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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2020-001600

THE STATE,

Respondent,

vs.

RICKY BERNARD BROWN,

Appellant.

INITIAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

South Carolina Cases:

United States Supreme Court Cases:

Other State and Federal Cases:

Statutory Provisions:

Other Authorities:

STATEMENT OF ISSUE ON APPEAL

"Whether the trial judge erred in refusing to instruct the jury on not guilty by reason of insanity and guilty but mentally ill where there was evidence presented to the jury that Appellant did not have the mental capacity to distinguish between right and wrong and also that Appellant was unable to conform his conduct to the requirements of the law?"

COUNTER-STATEMENT OF ISSUE ON APPEAL

Did the trial judge somehow err by declining to instruct the jury on both insanity and guilty but mentally ill when there was no evidence presented during trial from which the jury could have found Appellant: (1) lacked the capacity to distinguish right from wrong at the time of his crimes or to recognize his actions were wrongful; or (2) lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect at the time of the incident?

STATEMENT OF THE CASE

In October of 2019, Appellant Ricky Bernard Brown was arrested at the conclusion of a hostage incident that occurred at the Newberry County branch of the South Carolina Vocational Rehabilitation Department. In December of 2019, the Newberry County Grand Jury indicted Appellant for two counts of kidnapping. In November of 2020, the Newberry County Grand jury additionally indicted Appellant for two counts of pointing or presenting a firearm along with one count of possession of a firearm by a person convicted of a violent crime. On November 16, 2020, a jury trial was commenced in the Newberry County Court of General Sessions with the Honorable Donald B. Hocker, circuit court judge, presiding. At the conclusion of the four-day trial, the jury acquitted Appellant of one of the kidnapping charges and convicted him of all the remaining indicted offenses. Following the verdict, the trial judge sentenced Appellant to concurrent terms of imprisonment of life without parole pursuant to Section 17-25-45 of the South Carolina Code of Laws for the kidnapping conviction, five years for each of the pointing or presenting a firearm convictions, and five years for the possession of a firearm by a person convicted of a violent crime conviction.[1] Appellant then timely filed a notice of appeal.

[1] Before he was convicted of kidnapping, Appellant had previously been convicted of voluntary manslaughter, which—like kidnapping—was a "most serious" offense in South Carolina. (Tr. pp. 561-562).

STATEMENT OF FACTS

Around lunchtime on October 2, 2019, Appellant, who in the past had received state-provided mental health and rehabilitative assistance after he finished serving a prison sentence for voluntary manslaughter, entered the Newberry County branch of the Department of Mental Health. (Tr. pp. 224-226; pp. 304-305; p. 342; p. 562). Upon doing so, he approached the front desk, reported his medication had been making him "feel weird," and, while behaving in a polite and normal manner, requested to speak with his counselor. (Tr. p. 226). However, his counselor was at lunch at that time, so Appellant was asked to wait in the lobby, and he calmly did so as requested. (Tr. p. 227).

Significantly, unbeknownst to the staff at the Department of Mental Health, Appellant was not there to simply meet with his counselor. (Tr. pp. 321-322; pp. 428-429). Instead, Appellant, by his own later candid admission, came there that day while armed with a gun, and his plan was to "shoot everybody" and to kill his caseworker and doctor because they purportedly would not give him the medications he wanted. (Tr. pp. 321-322; p. 355; pp. 428-429). Ultimately though, after waiting for a few minutes in the lobby, Appellant—fortunately for the people at the Department of Mental Health—decided to change his plan, and he set out for the nearby Newberry County branch of the Vocational Rehabilitation Department. (Tr. p. 226; p. 236; State's Ex. # 2 (Surveillance Footage)).

Earlier that day, Appellant had called Sonya Byrd, who was a counselor at the Vocational Rehabilitation Department and had previously worked with Appellant before his case was closed over a year earlier, and, during the call, Appellant told her was feeling suicidal and distressed, was taking illegal drugs, was not using his medication, and was planning on cutting himself. (Tr. pp. 235-236; p. 305; pp. 307-308; p. 335). In light of that, Byrd quickly arranged for Appellant's

sister to take Appellant to the hospital to get whatever help he needed, but Byrd did not make any plans for Appellant to meet with her in person. (Tr. p. 297; p. 302; p. 306; pp. 309-310).

Nonetheless, Appellant unexpectedly arrived at the Vocational Rehabilitation Department at approximately 12:54 p.m. on that date. (Tr. pp. 234-235; p. 306; p. 310; State's Ex. # 2). Once there, Appellant spoke with Kendall Armstrong, who was one of the agency's counselors, at the front desk in the lobby and asked to speak Byrd. (Tr. pp. 234-236; pp. 246-248; State's Ex. # 2). At that time, Byrd and the other employees at the agency were having some pizza together in the agency's conference room, which was located behind a partition that separated the lobby from the rest of the building. (Tr. p. 234; pp. 244-245; p. 249; p. 282; p. 306). In light of that, Armstrong informed Appellant about the lunch gathering and advised him she would let Byrd know he was there. (Tr. p. 306).

When Armstrong left to go alert Byrd of Appellant's presence, Appellant sat down in a chair in the lobby and calmly occupied himself with his phone while he waited. (Tr. p. 236; p. 306; State's Ex. # 2). A short time later, Byrd, who was surprised by Appellant's sudden appearance at the agency, came to the lobby, and she proceeded to talk with Appellant for a few minutes. (Tr. p. 236; pp. 283-284; p. 306; p. 310; p. 330; State's Ex. # 2). During the conversation, Appellant, who was behaving in a calm and engaged manner, reported he had recently experienced a number of personal tragedies. (Tr. pp .310-311; pp. 347-348). More specifically, Appellant stated his grandfather had died, one of his cousins had committed suicide, another of his cousins had been killed as he walked along a highway while drunk, and his fiancée had had a miscarriage.[2] (Tr. pp. 310-311; pp. 347-348).

[2] Later on, Appellant told others the person who was killed walking along the roadway was his brother. (Tr. p. 114).

After speaking with Appellant for a bit, Byrd went to again call his sister, and Appellant's sister advised her she still intended to pick Appellant up and take him to the hospital as had previously been arranged but needed to first deal with an issue at her child's school. (Tr. pp. 311-312; p. 330; State's Ex. # 2). Byrd then returned to Appellant and continued to chat with him. (Tr. p. 312). However, during that renewed conversation, one of Byrd's current clients came to the agency, and Byrd briefly turned her attention to the client and away from Appellant. (Tr. pp. 312-313; State's Ex. # 2).

