.

4 Q Mother's Day of 2013?

5 A That's correct.

6 Q Which would have been May the 12th, the Sunday
7 before the incident Monday night, Tuesday morning?

8 A Correct.

9 Q All right. I'm going to -- I offer these.

10 MS. STROM: Without objection.

11 THE COURT: All right. Entered.

12 (WHEREUPON, Defendant's Exhibit Numbers 11,
13 12 and 13 were admitted into evidence.)

14 BY MR. MAULDIN:

15 Q All right. I'm going to ask you if you would
16 describe that photograph.

17 A I would describe it as not quite Anna.

18 Q Well, who's in the picture?

19 A It's Anna and myself.

20 Q All right.

21 A But the expression on her face is not quite Anna.

22 Q All right. So that picture was taken on Mother's
23 Day?

24 A Yes.

25 Q And what were the two of you doing or what was the

1 occasion? I understand it was Mother's Day, but what
2 was the occasion?

3 A We had all gone out to eat together, and we were
4 coming back to the parking lot to get in our cars to go
5 home:

6 Q And who went to -- was this lunch or dinner?

7 A Dinner.

8 Q And who went to dinner?

9 A Mike, my Mike.

10 Q That's Mike Brown?

11 A And I and Anna and Mike Simpson and the two
12 children.

13 Q All right. So it was the Simpsons, the family of
14 Simpsons, four, and the two of you?

15 A Uh-huh.

16 Q Six folks?

17 A Uh-huh.

18 Q All right. And is this Anna at that dinner?

19 A That's Anna with her plate untouched.

20 Q With her plate untouched?

21 A Yes. She didn't eat.

22 Q Was that picture taken at a time when others at
23 the table had already eaten?

24 A I imagine so or just starting, maybe -- I don't
25 know. I just know she didn't eat that night.

1 Q But she didn't eat. And, finally, that picture?

2 A That's what I was seeing.

3 Q Pardon me?

4 A That is what I was seeing. That was the Anna that
5 I was seeing that whole evening when we were at their
6 house before we went out to dinner and when we were at
7 dinner. She would just be staring, staring.

8 Q And the next morning was when the phone calls
9 began that you've described to the prosecutor?

10 A That's right.

11 Q And this is who was making the phone calls?

12 A Yes, sir.

13 Q Nothing further. Thank you, ma'am.

14 MS. STROM: Very briefly, Your Honor.

15 THE COURT: Yes, ma'am.

16 REDIRECT EXAMINATION

17 BY MS. STROM:

18 Q Ms. Brown, back when you took Anna to St. Francis
19 and you said you believe the security guard was outside
20 the door; is that correct?

21 A Yeah, and we couldn't shut the door.

22 Q Couldn't shut the door. But she wasn't restrained
23 to the bed or anything like that?

24 A I don't think so.

25 Q Okay. All right. And are you aware -- you were

1 talking about this incident involving drug dealers
2 across the street. Are you aware that the Pickens
3 County Sheriff's Office conducted some surveillance of
4 the residence across the street in the trailers?

5 A I think I do remember there was something.

6 Q That they were doing?

7 A Seemed to be something they were doing.

8 Q Then, finally, back on these two phone calls or,
9 in fact, the very last phone call that you had with
10 Anna, I'm going to show you your statement that you
11 made back on May 14th, 2013. I want you to start right
12 here where, "Then at 8:45 she called me," and read to
13 me what you told the police back then.

14 A "Then at 8:45 she called me and said 'Mike's
15 through with me.' I asked her what had changed since
16 6 o'clock. She just said, 'He thinks I can't take care
17 of the children.'"

18 Q Thank you.

19 That's all I have, Your Honor.

20 THE COURT: Recross?

21 MR. MAULDIN: Yeah. One quick one.

22 RECROSS-EXAMINATION

23 BY MR. MAULDIN:

24 Q "He thinks I can't take care of the children."

25 That's what you told them that Anna said?

1 A I actually remember her saying -- saying, "Because
2 I'm just -- I just stare all the time," but I didn't
3 write that down.

4 Q That she's just scared all the time?

5 A No. Staring, just staring all the time.

6 Q Staring, okay. That she's just staring all the
7 time and can't take care of the children.

8 All right. Nothing further, Your Honor.

9 THE COURT: Thank you, ma'am. You may step down.
10 State, go ahead and call your next witness.

11 MS. STROM: State calls Leigh Snow.

12 LEIGH SNOW,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE CLERK: If you would have a seat and state
15 your name for the record, please.

16 THE WITNESS: Leigh Snow.

17 DIRECT EXAMINATION

18 BY MS. STROM:

19 Q And if you would keep your voice up and speak into
20 the microphone so everyone can hear you. All right?

21 A Uh-huh.

22 Q By whom are you employed, Ms. Snow?

23 A Blue Ridge Security Systems.

24 Q And what is Blue Ridge Security Systems?

25 A We're an industrial, commercial, residential

1 security installation and monitoring company. Am I
2 loud enough?