Not long after that, Byrd returned to Appellant. (Tr. p. 313; State's Ex. # 2). When she did, Appellant, who had become agitated in her brief absence, casually pulled out a gun that had been concealed in his clothing, told her he had had enough, and stated "they" would not give him his medication. (Tr. pp. 313-314; State's Ex. # 2). Appellant then began waving the gun around and suddenly fired it into the lobby's ceiling. (Tr. p. 314; p. 397; State's Ex. # 2). Following that, Appellant began heading in the direction of the conference room where Byrd's co-workers were continuing to have lunch. (Tr. pp. 314-315; State's Ex. # 2).

Meanwhile, all Byrd's fellow employees had heard the sound of the gunshot, and several of them quickly headed toward the lobby to find out what was going on. (Tr. p. 237; pp. 249-250; p. 315; State's Ex. # 2). On their way, they encountered Appellant with the gun in his hand, and two of the agency's employees—Armstrong and Chad Ulmer—responded by rapidly fleeing out the building's front door while another—Tammy Wood—ran to the back of the building and locked herself inside the women's bathroom. (Tr. pp. 237-238; pp. 250-252; pp. 263-270; p. 315; State's Ex. # 2). As Armstrong and Ulmer fled, Appellant chased after them while pointing his gun in their direction, but he did not fire any shots and they were able to successfully get away. (Tr. p. 372; State's Ex. # 2).

Immediately after that, Cheri Braswell, who had been behind Armstrong and Ulmer, tried to also escape, but, as she did, Appellant grabbed her, pulled her to him, threatened her with his gun, and told her she could not leave. (Tr. pp. 285-286; pp. 288-289; p. 296; pp. 315-317; State's Ex. # 2). At that point, Byrd, who had selflessly followed after Appellant instead of fleeing, tried to intervene and pleaded with Appellant not to hurt Braswell and to let Braswell go while simultaneously calling 911 to alert the authorities of what was transpiring. (Tr. p. 272; p. 288; p. 291; pp. 316-317; State's Ex. # 2). In response, Appellant indicated he would not hurt Braswell, and he also took his finger off the trigger of his gun when Braswell asked him to do so. (Tr. p. 272; p. 301).

A short time later, Appellant released Braswell and shifted his focus away from her long enough for her to escape. (Tr. p. 291; pp. 301-302; pp. 316-317; pp. 332-333; State's Ex. # 2). By that point, numerous police officers had arrived at the scene and were visible through the building's windows. (Tr. p. 291; pp. 333-334; p. 376; State's Ex. # 2). Appellant responded by locking the building's back door, having Byrd shut the blinds to cover the windows, and crouching down to stay out of sight. (Tr. p. 271; p. 275; p. 324; pp. 332-334; p. 356; State's Ex. # 2). However, shortly after that, Wood snuck out of the bathroom she had been hiding in, unlocked the back door, and escaped out the back. (Tr. pp. 272-273; State's Ex. # 2).

For roughly the next hour, Appellant remained in the building with Byrd as the officers stayed in position outside. (Tr. pp. 333-334; State's Ex. # 2). During that time, Appellant advised Byrd he was not going to hurt her but referred to her as his hostage. (Tr. p. 325; pp. 353-354). He also advised Byrd he wanted to speak to a number of different people, and Byrd placed several calls for Appellant, including to his sister and his aunt. (Tr. pp. 317-318; p. 321; p. 325).

Based on Appellant's demeanor during that time, Byrd believed Appellant was "high" and thought he had been drinking. (Tr. p. 354). Relatedly, at one point, Appellant sat down on the floor, smoked some marijuana, and then pulled out a pipe used for smoking methamphetamine. (Tr. p. 318). However, Byrd told Appellant not to use the pipe, and he did not do so in response. (Tr. p. 318).

Eventually, after hearing her repeated pleas for him to surrender to the police, Appellant told Byrd she could leave, and she quickly headed out of the building at roughly 2:27 p.m. (Tr. pp. 321-323; State's Ex. # 2). Immediately after she left, Appellant, who was still keeping low to the floor, fired his pistol's remaining rounds into the ceiling and wall, tossed the gun onto the ground near the front door, left the fifteen additional rounds of ammunition he brought with him on the floor, and waited for the police to enter the building. (Tr. p. 318; p. 326; pp. 380-381; p. 385; pp. 399-403; State's Ex. # 2). When they did, Appellant immediately put his hands up, surrendered to the officers, and allowed himself to be taken into custody without offering any resistance. (Tr. p. 378; State's Ex. # 2). By 2:28 p.m., Appellant was arrested, and the ordeal was over. (Tr. p. 424; State's Ex. # 2).

Following his arrest, Appellant was transported to a hospital. (Tr. p. 425). While there, Appellant gestured from his bed for Captain Kevin Goodman of the Newberry Police Department to come over to his position. (Tr. pp. 426-427; p. 433). The captain complied with that non-verbal request, and, when he did so, Appellant proceeded to—without being questioned—offer his own account of what had occurred. (Tr. pp. 428-429; p. 431; p. 435). Specifically, Appellant recounted he had gone to the Department of Mental Health on a number of earlier occasions, reported he was suicidal and homicidal to staff there, was sent away, and was prescribed medication that did not work for him. (Tr. p. 428). Appellant also reported he

had consumed alcohol and used drugs while armed and had been planning to kill the first person "that said something out of the way to him," which he viewed as the only way to get help. (Tr. p. 428). Furthermore, regarding the incident itself, Appellant reported he went to the Department of Mental Health that day with the intent to kill his caseworker and doctor, but his plans were dashed because they were not there when he arrived. (Tr. pp. 428-429). As a result, Appellant stated he went to the Vocational Rehabilitation Department, fired his gun because he knew it would lead to the police being called, and planned on going out in a "blaze of glory" during a shootout with the police once they arrived. (Tr. pp. 428-429). However, Appellant indicated he changed his mind about that plan after speaking with Byrd and his daughter, which led to his eventual peaceful surrender. (Tr. pp. 428-429; p. 436).

Thereafter, Appellant was indicted for a number of different crimes, including two counts of kidnapping and several firearm offenses. (Tr. pp. 13-14; Indictments). Before his case was brought to trial, a court-ordered evaluation was conducted by Dr. Casey Gregoire, a forensic psychiatrist working on behalf of the South Carolina Department of Mental Health, to determine whether Appellant: (1) was competent to stand trial; (2) was criminally responsible for his actions during the incident; and (3) possessed the capacity to conform his conduct to the requirements of the law at the time of the incident. (Tr. p. 95; pp. 98-99; p. 102; Court's Ex. # 1 (Competency Evaluation Report); Court's Ex. # 2 (Criminal Responsibility and Capacity to Conform Evaluation Report)). After completing that evaluation, Dr. Gregoire issued reports concluding Appellant was competent, was criminally responsible for his crimes, and did possess the capacity to conform his conduct to the requirements of the law. (Tr. pp. 102-104).

Subsequently, Appellant proceeded forward to trial, and, at its outset, the trial judge conducted a hearing related to the results of the court-ordered evaluation. (Tr. pp. 13-14; p. 93).

During the course of that hearing, Dr. Gregoire recounted she conducted an evaluation of Appellant and, based on it, diagnosed him with antisocial personality disorder along with several substance abuse disorders. (Tr. pp. 98-100). She further indicated Appellant had previously been diagnosed with bipolar disorder in 2016 and post-traumatic stress disorder in 2017, but she stated she disagreed with both of those diagnoses in light of her own evaluation. (Tr. pp. 108-110). Similarly, she indicated Appellant had been diagnosed with an unspecified depressive disorder, borderline personality disorder, and cocaine use disorder in 2018. (Tr. pp. 111-112). Ultimately, based on her evaluation, Dr. Gregoire offered her expert opinion to a reasonable degree of medical certainty Appellant was criminally responsible for his actions on the date of the incident and did not have a mental disease or defect at that time that would have prohibited him from conforming his conduct to the requirement of the law. (Tr. p. 98; pp. 102-104; pp. 122-123; p. 125). As support for that opinion, Dr. Gregoire noted Appellant's expressed plan for his actions to result in suicide-by-police constituted poor judgment but also demonstrated rational, reality-based, and non-delusional thinking. (Tr. p. 117; pp. 125-126). Likewise, she explained Appellant's behavior was indicative of "legal knowledge of wrongfulness" while noting he gave several self-protective accounts of the incident, expressed being angry at one of his victims, kept his gun concealed so as to avoid detection, acknowledged he was not supposed to have a firearm, and stayed low to evade detection by officers. (Tr. p. 121). Following the presentation of that testimony, the trial judge elected to proceed forward with trial. (Tr. p. 126).

During the course of trial, a recording of the incident was played for the jury, Byrd and the other staff members at the Vocational Rehabilitation Department recounted the details of their harrowing and "life-changing" encounter with Appellant, and several of the officers involved in the response to the incident offered testimony about what had occurred, including

about Appellant's volunteered post-arrest admissions about what he had done and why he had done it. (Tr. pp. 233-260; pp. 263-279; pp. 281-385; pp. 387-403; pp. 417-421; pp. 423-436). As part of her testimony, Byrd indicated she was aware Appellant had a mental health background and stated she believed he had been diagnosed in the past with schizophrenia, post-traumatic stress disorder, and suicidal ideations. (Tr. pp. 340-341). She further indicated she believed Appellant was mentally ill on the date of the incident and personally thought he was "going through an episode." (Tr. p. 350; p. 363).

After all that testimony and evidence was presented, the State rested its case. (Tr. p. 438; p. 498). Following that, the trial judge indicated they needed to talk about the issue of whether insanity and guilty but mentally ill jury instructions were warranted. (Tr. p. 465). During the ensuing discussion, the trial judge—correctly recognizing there had to be some evidence to support such instructions—questioned whether the testimony that had been presented about Appellant's various mental health diagnoses was something that could support a conclusion he did not know right from wrong or could not conform his conduct to the requirements of the law, and he asked defense counsel to explain to him what in the record supported jury instructions on insanity and guilty but mentally ill. (Tr. pp. 466-469; p. 472; pp. 475-476).

In response, defense counsel asserted evidence had been presented showing Appellant had multiple mental health diagnoses and was suicidal, and, based on that, he contended it was his belief it should be up to the jury to determine whether a mentally-ill person trying to kill himself could "meet both prongs that he did know right from wrong and that he couldn't conform his conduct."[3] (Tr. p. 477). Defense counsel further asserted he believed he had a

[3] In addition to that, defense counsel also candidly conceded Byrd's testimony suggesting Appellant had been diagnosed with schizophrenia appeared to be incorrect, and, thus, he

"much stronger case for guilty but mentally ill" than he did for insanity, but he argued both matters nevertheless had to be presented to the jury if one was presented based on existing case law that had been identified to him by the solicitor. (Tr. p. 477).

At that point, the solicitor confirmed the case defense counsel was referencing was State v. Rimert, 315 S.C. 527, 446 S.E.2d 400 (1994), which he asserted supported the proposition both insanity and guilty but mentally ill must be charged to the jury when one was presented. (Tr. p. 478). Based on that, the solicitor argued guilty but mentally ill would not be applicable in Appellant's case if insanity was not applicable. (Tr. p. 478). Beyond that, the solicitor further contended guilty but mentally ill was also not appropriate in Appellant's case because no evidence was presented supporting a conclusion Appellant lacked the capacity to conform his conduct to the requirements of the law, which he noted was the "ultimate issue" when determining whether a guilty but mentally ill charge was warranted. (Tr. pp. 479-480). In making that particular argument, the solicitor asserted evidence of mental illness without more was not sufficient to support such an instruction and, instead, there needed to be something upon which a factfinder could reach the necessary conclusion concerning Appellant's lack of capacity to conform in order for a guilty but mentally ill jury instruction to be warranted. (Tr. p. 480).

Following that, the trial judge asked the parties whether everyone agreed "it's all or none" on the insanity and guilty but mentally ill instructions, and defense counsel explained he believed it was "probably" appropriate for the jury to be instructed on only one of those issues in the event the defense was seeking to "put one in but not the other." (Tr. pp. 480-481). However, defense counsel noted he was seeking instructions on both in Appellant's case while asserting the Rimert decision said the proper verdict form would have both. (Tr. p. 481). In response, the

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explained he was not prepared to present any arguments to the jury concerning a schizophrenia diagnosis. (Tr. p. 469).

solicitor cited to Section 17-24-30 of the South Carolina Code of Laws and asserted it suggested either all four possible verdicts—not guilty by reason of insanity, guilty but mentally ill, guilty, and not guilty—should be presented to the jury or just the standard guilty and not guilty verdicts should be presented. (Tr. pp. 481-482). Furthermore, the solicitor again contended no evidence was presented in Appellant's case to support the requested charges, and defense counsel responded he believed the testimony establishing Appellant was mentally ill and suicidal was sufficient to support the charges while conceding nothing suggesting Appellant was "manic" at the time of the crimes. (Tr. pp. 482-483; p. 485).