3 Q Speak up just a little bit.

4 A Okay.

5 Q Back in 2013, what was your position there?

6 A I was a monitoring center manager for the call
7 center, alarm monitoring.

8 Q And what is your position now?

9 A In February of 2014 I moved to the headquarters
10 office, and I actually -- now I manage all the
11 documents, licensing, registration, background checks,
12 that sort of thing.

13 Q I'm going to show you what's been marked as
14 State's Exhibit number 51 for identification at this
15 time. Ask you to take a look at that. Do you
16 recognize that document?

17 A Yes.

18 Q Is that a document that you prepared with regards
19 to the investigation of this event?

20 A Yes. This is a download of the activity from the
21 alarm panel.

22 Q And is that the information that is contained by
23 your company and made in the normal course of business?

24 A Yes.

25 MS. STROM: Your Honor, we'd offer State's

1 Exhibit 51 into evidence.

2 MR. MAULDIN: No objection.

3 THE COURT: Without objection, introduced.

4 (WHEREUPON, State's Exhibit Number 51 was admitted
5 into evidence.)

6 MS. STROM: Thank you.

7 Q If you would, tell me, are you familiar with the
8 file contained -- regarding Mike Simpson and Anna
9 Simpson's home with regards to an alarm system?

10 A Yes.

11 Q Okay. And did y'all install an alarm system in
12 their home?

13 A Yes. The alarm system was installed in December
14 of 2012.

15 Q December of 2012?

16 A Right.

17 Q All right. And explain to this jury a little bit
18 about what their system contained.

19 A It was a typical residential system, door
20 contacts, motion detector, smoke detector, and keypad
21 key fob.

22 Q What do you mean by key fob?

23 A A key fob is a device that you can put on your key
24 ring, and you can arm and disarm your system with just
25 a button.

1 Q So you don't have to do it at the panel?

2 A Right.

3 Q In particular, with regards to this system, what
4 can you tell us about the arming and disarming of this
5 system on May 13th, 2013, and May 14th, 2013?

6 A The system was armed by the keypad, the panel, and
7 disarmed by the key fob.

8 Q Let's go to the night or the day of the 13th.
9 Let's just back up a day.

10 A Okay.

11 Q What time in the morning was it disarmed on the
12 13th?

13 A Just a second.

14 Q Sure.

15 A Disarmed at 7:36 a.m.

16 Q 7:36 a.m. All right. And can you tell if that
17 was disarmed by the fob or at the panel?

18 A It was by User 2, which is the key fob.

19 Q The key fob. All right. When was the next time
20 any activity took place on that system on the 13th?

21 A There was a test signal that was transmitted at
22 8:35, which is typical, it transmits every day, and on
23 the 13th, and there was a panic alarm at 1:07 p.m.

24 Q 1:07?

25 A Uh-huh.

1 Q And when you received a panic alarm, what, if
2 anything, do y'all do? And what did y'all do in
3 relation to that?

4 A A panic alarm is a silent signal, so an operator
5 will automatically notify the police. They wait until
6 the officer clears, and then they call the key holder
7 or the owner. And this particular situation, they
8 talked to Mr. Simpson and he verified with password
9 everything was okay.

10 Q All right. Again on the 13th, what time -- what
11 other activity occurred with regards to this alarm
12 system on the 13th?

13 A At 11:13 p.m. the system was armed by the keypad.

14 Q So it was armed at the keypad?

15 A Right.

16 Q Then what was the next activity on this alarm
17 system?

18 A There was -- on the 14th there was a disarming by
19 Zone 2, which is the key fob -- I'm sorry, Zone 2 --
20 User 2. And that was at 4:48 a.m.

21 Q When it is noted that it is armed or disarmed at
22 the keypad, what user is shown there?

23 A User Zero.

24 Q That indicates that it's the keypad?

25 A Right.

1 Q What indicates that it's a fob, that the fob has
2 been used to arm or disarm?

3 A User 2.

4 Q And, again, what time on the 13th was it armed at
5 the panel?

6 A 11:13 p.m.

7 Q And what time was it disarmed by the fob on the
8 14th?

9 A 4:48 a.m.

10 Q Thank you. Please answer any questions the
11 defense may have.

12 CROSS-EXAMINATION

13 BY MR. MAULDIN:

14 Q Just a couple of questions to make sure I get
15 this. When you say the keypad, are you able to show us
16 where in the house that would be? I mean, I don't know
17 whether you have that knowledge or not, but do you
18 know?