After listening to the arguments of counsel, the trial judge took the matter under advisement overnight. (Tr. p. 485). Thereafter, on the following morning, the trial judge announced he would not be presenting instructions to the jury on either insanity or guilty but mentally ill. (Tr. p. 489). In reaching that decision, the trial judge explained he did not believe the evidence warranted instructions on both insanity and guilty but mentally, and, therefore, he would not charge either in light of the Rimert decision coupled with the language of Section 17-24-30. (Tr. p. 489). Additionally, the trial judge explained the pre-trial testimony from Dr. Gregoire indicated there was no evidence supporting insanity or guilty but mentally ill in Appellant's case.[4] (Tr. p. 489). Finally, the trial judge noted the circumstances of Appellant's case were very different than the circumstances involved in State v. Curry, 410 S.C. 46, 762 S.E.2d 721 (Ct. App. 2014), since Appellant did not present any testimony, including from himself, that could support the requested charges. (Tr. pp. 489-490). Therefore, "[t]aking everything into consideration," the trial judge explained he did not believe either charge was

[4] Earlier, both defense counsel and the solicitor had indicated they believed it would be appropriate for the trial judge to consider the testimony from the in camera hearing when determining whether insanity and guilty but mentally ill charges were warranted. (Tr. pp. 471-472; p. 481).

warranted. (Tr. pp. 489-490). However, the trial judge indicated he would be willing to revisit the issue if the defense subsequently elected to present any additional evidence. (Tr. p. 490).

Following the trial judge's ruling, defense counsel asserted he believed an instruction on guilty but mentally ill could be presented to the jury separately and objected to the omission of such an instruction. (Tr. pp. 490-491). As support for that objection, defense counsel indicated he believed the "inference" from Appellant's behavior could support "the burden" on guilty but mentally ill. (Tr. p. 491). However, defense counsel conceded he had procured the services of a psychiatrist for the defense, and that individual indicated she would not be able to challenge Dr. Gregoire's findings. (Tr. pp. 491).

Subsequently, the trial proceeded forward, and the defense rested without presenting any further evidence or testimony. (Tr. p. 498). The parties then presented their closing arguments to the jury, and the trial judge instructed the jury on the applicable law without presenting instructions on insanity or guilty but mentally ill. (Tr. pp. 500-536; pp. 540-556).

Following that, the case was submitted to the jury, and the jury ultimately convicted Appellant of all the charges except for the charge of kidnapping involving Byrd. (Tr. pp. 558-559). The trial judge then sentenced Appellant to an aggregate and non-discretionary term of imprisonment of life without parole. (Tr. p. 562; p. 568).

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). On appeal, an appellate court reviewing a trial judge's jury charge must view the charge as a whole and in light of the evidence and issues from trial. State v. Simmons, 384 S.C. 145, 178, 682 S.E.2d 19, 36 (Ct. App. 2009); see Todd v. State, 355 S.C. 396, 402, 585 S.E.2d 305, 308 (2003) ("[J]ury charges should be examined in their entirety and not in isolation[.]"). Significantly, the appellate court will only reverse a trial judge's decision regarding jury instructions when that decision constituted a prejudicial abuse of discretion. See Clark v. Cantrell, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion."); Rauch v. Zayas, 284 S.C. 594, 597, 327 S.E.2d 377, 378 (Ct. App. 1985) ("[A]n alleged error in a portion of the charge must be prejudicial to the appellant to warrant a new trial."). Meanwhile, if the jury instructions presented were substantially correct and covered the applicable law, the trial judge's decision will not be reversed on appeal. See State v. Ezell, 321 S.C. 421, 425, 468 S.E.2d 679, 681 (Ct. App. 1996) ("A jury charge which is substantially correct and covers the law does not require reversal."); see also State v. Rye, 375 S.C. 119, 123, 651 S.E.2d 321, 323 (2007) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied.").

ARGUMENT

The trial judge correctly declined to instruct the jury on both insanity and guilty but mentally ill because there was no evidence presented during trial from which the jury could have found Appellant: (1) lacked the capacity to distinguish right from wrong at the time of his crimes or to recognize his actions were wrongful; or (2) lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect at the time of the incident.

Appellant contends the trial judge reversibly erred by refusing to instruct the jury on insanity and guilty but mentally ill. In support of that contention, Appellant maintains evidence was presented during trial from which the jury could have concluded he either could not distinguish between right and wrong at the time of the crimes or lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect. To the contrary, no evidence was presented during trial that supported a conclusion Appellant was not capable of distinguishing right from wrong or recognizing the wrongfulness of his actions at the time of the crimes, which was necessary in order for an insanity verdict to be legally proper. Likewise, no evidence was presented that supported a conclusion Appellant lacked sufficient capacity to conform his conduct to the requirements of the law at the time of the incident, which was necessary in order for a guilty but mentally ill verdict to be legally proper. Accordingly, because there was no evidence supporting the issues of insanity or guilty but mentally ill in Appellant's case, the trial judge properly declined to present either of those unsupported instructions to the jury. Appellant's convictions should be affirmed.

In South Carolina, the applicable standard for determining whether a defendant is insane is "the so-called M'Naughten test" State v. Law, 270 S.C. 664, 667, 244 S.E.2d 302, 304 (1978); see State v. Wilson, 306 S.C. 498, 505, 413 S.E.2d 19, 23 (1992) ("South Carolina has rejected the so-called 'irresistible impulse' test as an insanity defense. . . . This test essentially engages the court to determine whether the defendant was acting, at the time of his alleged criminal

behavior, pursuant to an irresistible impulse, or was unable to control himself."). Pursuant to that test, "a defendant is considered legally insane if, at the time of the offense, he lacked the capacity to distinguish moral or legal right from wrong." State v. Pittman, 373 S.C. 527, 577, 647 S.E.2d 144, 170 (2007); see S.C. Code Ann. § 17-24-10(A) ("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."). If a defendant is legally insane in that he lacked the capacity to distinguish right from wrong at the time of the crime or to recognize the charged act as wrongful, the defendant is considered to be not responsible for his actions under the law. Davenport v. State, 301 S.C. 39, 40, 389 S.E.2d 649, 649 (1990); see State v. Grimes, 292 S.C. 204, 205, 355 S.E.2d 538, 539 (1987) ("[A] person is insane if, due to a mental disease or defect, he lacks the capacity (1) to distinguish moral or legal right from moral or legal wrong, *or* (2) to recognize the particular act charged as morally or legally wrong.").

Relatedly, the applicable standard in South Carolina for determining whether a defendant is guilty but mentally ill involves determining whether, at the time of the offense, the defendant lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect.[5] See S.C. Code Ann. § 17-24-20(A) ("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-

[5] Notably, South Carolina's legal standard for guilty but mentally ill is substantially less broad than the standard that has been adopted in some other jurisdictions. See, e.g., Ga. Code Ann. § 17-7-131 (stating "mentally ill" for purposes of a guilty but mentally ill verdict in Georgia means "having a disorder of thought or mood which significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life").