19 A I would know from looking at the alarm contract,
20 but typically it's installed next to an entry/exit
21 door.

22 Q Okay. So the likelihood is that the actual
23 keypad, it's kind of like -- can it be described like a
24 thermostat? It hangs on the wall and --

25 A Yeah, has a numeric code pad and has --

1 Q Okay. And somewhere, then, in the residence of
2 the Simpsons there is a pad, and that's what you're
3 referring to as User Zero?

4 A Yes.

5 Q Okay. User 2, which is the other user or Owner 2
6 or whatever, is the other one I need to clarify. That
7 is on a key, like an automobile key?

8 A Right. It's a small device that you can arm or
9 disarm or set off a panic alarm. When it arms and
10 disarms, it disarms the entire system or arms the
11 entire system. If you arm from the keypad, you can
12 arm -- just stay at home such as the perimeter.

13 Q And if I had that system, I could be -- I could
14 use the little key thing even if I was inside the
15 house?

16 A Yes.

17 Q In other words, doesn't mean you're riding around
18 in the car, right?

19 A Well, as you approach the house, you can turn it
20 on from the outside of the house. But if the system is
21 armed, you can't exit the premises without setting off
22 the alarm if you don't disarm it.

23 Q Okay. So an example, then, of trying to make sure
24 I understand how this thing works, if I'm in my living
25 room and I want to -- I say, okay. I'm going to go to

1 bed. I can have that thing in my hand instead of going
2 to the keypad -- oh, I can't turn it on?

3 A You can turn it on if you leave the house because
4 it arms all the devices. But if you want to arm it so
5 you can walk around interior and not set off a motion
6 detector, you use the keypad to do that. That's why
7 typically it's armed at night with the keypad, you put
8 it on night.

9 Q So you would have to use the keypad to disarm the
10 interior of the house?

11 A No, to arm it, you use the keypad. To disarm it,
12 you could use the fob.

13 Q Okay. All right. And then the other question
14 I've got, Ms. Snow, this system was installed by your
15 company in December of 2012; is that the date --

16 A Yes.

17 Q -- that I heard you say?

18 A Right.

19 Q All right. That's all. Thank you, ma'am.

20 MS. STROM: No redirect. We'd ask that this
21 witness be allowed to be excused.

22 THE COURT: Any objection?

23 MR. MAULDIN: No objection.

24 THE COURT: Thank you, ma'am. You're free to
25 leave.

1 State can call its next witness.

2 MR. WILKINS: State calls Dr. James Fulcher.

3 JAMES WILLIAM FULCHER, M.D.,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: Thank you. If you would have a seat.

6 State your name for the record.

7 THE WITNESS: Dr. James William Fulcher.

8 DIRECT EXAMINATION

9 BY MR. WILKINS:

10 Q Dr. Fulcher, with whom are you employed?

11 A I'm a pathologist with Pathology Associates of
12 Greenville, South Carolina.

13 Q All right. And what do you do for them?

14 A I do autopsies. I'm the medical examiner for
15 Greenville, South Carolina. We do autopsies for
16 contract for Pickens County.

17 Q Briefly tell this jury what your educational and
18 professional training is.

19 A Sure. I'm from Virginia originally. I went to
20 college at the University of Virginia, medical school
21 at the Medical College of Virginia, did my residency in
22 anatomic clinical and forensic pathology all there in
23 Richmond, Virginia. I'm board certified in anatomic,
24 clinical, and forensic pathology. I have been
25 practicing in South Carolina right out of school. I've

1 been here for nine years. This is my first job.

2 Q And how many autopsies do you think you've
3 performed?

4 A Approximately 2,000.

5 Q And how many times have you been qualified as an
6 expert?

7 A Many.

8 MR. WILKINS: Your Honor, I'd like to offer
9 Dr. Fulcher as an expert in the area of forensic
10 pathology.

11 MR. MAULDIN: No objection.

12 THE COURT: Without objection, he's qualified as
13 an expert in the field of forensic pathology.

14 Ladies and gentlemen of the jury, remember an
15 expert witness can give an opinion but it doesn't mean
16 you have to accept the opinion. You will determine
17 that whenever you consider all the weight and
18 credibility of the evidence when you deliberate. Okay?
19 Thank you.

20 BY MR. WILKINS:

21 Q Dr. Fulcher, did you have the occasion to perform
22 an autopsy on Male Child Simpson?

23 A Yes.

24 Q Do you remember when you did that?

25 A Yes. I'll refer to my notes for this case. I did

1 the postmortem examination, the autopsy, May 15th,
2 2013.