10(A), but because of mental disease or defect he lacked sufficient capacity to conform his conduct to the requirements of the law."). As a verdict, guilty but mentally ill exists to: (1) reduce the number of defendants being relieved of criminal responsibility due to mental health issues; and (2) ensure defendants who are mentally ill receive treatment while incarcerated for the benefit of both the defendant and society as a whole. Wilson, 306 S.C. at 503-504, 413 S.E.2d at 22; see State v. Hornsby, 326 S.C. 121, 130, 484 S.E.2d 869, 874 (1997) ("The GBMI statute ensures the jury applies the legal definition of insanity correctly by underscoring that a person may be mentally ill, yet not legally insane."). Significantly, if a defendant is guilty but mentally ill in the sense he lacked sufficient capacity to conform his conduct to the requirements of the law because of mental disease or defect, the defendant *is* considered to be criminally responsible for his actions, is not considered to be less culpable as a matter of law, and is punished just as he would have been punished if he had simply been found guilty. See S.C. Code Ann. § 17-24-70 (explaining a defendant found to be guilty but mentally ill "must be sentenced by the trial judge as provided by law for a defendant found guilty" but, if sentenced to a term of incarceration, must first be taken to facility designated by the Department of Corrections for treatment); State v. Downs, 361 S.C. 141, 146, 604 S.E.2d 377, 380 (2004) ("Guilty but mentally ill is still guilty. The difference between guilty and GBMI pertains only to post-sentencing medical treatment."); see also Wilson, 306 S.C. at 508, 413 S.E.2d at 24-25 ("South Carolina does not recognize that one acting under an irresistible impulse is somehow less culpable. Instead, the statutory scheme specifically provides that one acting under such an impulse is *guilty*, albeit guilty but mentally ill." (footnote and internal quotations omitted)).

In order to be entitled to a verdict of not guilty by reason of insanity, the defendant bears the burden of proving insanity, which constitutes an affirmative defense, by a preponderance of

the evidence. S.C. Code Ann. § 17-24-10; see State v. Hinson, 253 S.C. 607, 620, 172 S.E.2d 548, 554 (1970) ("It is well settled in this State that insanity is an affirmative defense in a criminal prosecution and that, in order to make out such defense, sufficient proof of insanity must be shown, by a preponderance of the evidence, to overcome in the first place the presumption of sanity and any other proof of sanity that may be offered."); State v. Bethune, 88 S.C. 401, __, 71 S.E. 29, 32 (1911) ("The plea of insanity is an affirmative defense, and must be established by the party interposing it by the preponderance of evidence."). Similarly, in order to be entitled to a verdict of guilty but mentally ill, the defendant must prove by a preponderance of the evidence he was mentally ill not just in a general sense but in the sense necessary to meet South Carolina's articulated definition of guilty but mentally ill. S.C. Code Ann. § 17-24-20(B).

"Ordinarily, the trial court has the duty to give requested instructions which correctly state the law applicable to the issues and which are *supported by the evidence*." State v. Peer, 320 S.C. 546, 553, 466 S.E.2d 375, 380 (Ct. App. 1996) (emphasis added). However, a trial judge should *not* present a jury instruction "which tenders an issue which is not presented or supported by the evidence." State v. Weaver, 265 S.C. 130, 137, 217 S.E.2d 31, 34 (1975); see State v. Brandt, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (explaining a trial judge is required to instruct the jury on sound principles of law that are applicable to the case *based on the evidence presented*). Significantly, that is true because the presentation of jury instructions on inapplicable matters has the potential to confuse or mislead the jury. See State v. Washington, 338 S.C. 392, 400, 526 S.E.2d 709, 713 (2000) ("Jury instructions by the court of irrelevant and inapplicable principles may be confusing to the jury and can be reversible error."). Therefore, there must be some evidence adduced at trial on the issues of insanity and guilty but mentally ill in order for jury instructions on those issues to be warranted. See State v. Gardner,

219 S.C. 97, 106, 64 S.E.2d 130, 135 (1951) (concluding the trial judge correctly declined to submit the issue of insanity to the jury because there was no evidence in record which could "reasonably be said to rebut the presumption of sanity"); see also State v. Otts, 424 S.C. 150, 158, 817 S.E.2d 540, 545 (Ct. App. 2018) (explaining there must be some evidence adduced at trial on a particular issue in order for a jury instruction on that issue to be warranted).

In State v. Lewis, 328 S.C. 273, 275, 494 S.E.2d 115, 115 (1997), our Supreme Court addressed a challenge to a trial judge's decision not to submit the issue of insanity to the jury. In that case, Lewis broke into his estranged wife's home and fatally shot her paramour. Id. During trial, evidence and testimony was presented establishing Lewis was suicidal, was taking medication, seemed out of it and severely disturbed, acted dazed and incoherent leading up to the killing, and was suffering from depression and other mental health issues. Id. at 275-276, 494 S.E.2d at 116. Additionally, Lewis himself testified he did not remember what occurred immediately prior to the shooting, did not intend to harm anyone but himself on the date of the incident, and was "totally" out of his mind at that time. Id. at 276, 494 S.E.2d at 116. Furthermore, expert testimony was presented opining Lewis was able to distinguish between right and wrong but was not able to conform his conduct to the requirements of the law due to his severe depression.[6] Id. at 277, 494 S.E.2d at 116. Ultimately, the trial judge did not submit the issue of insanity to the jury, and Lewis was found guilty but mentally ill of voluntary manslaughter and first-degree burglary. Id. at 275, 494 S.E.2d at 115. Lewis subsequently appealed, and, on appeal, the Supreme Court affirmed. Id. In affirming, the Supreme Court explained the testimony suggesting Lewis suffered from severe depression and had been out of

[6] In its decision, the Supreme Court noted the testimony establishing Lewis was unable to conform his conduct to the requirements of the law supported a charge on guilty but mentally ill. Lewis, 328 S.C. at 277, n. 4, 494 S.E.2d at 116, n. 4.

his mind at the time of the incident did *not* suggest he could not distinguish between right and wrong as necessary to warrant a jury instruction on the issue of insanity. Id. at 278-279, 494 S.E.2d at 117. Moreover, the Supreme Court noted other evidence presented during trial, including evidence establishing Lewis retreated at the sight of police officers, demonstrated he recognized the wrongfulness of his conduct and, thus, tended to establish his sanity rather than his insanity. Id. at 279, 494 S.E.2d at 118. As a result, the Supreme Court found the trial judge properly refused Lewis's request for an insanity instruction "[s]ince there was no evidence [Lewis] was unable to distinguish between right and wrong or unable to recognize his actions as wrong at the time of the offense[.]" Id. at 280, 494 S.E.2d at 118.