3 Q And do you remember how old Male Child was at the time
4 of the autopsy?

5 A Five.

6 Q And can you tell this jury what your findings
7 were?

8 A Yes. Mr. Simpson died from four gunshot wounds to
9 the head.

10 Q Okay. And can you tell this jury about where they
11 were located?

12 A Sure. In this case all entrances are on the right
13 anterior cheek. They penetrate into the cranial vault
14 severely damaging the brain. Two of these projectiles
15 exit the left lateral forehead on the other side. I
16 personally recover multiple fragments of copper jacket
17 and lead core that are mixed in essentially pulpified
18 or mushed up brain matter.

19 Q What did you do with those projectiles?

20 A They are given to law enforcement that's present
21 at autopsy.

22 Q Can you tell us in what position, based on your
23 autopsy, Male Child was when he sustained the gunshot
24 wounds?

25 MR. MAULDIN: One moment. If the question relates

1 to essentially the scene reconstruction, I'm not really
2 sure the pathologist is qualified. I think that
3 Mr. Wilkins can ask him the direction of the gunshots,
4 but I don't think he could actually tell him how the
5 victim with the gunshot wound was positioned.

6 THE COURT: Is that an objection?

7 MR. MAULDIN: Yes.

8 THE COURT: Okay.

9 Rephrase your question.

10 MR. WILKINS: Sure.

11 Q Let me ask you this. Can you tell -- can you
12 estimate how far away the gun was from Male Child at the
13 time he sustained the gunshot wounds?

14 A Yes. Mr. Male's face has prominent gunpowder
15 tattooing with no significant soot that makes it an
16 intermediate range wound, which means it's several feet
17 away but probably no further than three or four feet
18 away. Within a few feet, usually.

19 Q Any other information about the -- let me ask you
20 this. How many gunshot wounds to the head were there?

21 A Four.

22 Q Any other information that was present?

23 A The direction of wounding in this case is from
24 right to left, slightly upward, with no significant
25 deviation from front to back across the head.

1 Q Would that be consistent with somebody laying down
2 or sitting up, or can you say?

3 A It's difficult to say without examining the scene.

4 Q Did you do a toxicology on the victim?

5 A I did, yes, sir.

6 Q And what were those results?

7 A It was negative. We send all our toxicology to
8 National Medical Services Laboratory for our purposes
9 in this case. It's a very thorough toxicology screen,
10 and it is totally negative.

11 Q And you may have already stated this before, but
12 what is the manner and cause of death?

13 A Cause of death in this case is gunshot wounds to
14 the head. The manner of death is homicide.

15 Q Okay. Did you also perform an autopsy on Female
16 Simpson?

17 A I did, yes, sir.

18 Q And when did you do that?

19 A Same day, May 15th, 2013.

20 Q And how old was Female at the time?

21 A Seven.

22 Q Can you tell this jury what injuries she
23 sustained?

24 A Yes. She has two intermediate range also gunshot
25 wounds to the head which cause very severe damage to

1 the brain. Additionally, she has an intermediate range
2 wound to the back. It actually enters in the posterior
3 left shoulder and tracks across the soft tissue of the
4 back without actually entering into the chest cavity.
5 It exits at the right posterior shoulder. The
6 direction of wounding in all cases is from left to
7 right on her.

8 Q The injuries she sustained across the back, did
9 that cause any damage to any organs or any bones or
10 anything like that?

11 A It -- I'm referring to my notes. It tunnels under
12 the skin and is only a flesh wound.

13 Q A flesh wound?

14 A At this point. It affects skin, subcutaneous fat
15 but does not enter the thoracic cavity.

16 Q Did you recover any projectiles?

17 A In this case I did from the head, yes. Multiple
18 fragments of lead and copper jacket. On the back
19 wound, I do not. That projectile exits the body and is
20 not recovered by myself.

21 Q And were you able to determine, again, the range
22 or how far away the individual was who pulled the
23 trigger?

24 A Yes. In this case, it's also an intermediate
25 range, several feet away.

1 Q Did you perform any toxicology?

2 A Yes, sir, I did. It is negative also in this
3 case. Same laboratory performed that toxicology.

4 Q And then, finally, can you tell us the cause and
5 manner of death?

6 A Yes, sir. The cause of death in this case is
7 multiple gunshot wounds to the head. The manner is
8 homicide.

9 Q Answer any questions Mr. Mauldin may have.

10 THE COURT: Mr. Mauldin.

11 MR. MAULDIN: No questions. Thank you, Doctor.

12 THE COURT: Thank you, sir. You may step down.

13 Any objection to him leaving?

14 MR. MAULDIN: No problem.

15 THE COURT: You are free to leave. Thank you.

16 State may call its next witness.

17 MR. WILKINS: Your Honor, may we have a moment?

18 Your Honor, the State rests.

19 THE COURT: The State rests.

20 All right. Ladies and gentlemen, I have certain

21 legal matters I need to take up with the lawyers at

22 this time. So I'm going to ask that you go back to

23 your jury room. Again, do not talk about the case you

24 have to wait until the very end when I tell you you can

25 talk about the case before you can talk about it.