Likewise, in State v. Harris, 318 S.C. 178, 181, 456 S.E.2d 433, 435 (Ct. App. 1995), this Court addressed an issue related to South Carolina's requirements for a guilty but mentally ill verdict. In that case, Harris was charged with kidnapping after a bizarre incident involving his estranged wife. Id. at 179-180, 456 S.E.2d at 434. During trial, evidence was presented establishing Harris had a history of emotional problems and substance abuse that resulted in several periods of hospitalization, which ultimately led to Harris's wife leaving him. Id. at 179, 456 S.E.2d at 434. Additionally, evidence was presented establishing Harris—after being released from one of his stays at a state hospital—tracked down his wife, made preparations to adduct her, obtained various items to carry out his scheme, concealed himself in the trunk of her car, waited for her to enter it, crawled from the trunk into the car's interior when she was inside, and took control of the vehicle from her until he was stopped by the intervention of a law enforcement officer. Id. at 179-180, 456 S.E.2d at 434. In addition to that, Harris sought to introduce expert testimony from his counselor at the Dorchester Mental Health Center in order to establish he was guilty but mentally ill. Id. at 180, 456 S.E.2d at 434-435. During an in camera

hearing on the matter, the counselor testified she believed Harris was out of control and used poor judgment at the time of the incident, but she did not offer any testimony specifically addressing the issue of whether Harris lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect. Id. at 180, 456 S.E.2d at 435. Ultimately, the trial judge refused to allow that testimony, Harris was convicted of kidnapping, and he initiated an appellate challenge to the ruling excluding the purported guilty but mentally ill evidence. Id. at 179, 456 S.E.2d at 434. On appeal, this Court affirmed. Id. In doing so, this Court initially found the trial judge did not abuse his discretion by refusing to qualify Harris's counselor as an expert under the circumstances involved. Id. at 181, 456 S.E.2d at 435. Furthermore and importantly, this Court also concluded Harris was not prejudiced by the trial judge's ruling even assuming it was erroneous because the counselor's testimony would *not* have supported a guilty but mentally ill verdict. Id. In reaching that conclusion, this Court pointed out the counselor only offered vague testimony opining Harris was out of control and exercising impaired judgment at the time of the incident, which it explained "[i]n no way" established what was required to support a verdict of guilty but mentally ill under South Carolina law. Id.

In the case sub judice, Appellant sought jury instructions on both insanity and guilty but mentally ill. However, in seeking such instructions, Appellant did not offer any testimony, including from himself, and did not identify any evidence that established he either could not distinguish between right and wrong at the time of the incident or lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect. Instead, Appellant argued—and continues to argue on appeal—he was entitled to the requested instructions based solely on the evidence establishing he was mentally ill in a general sense, was suicidal, and engaged in the troubling acts that resulted in his charges.

Importantly though, a defendant in South Carolina cannot be found to be insane or guilty but mentally ill as a matter of law merely because he is generally mentally ill or suicidal. Instead, for insanity to be applicable, there must be some evidence from which a factfinder can conclude by a preponderance of the evidence the defendant lacked the capacity to distinguish right from wrong at the time of the crime or to recognize his actions as wrongful. S.C. Code Ann. § 17-24-10(A); see Gardner, 219 S.C. at 106, 64 S.E.2d at 135 ("Subnormal mentality is not a defense to crime *unless* the accused is by reason thereof unable to distinguish between right and wrong with respect to the particular act in question." (emphasis added)). Similarly, in order to be guilty but mentally ill pursuant to South Carolina law, there must be some evidence from which a factfinder can conclude by a preponderance of the evidence the defendant lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect. S.C. Code Ann. § 17-24-20(A); see State v. Hartfield, 300 S.C. 469, 472, 388 S.E.2d 802, 804 (1990) ("The *requirements* for receiving a verdict of guilty but mentally ill are set forth in § 17-25-20[.]" (emphasis added)).

Looking first to the insanity issue, evidence was unquestionably presented during Appellant's trial generally demonstrating Appellant suffered from various mental health issues, and it suggested he may have been depressed, suicidal, or both around the time of the crime. See, e.g., Lawrence v. State, 454 S.E.2d 446, 449 (Ga. 1995) ("Legal insanity is not established by a medical diagnosis that an individual suffers from a mental illness such as a psychosis."). However, as was true in Lewis, neither that evidence nor any other evidence presented supported a conclusion Appellant—who elected not to personally testify in support of an insanity defense—was unable to distinguish between right and wrong or to recognize the wrongfulness of his actions at the time of his crimes as was necessary for an insanity verdict to be legally

appropriate in our state. See Lewis, 328 S.C. at 278-278, 494 S.E.2d at 117 ("While it is uncontroverted [Lewis] suffered from severe depression, the evidence does not suggest he was unable to distinguish between right and wrong or unable to recognize his actions as morally or legally wrong at the time of the offense. Even [Lewis]'s own testimony that he was out of his mind does not indicate he could not differentiate between right and wrong or recognize his conduct as wrong." (brackets and internal quotations omitted)); cf. Gardner, 219 S.C. at 106, 64 S.E.2d at 135 (explaining evidence of Gardner's "low mentality," emotional instability, claimed lack of memory of the crime, passion at the time of the killing, and abnormal appearance and actions after it was not sufficient individually or collectively to warrant a jury instruction on insanity because "there [wa]s no evidence whatsoever that [Gardner] was unable to distinguish between right and wrong or to recognize the nature and quality of the act committed"). Instead, the evidence presented supported a contrary conclusion and demonstrated Appellant *was*, in fact, cognizant of the wrongfulness of his actions based on his acts of: (1) initially concealing his firearm; (2) keeping low to the ground to stay out of the responding police officers' sight; (3) locking the building's back door to prevent officers from getting inside; (4) taking his finger off the trigger of his gun when asked to do so; (5) abandoning his weapon and putting his hands up to officers prior to his eventual peaceful surrender; and (6) explaining he initially fired his gun at the Vocational Rehabilitation Department because he knew it would lead to police officers coming to his location. Cf. Lewis, 328 S.C. at 279, 494 S.E.2d at 118 ("These actions suggest [Lewis] recognized the gravity of the situation and that his conduct was wrong, and tend to establish his sanity rather than his insanity."); Gardner, 219 S.C. at 107, 64 S.E.2d at 135 (finding Gardner's statements admitting his crime and indicating his readiness to "be electrocuted" for it demonstrated "he fully appreciated the gravity of his act"). Therefore,