1 Y'all enjoy some snacks and water and some
2 beverages. Thank you.

3 (WHEREUPON, the jury exited open court at
4 3:46 p.m.)

5 Mr. Mauldin.

6 MR. MAULDIN: Your Honor, I would ordinarily ask
7 for a few moments to gather my thoughts on this, but
8 I'll proceed and perhaps come back to it if I feel like
9 I left something out.

10 But we commenced the case with a motion for a
11 directed verdict and knew at that time that that was a
12 rather awkward timing for such a motion. But because
13 of the uniqueness of the issue in this case, the fact
14 issue in this case, we felt we wanted to put it on the
15 record in advance.

16 As additional notice to the State of what our
17 position is on the not guilty by reason of insanity
18 issue, we have provided to the State not only the
19 identity but also in two cases written material from
20 prospective or potential psychiatric witnesses.

21 The notice of our intention to claim or at least
22 to assert NGRI was provided to the State in June of
23 2014, over two years ago, and it raised the question of
24 the state of mind of the defendant in this charge. It
25 raised the challenge to the State that state of mind

1 would be the issue and that sanity of the defendant
2 would be the question.

3 We take the position under those circumstances
4 because the elements of the crime in this case require
5 proof of malice for the murder and proof of specific
6 intent to kill on the attempt to murder, that the State
7 was on notice that the state of mind of the defendant
8 was the focus of the case. I raised to you at that
9 time a comparative analysis with competency. If
10 raised, the State must respond and prove -- I raised
11 the comparison of alibi, which the rules of our court
12 require that we notice the State of, and if we notice
13 the State, they have to prove that the defendant was
14 present at the crime.

15 And the fact of the matter is the State has simply
16 not established by any evidence any state of mind of
17 this defendant. They haven't established any -- any
18 evidence what the state of mind of the defendant is,
19 and it now cannot be assumed to be sane because we have
20 put them on notice according to the rules.

21 To the extent that the State can then say, "Well,
22 wait a minute. Under the case law, the defendant has
23 the burden of proving that the defendant did not know
24 right or wrong by a preponderance of the evidence, and,
25 therefore, it's now our turn," and that's when they get

1 to fill in their blanks? Well, I mean, a directed
2 verdict occurs at the end of the State's case. And
3 it's going to be renewed, I'll assure you, if you don't
4 grant it at this point.

5 THE COURT: I understand exactly where you're
6 going with this. It's burden shifting.

7 MR. MAULDIN: That's right. And we say that that
8 is an unconstitutional burden shifting on the
9 defendant.

10 And, Your Honor, it's one thing if a defendant
11 comes in and by surprise somehow raises such questions.
12 But this -- the State's been aware of the nature of the
13 trial of this case for two years. They know what the
14 issue is.

15 And so let's assume that now, if this motion is
16 not granted, we have to present evidence, and we will,
17 then the question is going to be do they then have the
18 right to bring in reply testimony. And here's the
19 problem with that. They have given to the defendant in
20 this case until this very moment zero notice of the
21 intention to provide a forensic expert witness either
22 in the State's case-in-chief or potentially in reply.
23 We still have not received any notice of the State's
24 intention to provide a forensic expert, which is what
25 it would take in reply testimony or otherwise it's not

1 going to be -- that witness is not going to be called.

2 We're going to object to the calling of a witness
3 that we've gotten no notice of. And you're talking
4 about a case of hiding the ball. That is about as bad
5 of hide the ball as I have ever even imagined. We were
6 told at the beginning of this trial that Jeff Smith was
7 a potential State's witness. Jeff Smith is the
8 treating psychiatrist at Piedmont Psychiatric in
9 Greenville. He is this woman's doctor who's not a
10 forensic psychiatrist. He has been given no release or
11 no consent to offer testimony in a trial of her case by
12 her or anybody on her behalf.

13 So what we've got here is they put up their case.
14 They -- and we're required to tell them everything
15 we've got under Rule 5. They don't have to tell us a
16 thing, apparently, and what they now have said was a
17 potential witness is a treating physician. And I'm
18 assuming that's who's going to be called in rebuttal.

19 That scenario, which is what is playing out before
20 our very eyes, is fundamental denial of due process
21 under the state and federal constitution. I mean, you
22 talk about ambush and trial by surprise. The law says
23 the defendant, who is presumed innocent, has all of
24 these requirements that we notify. We notified them
25 two years ago, we tell them who the witnesses are, we

1 give them the written reports, and yet they get to sit
2 over there and hide it.

3 I still don't know who they plan on calling, if
4 they do plan on calling anybody. I mean, what are we
5 going to do then? I will tell you, if they call a
6 witness with the intention of qualifying that witness
7 as an expert in any field of psychiatry, forensic,
8 clinical, or any otherwise, I will object to the
9 offering of such testimony point blank and absolute.