without any evidence supporting a conclusion Appellant met the legal definition of insanity at the time of his crimes, the trial judge correctly declined to submit the issue of insanity to the jury. See Lewis, 328 S.C. at 278, 494 S.E.2d at 117 (instructing a request for an insanity jury instruction is properly refused when there is no evidence tending to show the defendant was insane at the time of the crime); cf. Meredith v. State, 370 So. 2d 1075, 1078 (Ala. Crim. App. 1979) ("Unusual or weird behavior alone cannot be equated with mental insanity."); Lickliter v. Commonwealth, 142 S.W.3d 65, 68 (Ky. 2004) ("The two defense experts did not give any opinion that Lickliter suffered from insanity as defined by [the applicable Kentucky statute]. At best, they recited only symptoms. Thus, Lickliter was not entitled to an insanity instruction and the trial judge properly rejected the requested instruction."); State v. Davis, 334 S.E.2d 509, 512 (N.C. Ct. App. 1985) ("[Davis] offered no expert testimony on his mental condition or mental history. [Davis]'s only conceivable evidence on the issue of insanity was his testimony on numerous occasions that he lost his mind, went blind or something, went pure bizarre, was so mixed up right then, was all to pieces, and went completely out of his mind. This testimony fails to show any evidence of insanity, either permanent or temporary. . . . There was no evidence of insanity, and it is not error to refuse to instruct on insanity when there is no evidence of such." (brackets and internal quotations omitted)); Jacobson v. State, 684 P.2d 556, 561 (Okla. Crim. App. 1984) (finding the trial judge properly declined to instruct the jury on insanity where evidence was presented establishing Jacobson suffered from post-traumatic stress disorder, nerves, acute anxiety, depression, and suicidal thoughts but nothing was presented from Jacobson or any other witness indicating he did not have an ability to distinguish right from wrong at the time of his victim's death).

Similarly, looking to the guilty but mentally ill issue, there was no evidence presented during Appellant's trial that could support a conclusion he lacked sufficient capacity to conform his conduct to the requirements of the law at the time of the incident. Instead, similar to what occurred in Harris, all that was presented during Appellant's trial concerning his mental health was testimony and evidence suggesting he generally suffered from mental issues, had claimed to be suicidal, had been diagnosed with various conditions like post-traumatic stress disorder in the past, had been prescribed with medication, and had committed the unlawful acts involved in the incident. Cf. Harris, 318 S.C. at 180-181, 456 S.E.2d at 435 (concluding testimony indicating Harris was "out of control" and using poor judgment at the time of the incident was not sufficient to warrant submitting the issue of guilty but mentally ill to the jury because such testimony "[i]n no way" indicated Harris lacked sufficient capacity to conform his conduct to the requirements of the law due to mental disease or defect as required for a verdict of guilty but mentally ill). Critically though, none of that evidence established Appellant lacked sufficient capacity to conform his conduct to the requirements of the law as the result of any mental disease or defect, and nothing was presented to draw such a required connection between Appellant's mental health and his actions at the time of the incident for the jury. See State v. Bell, 293 S.C. 391, 398, 360 S.E.2d 706, 710 (1987) (finding the issue of whether Bell was guilty but mentally ill was a disputed matter that was properly submitted to the jury where Bell "introduced lay and expert evidence during his case that he was mentally ill, *as defined by § 17-24-20(A)*, at the time the crime was committed" (emphasis added)); cf. Harris, 318 S.C. at 181, 456 S.E.2d at 435 ("Ariel only vaguely opined Harris's judgment was impaired and he was out of control at the time of the incident. In no way do her statements indicate, as required for a verdict of guilty but mentally ill, that because of a mental disease or defect Harris lacked sufficient capacity to

conform his conduct to the requirements of the law." (citation, internal quotations, and brackets omitted)). Likewise, although not categorically required, no expert testimony was presented to support a conclusion Appellant lacked the capacity to conform his conduct to the requirements of the law, which likely did not happen due to the fact every expert—both court-ordered and defense-retained—that evaluated Appellant after the incident reached the opposite conclusion. Cf. Downs, 361 S.C. at 144, 604 S.E.2d at 379 (concluding evidence of mental illness in the context of guilty but mentally ill was presented when Downs offered expert testimony suggesting his "mental condition rendered him unable to conform his conduct to the requirements of the law, that is, he was mentally ill"). Meanwhile, Appellant did not personally testify or claim he had been unable to conform his conduct when he committed his crimes, and his earlier account of the incident, which was admitted into evidence during trial, similarly did not contain any statements suggesting he had been unable to conform or control his conduct at the time of the incident. Instead, that account demonstrated his thought process on date of the incident was reality-based and purpose-driven. Moreover, nothing was presented suggesting Appellant was manic, delusional, or unable to comprehend reality at the time of the crimes. Cf. State v. Curry, 410 S.C. 46, 54, 762 S.E.2d 721, 725 (Ct. App. 2014) ("[W]e find Dr. Means's opinion that Curry suffered from mania at the time of the incident combined with other lay and expert testimony on Curry's antisocial conduct, odd mannerisms, and isolationist behavior indicate his mental illness may have prevented Curry from being able to conform his conduct to the law at the time of this offense. We also find Curry's affirmative actions of stockpiling his feces under his sink and placing feces on his face and clothing at the time of the offense created a jury question as to whether he truly appreciated the nature of his actions. Arguably, if Curry was willing to smear them on himself, the jury could reasonably conclude he lacked the requisite

mental capacity to be able to abide by the law."). Beyond that, the evidence presented during trial repeatedly demonstrated Appellant *could*, in fact, conform his conduct to the requirements of the law during the incident. Specifically, it showed Appellant: (1) abandoned his anger-based plan to kill his doctor and counselor at the Department of Mental Health; (2) allowed the people at the Vocational Rehabilitation Department to flee despite having an opportunity to stop them by shooting them; (3) affirmatively stated he was not going to hurt Braswell when asked not to do so; (4) took his finger off the trigger of his gun when asked to do so; (5) did not use his methamphetamine pipe when asked not to do so; (6) emptied his gun and placed it out of his own reach before surrendering to officers; (7) put his hands up to signal his submission when surrendering to officers; (8) allowed himself to be taken into custody without incident; and (9) abandoned his plan to engage in a shoot-out with police. Thus, in light of the fact there was an absence of evidence demonstrating Appellant lacked capacity to conform his conduct to the requirements of the law coupled with the fact there was a plethora of evidence expressly demonstrating Appellant did possess the capacity to conform his conduct to the requirements of the law on the date of the incident, there was nothing presented during trial upon which a factfinder could reasonably conclude the legal requirements for a guilty but mentally ill verdict had been met in Appellant's case without resorting to rank speculation. See State v. Washington, 431 S.C. 394, 411, 848 S.E.2d 779, 788 (2020) (finding the trial judge committed reversible error by presenting a jury instruction that "invited the jury to speculate" due to the absence of evidentiary support for the instruction); cf. Milford v. State, 57 So. 96, 97 (Ala. Ct. App. 1911) ("A jury have no right to infer the existence of insanity from the existence of a cause which may have some tendency to produce it, unless there is some evidence before them that insanity actually followed as a result of the possible cause."). As a result, the trial judge correctly

declined to present a jury instruction on guilty but mentally ill that was not supported by any evidence.[7]