10 So, I mean, if they're going to play that way
11 and --- no. I apologize. I don't mean that. If that's
12 the way in which this case is going to process, then I
13 will actually operate accordingly..

14 So, that being said, Your Honor, I make a motion
15 for a directed verdict at this time.

16 THE COURT: Thank you.

17 Who's going to argue on behalf of the State?

18 MR. WILKINS: Why not, Your Honor.

19 THE COURT: Mr. Wilkins.

20 MR. WILKINS: Thank you, Your Honor.

21 In light of Mr. Mauldin's theatrical presentation,
22 there is a couple things that he's failing to
23 recognize. First and foremost, *State vs. Milan*
24 *Hernandez*, the defendant is presumed sane. She's
25 presumed sane when we started this trial. She's

1 presumed sane until they -- it's not burden shifting.
2 It's their defense. And our legislature has said for
3 them to assert a particular affirmative defense, we
4 still have a burden. Our burden is to prove the case
5 beyond a reasonable doubt. That's our case. We have
6 to prove that Anna Simpson did, in fact, with malice
7 aforethought kill Male Child [REDACTED] Female [REDACTED] and
8 attempt to kill Michael Simpson. That's our burden.

9 They have asserted an affirmative defense, and
10 under the law they have to give us notice of it, which
11 they did, and then they have to prove by a
12 preponderance of the evidence that she was insane at
13 the time of the murders. And once they do that, then
14 we have to prove beyond a reasonable doubt to this jury
15 she wasn't.

16 But we're not there yet. And so what we have done
17 is we have presented a case for two counts of murder,
18 possession of weapon with -- possession of weapon
19 during commission of violent crime, attempted murder.
20 And in the light most favorable to the State, we have
21 presented all the elements of that crime. We have laid
22 those out to the jury, and --

23 THE COURT: What is the evidence of malice?

24 MR. WILKINS: Well, couple of pieces. She was
25 having issues with her husband. She says to her

1 mother-in-law the night before -- her mother the night.
2 before, "He's done with me," or, "He is through with
3 me." Nate Stegall testified that she was an angry
4 wife. They had words about things that day before.

5 Malice aforethought can be through circumstantial
6 evidence. She went and got a gun. She went and got a
7 gun and arguably loaded it away from them so they could
8 not hear her; loads it and shoots her husband with a
9 .22. Comes back and gets another gun and shoots both
10 her kids. We don't have to prove motive, Your Honor.
11 Motive is not an element of murder.

12 THE COURT: Sure.

13 MR. WILKINS: But right now we have evidence of a
14 couple who was going through a tough time. "Mike says
15 I can't take care of the kids. He's through with me,"
16 was part of the statement as well. That's -- that's
17 actually motive, Your Honor, not necessarily but also
18 evidence of malice in forethought. Malice in
19 forethought doesn't have to be premeditated.

20 And, finally, in regards to the Rule 5, keep in
21 mind, the defense filed a limited Rule 5 up until about
22 three weeks ago. And I don't know if Your Honor is
23 familiar with this practice in your circuit, but what
24 the defense does is they file a Rule 5, and all they
25 want is the statements of the defendant. That's in

1 Rule 5, the first section of Rule 5. It does not
2 trigger reciprocal discovery. So we can't get -- they
3 don't have to give us anything. But Mr. Mauldin did on
4 Friday hand me the report of one of their experts.
5 Four days ago, Friday, he did me a report. And we both
6 had a report from the State's witness, Dr. Frierson,
7 which was given to both of us. That's a state doctor.
8 Not my doctor, not his doctor, a state Department of
9 Health doctor. Doesn't work for either of us.

10 And then there is a third expert that he may or
11 may not call, who I tried to contact. He said he had
12 to talk with Mr. Mauldin. And I haven't spoken with
13 him, and I have no report from him, so I don't know
14 what he's going to say as far as -- you know, I'm
15 assuming he's going to say she was insane, but I don't
16 know that.

17 And so at this juncture, you know, we feel like
18 light most favorable to the State, Your Honor, we have
19 met our burden to get past directed verdict to prove
20 two elements of two counts of murder, one attempted
21 murder, and a --

22 THE COURT: Assuming arguendo, what's before me is
23 a motion for directed verdict.

24 MR. WILKINS: Sure.

25 THE COURT: Mr. Mauldin did go into what happens

1 later, okay, assuming we get to the later points. He
2 produces -- or the defense does its case. At the
3 conclusion of the defense case, the State has the
4 option for reply --

5 MR. WILKINS: Absolutely.

6 THE COURT: -- if you wish to. Do you know if the
7 State intends on calling an expert witness in reply?

8 MR. WILKINS: Based on -- based on what I believe
9 the experts are going to say -- and, again, Your Honor,
10 I don't have a magic looking glass. I can't see into
11 the future. I don't know how our cross-examination is
12 going to go. Based on what I believe, there is a
13 significant chance we intend to call rebuttal
14 witnesses.

15 THE COURT: Okay.

16 MR. WILKINS: But, you know, I can't tell you that
17 until I get there. And I've already represented to the
18 court, if you remember, Your Honor, any rebuttal
19 witness that I may or may not call, Mr. Mauldin is very
20 well aware of. I told you who it might be. It will be
21 Dr. Jeff Smith.

22 THE COURT: We talked about that yesterday.

23 MR. WILKINS: So I've already represented to the
24 court I don't have this mysterious expert coming in
25 here that he has never heard of or doesn't know

1 anything about.

2 THE COURT: I think he mentioned her treating
3 psychiatrist as well as the ER psychiatrist, possibly.

4 MR. WILKINS: That's correct, Your Honor.

5 THE COURT: Coming back to you. Any further
6 argument on the directed verdict motion?

7 MR. MAULDIN: One final comment. Keep in mind,
8 Your Honor, with regard to the attempted murder
9 regarding Michael Simpson, Michael Simpson was not
10 called to testify. There was no actual direct
11 testimony regarding that. So I don't -- you know, in
12 times of like malice, in terms of this evidence of
13 marital -- I mean, that is blatant speculation. And it
14 has to be more than suspicion or speculation. It's got
15 to be actual evidence in the record to support it, not
16 what might have been going on. If that is what -- both
17 of the mothers-in-law, Alison Simpson and Anna's
18 mother, Susan, they both testified and they had
19 opportunity to question them at that time about marital
20 discord or any kind of difficulties.

21 So I don't get the idea that that somehow would
22 pass the threshold regarding the intent elements of
23 these crimes.

24 THE COURT: Anything else y'all wish to say about
25 that?

1 I'll give him the last word.

2 MR. WILKINS: Your Honor, just, you know, the fact
3 that she shot him in the head is evidence of malice, by
4 the way.

5 THE COURT: Y'all give me just a second.

6 All right. Defense motion for a directed verdict
7 is denied.

8 All right. Mr. Mauldin, at this time I need to
9 speak with your client concerning her right to testify.

10 MR. MAULDIN: Your Honor, could we spend a moment
11 with her?

12 THE COURT: Sure. Why don't you talk to her about
13 that. Plus I'm going to have y'all move that Elmo so I
14 can make eye contact with her, talk to her about it.

15 If you could explain to her what I'm going to do.

16 MR. MAULDIN: We can bring her over here.

17 THE COURT: That's fine. Let's take about a
18 five-minute recess while we get ready for that.

19 (WHEREUPON, a recess was taken from 4:05 p.m. to
20 4:10 p.m.)

21 MR. MAULDIN: Your Honor, we're prepared. And if
22 the court would prefer to do the questioning, certainly
23 that's your discretion. I will do it if you wish.

24 THE COURT: I will do that. And if y'all see the
25 need to editorialize what I'm saying to her, as long as

1 it means the same thing as what I'm saying, that will
2 be fine.

3 MR. MAULDIN: Yes, sir.

4 THE COURT: All right.

5 Ms. Simpson, will you raise your right hand.

6 Do you swear to tell me the truth, the whole
7 truth, and nothing but the truth, so help you God?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Thank you. You can be seated.

10 Now, Ms. Simpson, at this time I'm going to
11 explain to you certain rights that you have. If you
12 don't understand anything I say, please let me know.
13 And if you want me to explain anything in more detail,
14 let me know that also.

15 Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Okay. We've now reached the stage of
18 the trial where you get to present your defense. Now,
19 you have the right to claim the protections given to
20 you by the Fifth Amendment of the United States
21 Constitution which says that no person shall be
22 compelled in any criminal case to be a witness against
23 himself or herself. This means, Ms. Simpson, that you
24 cannot be required to testify in this case. Okay?
25 Nobody can make you testify.

1 Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, if you want to testify, you can,
4 but nobody can make you do that. Do you understand?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you know what "testify" means?

7 THE DEFENDANT: Yes.

8 THE COURT: What does "testify" mean?

9 THE DEFENDANT: Testify my case.

10 THE COURT: Okay. That means to speak and answer
11 questions from the lawyers. Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay. Now, your right to decide
14 whether or not to testify is a personal right that
15 nobody can make you give up except for you yourself.
16 Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Now, if you do decide to
19 testify, if you decide to get up on this witness stand
20 and answer questions, then you will be subject to be
21 cross-examined by the State's lawyers. And they will
22 try to make your testimony look bad in front of the
23 jury the way your lawyer has tried to make, through
24 cross-examination, other witnesses' testimony look bad
25 in front of the jury. Do you understand what

1 "cross-examination" means?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Okay. No prior record?