For all those reasons, the trial judge, who otherwise presented instructions that fully provided the jurors with all the relevant law needed for them to be able to properly decide

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[7] In challenging the trial judge's ruling regarding the guilty but mentally ill jury instruction on appeal, Appellant appears to suggest the trial judge committed an error of law by interpreting the Rimert decision—and, by extension, Section 17-24-30—to preclude the presentation of a guilty but mentally ill jury instruction in the absence of an instruction on insanity. (App. Br. pp. 14-15). In light of the underlying purpose of guilty but mentally ill verdicts, a number of states with such verdicts have reached similar conclusions that a guilty but mentally ill verdict is not warranted in the absence of an insanity verdict. See, e.g., People v. Adamcyk, 631 N.E.2d 407, 413 (Ill. App. Ct. 1994) ("A defendant cannot be found GBMI unless he raises the defense of insanity."); People v. McLain, 589 N.E.2d 1116, 1119 (Ill. App. Ct. 1992) ("The concept of guilty but mentally ill . . . may come to the jurors' attention within the framework of an insanity defense. Mental illness, in and of itself, is not an affirmative defense but may be accepted as a finding when the affirmative defense of insanity is raised. Guilty but mentally ill may also be the subject of a jury instruction and may be returned as a special verdict, but, again, only if an insanity defense has been presented at trial. In sum, as we read the statute, it was not intended that guilty but mentally ill should be a plea to a jury. Moreover, there is no contention here that defense counsel presented an insanity defense. Therefore, there was no statutory basis which would have warranted presenting defendant's guilty but mentally ill position to the jury." (citations omitted)); Commonwealth v. Andrews, 158 A.3d 1260, 1263-1264 (Pa. Super. Ct. 2017) ("[A] defendant who pleads ***not guilty*** may be found by a fact-finder to be guilty but mentally ill only if the defendant offers a defense of insanity. The reason for this rule is that, under Pennsylvania law, mental illness is not a defense to criminal liability unless the mental illness rises to the level of legal insanity." (citations and internal quotations omitted)); Commonwealth v. Andre, 17 A.3d 951, 961 (Pa. Super. Ct. 2011) ("[U]nless a person pleads guilty but mentally ill, the guilty but mentally ill verdict only arises in the context of a legal insanity defense."). However, even assuming the trial judge's determination in that regard was incorrect pursuant to South Carolina law, his decision not to instruct the jury on guilty but mentally ill nonetheless did not constitute reversible error because—just as the trial judge *also* recognized—there was no evidence presented supporting such an instruction. See Sec. & Exch. Comm'n v. Chenery Corp., 318 U.S. 80, 88 (1943) ("[I]n reviewing the decision of a lower court, it must be affirmed if the result is correct although the lower court relied upon a wrong ground or gave a wrong reason. The reason for this rule is obvious. It would be wasteful to send a case back to a lower court to reinstate a decision which it had already made but which the appellate court concluded should properly be based on another ground within the power of the appellate court to formulate." (citation and internal quotations omitted)); State v. Goodstein, 278 S.C. 125, 128, 292 S.E.2d 791, 793 (1982) ("An appellate court . . . is not, as a general rule, bound by the reasoning adopted below if the record discloses a correct result. . . . No principle in the disposition of appeals is more firmly established than that a right decision upon a wrong ground will be affirmed." (citations and internal quotations omitted)).

Appellant's case, correctly declined to present jury instructions on insanity and guilty but mentally ill that were not supported by the evidence presented and, thus, could have only served to confuse and distract the jurors during their deliberations.[8] See Lewis, 328 S.C. at 278, 494 S.E.2d at 117 ("A requested charge on insanity is properly refused where there is no evidence tending to show the defendant was insane at the time of the crime charged."); State v. Rothell, 301 S.C. 168, 169-170, 391 S.E.2d 228, 229 (1990) ("It is error to give instructions which may confuse or mislead the jury."); see also State v. Burkhart, 350 S.C. 252, 263, 565 S.E.2d 298, 304 (2002) ("Failure to give requested jury instructions in not prejudicial error where the instructions given afford the proper test for determining the issues."); cf. Gardner, 219 S.C. at 106, 64 S.E.2d at 135 (affirming the trial judge's decision not to instruct the jury on insanity because there was no evidence supporting such a charge). Appellant's convictions should be affirmed.

[8] Moreover, even if the evidence presented during trial could have somehow been minimally sufficient to raise one or both of the issues of insanity and guilty but mentally ill, Appellant nonetheless could not have been prejudiced by the trial judge's failure to present those instructions to the jury because the vague and general mental health evidence presented could not possibly have supported a conclusion Appellant was insane or guilty but mentally ill by the required showing of a preponderance of the evidence needed to sustain such verdicts. See State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) ("To warrant reversal, a trial judge's charge must be both erroneous and *prejudicial*." (emphasis added)); State v. Zeigler, 364 S.C. 94, 106, 610 S.E.2d 859, 865 (Ct. App. 2005) ("To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant."); see also Black's Law Dictionary 1301 (9th ed. 2009) (defining "preponderance of the evidence" as "[t]he greater weight of the evidence, not necessarily established by the greatest number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other"); cf. State v. Middleton, 407 S.C. 312, 319, 755 S.E.2d 432, 436 (2014) (concluding the trial judge erred by failing to instruct the jury on a lesser-included offense but finding that error was harmless beyond a reasonable doubt in light of the evidence presented).

CONCLUSION

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

Respectfully submitted,

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January 18, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County
Honorable Donald B. Hocker, Circuit Court Judge
Appellate Case No. 2020-001600

THE STATE,

Respondent,

vs.

RICKY BERNARD BROWN,

Appellant.

PROOF OF SERVICE

I, Mark R. Farthing, certify I have served the within Initial Brief of Respondent and Designation of Matter on Appellant by sending an electronic copy via email to the address listed in AIS for the following individual:

Adam Sinclair Ruffin, Esquire
S.C. Commission on Indigent Defense
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I further certify that all parties required by Rule to be served have been served.
This 18th day of January, 2022.

MARK R. FARTHING
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Subject: State v. Ricky Bernard Brown -- Initial Brief of Respondent and Designation of Matter
Date: Tuesday, January 18, 2022 6:40:00 PM
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image003.png

Mr. Seeger,

Attached are electronic copies of the State's Initial Brief of Respondent and Designation of Matter in the State v. Ricky Bernard Brown appeal. I will be electronically filing them with the Court of Appeals shortly. If you would also like a paper copy, have any questions, or need anything else, please just let me know.

Sincerely,
Mark

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