4 MS. STROM: None.

5 MR. WILKINS: No.

6 THE COURT: Okay. Now, if you decide to testify,
7 you yourself must voluntarily make that decision,
8 understanding your Fifth Amendment rights. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now, if you decide not to testify, I
12 will instruct that jury that they cannot give that fact
13 that you didn't testify any consideration whatsoever.
14 In fact, I'll tell them they can't even bring it up in
15 the jury room when they're discussing your case. Do
16 you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Now, it is left entirely up to you
19 whether or not you wish to testify. You can talk with
20 your lawyer, your family, friends, or anyone else, but
21 the final decision will be left up to you.

22 Now, do you understand what I've explained to you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you need any further explanation?

25 THE DEFENDANT: No, sir.

1 THE COURT: Do you have any questions?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you discussed with your lawyers
4 about whether or not you should testify?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. Do you wish to talk to
7 your lawyers anymore at this time?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you wish to testify?

10 THE DEFENDANT: No, sir.

11 THE COURT: Okay. Thank you.

12 All right. Do y'all concur with that decision,
13 Mr. Mauldin?

14 MR. MAULDIN: Nothing further, Your Honor.

15 THE COURT: All right. What we're going to do,
16 then, of course, we're already ten after 4:00. I
17 already indicated to you the defense will be able to
18 start its case tomorrow morning.

19 MR. MAULDIN: 10 o'clock.

20 THE COURT: Yes, sir. I told you 10:00 because
21 you have witnesses coming from out of town, that kind
22 of thing, to give them time to get here with traffic.

23 MR. MAULDIN: Yes, sir.

24 THE COURT: All right. So what we'll do is bring
25 the jury back in. I'll look at you again and you will

1 say, "The State rests." I'll look to you, and you will
2 say, "Your Honor, we have witnesses coming in tomorrow
3 morning," and I'll tell them that's what we're going to
4 do.

5 Sounds good? All right. Bring the jury in.
6 (WHEREUPON, the jury entered open court at
7 4:15 p.m.)

8 THE COURT: All right.

9 Solicitor.

10 MR. WILKINS: Your Honor, the State rests.

11 THE COURT: The State rests.

12 And, yes, sir, Mr. Mauldin.

13 MR. MAULDIN: Yes. Our witnesses are subpoenaed
14 for 10 o'clock in the morning, Your Honor.

15 THE COURT: Okay.

16 So, ladies and gentlemen, now is a good time to
17 recess this trial for the day. It is now a quarter
18 after 4:00, and, of course, as you heard Mr. Mauldin,
19 the defense will begin presenting their case tomorrow
20 morning at 10:00 a.m. That's a decision I made based
21 upon their witnesses' availability with traffic coming
22 from Greenville and their being out of town, okay. So
23 normally I like to start at 9:30, but we're doing it at
24 10:00. That's on me. So having said that, I want
25 y'all back in your jury room tomorrow morning at 9:45.

1 Okay?

2 Now, I will specifically instruct you again on
3 what I did right prior to lunch and what I did
4 yesterday when we finished for the day. Do not talk
5 with anybody about this case. Do not listen to any
6 news reports or read any media accounts of this case.
7 Do not go online and read what they're talking about on
8 Twitter or on Facebook or other social media about this
9 case. Your decision is based solely on the evidence as
10 it is presented in this courtroom. Do not do any
11 independent research on this case. If you do that, you
12 violate your oath as a juror. All right?

13 Also, if anybody attempts to contact you or talk
14 with you about this case, don't do that, number one.
15 Number two, let me know who that is and that they did
16 that, and I assure you I will take care of that. Okay?
17 And, ladies and gentlemen, also you may have noticed
18 there are some cameras in the courtroom. I assure you
19 in no way are y'all visible to the camera so don't
20 worry about that.

21 So having said that, we are recessed for the
22 evening. We'll see you tomorrow morning at 9:45 in the
23 jury room. Thank you very much. You are free to
24 leave.

25 (WHEREUPON, the jury exited open court at.

1 4:17 p.m.)

2 THE COURT: Again I'll ask the crowd in the
3 courtroom to hold on about five minutes for the jury to
4 leave before y'all exit the courtroom, if y'all don't
5 mind.

6 All right. We're at ease for the next five
7 minutes or so and y'all can leave. Y'all are free to
8 talk and mingle and stuff.

9 (WHEREUPON, proceedings adjourned at 4:28 p.m.)

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Certificate of Reporter

I, Diane L. Marcengill, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 21st day of June 2016.

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I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 14, 2016


Diane L. Marcengill, RPR, CRR
Circuit Court Reporter