EFiled: Apr 08 2016 07:09PM EDT
Filing ID 58839992
Case Number 338,2015

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JOSHUA STEPHENSON,	)	
	)	
Defendant Below,	)	
Appellant,	)	
	)	
v.	)	No. 338, 2015
	)	
STATE OF DELAWARE,	)	
	)	
Plaintiff Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

APPELLANT'S REPLY BRIEF

BERNARD J. O'DONNELL [#252]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5121

Attorney for Appellant

DATED: April 8, 2016

TABLE OF CONTENTS

TABLE OF CITATIONS

I. THE TRIAL COURT ERRED WHEN IT DENIED THE DEFENDANT'S REQUEST FOR THE JURY TO CONSIDER A DEFENSE OF JUSTIFICATION AND SUPPORTING EXPERT TESTIMONY FOR THAT DEFENSE.

In its answering brief, the State contends that the Superior Court correctly granted its motion to preclude Dr. Rushing's testimony at trial concerning the Defendant's state of mind at the time of the offense. The State also describes the grounds it asserted for exclusion of her testimony. Ans. Br. at 8-9. What the State fails to recognize, however, is that the Superior Court did not rely on any ground asserted by the State which the State now describes in its argument as suggested grounds for the Superior Court's decision. Instead the Superior Court excluded Dr. Rushing's testimony on the ground that she did not specifically address the Defendant's state of mind on the night of the homicide. The State likewise now adopts the Superior Court's finding in its answering brief and contends that her report was "devoid of any mention of the defendant's mental capacity on the night of December 24 and its impact on his perception of the events that night." An. Br. at 11. Neither contention is correct. Because the State now adopts the Superior Court's erroneous conclusion, which it did not contend at trial, does not make both the Superior Court and the State now right. The contentions are neither supported by the facts nor Dr. Rushing's report. In her report, she discussed at length the Defendant's "Schizoaffective Disorder,

bipolar type," (A23, 40, 43), and its "hallmark feature … characterized by delusions and hallucinations that typically occur without the patient understanding the pathological nature of the experience." (A40). She discussed the Defendant's delusions which are "erroneous beliefs that usually involve a misinterpretation of perceptions or experiences." (A40). She observed that in his schizophrenic condition, he would have "problems with making sense of information." (A40). He would also "experience a disturbance in major areas of functioning such as … interpersonal relationships…." (A41). Based on her review of the Defendant's records, including reports of the evidence the prosecution intended to produce at trial, and her clinical examination of the Defendant, she observed that the Defendant's mental state was characterized by "auditory hallucinations and paranoia." (A41). Most significantly, while the Superior Court stated that Dr. Rushing's testimony was irrelevant and inadmissible because she did not specifically address his mental state on December 24, her report plainly contradicts the Superior Court's finding: "Mr. Stevenson was in a manic state on Christmas Eve 2012." (A41). The State addresses none of this, laid out in the Defendant's opening brief, in its answering brief. Like the Superior Court was then, the State is simply wrong now about its threadbare contention that Dr. Rushing was not prepared to address the Defendant's mental state on the night of the homicide. The State

makes a similar contention now that the failure to disclose what was abundantly evident in her report was a discovery violation and supported exclusion of her testimony, but fails to explain why, if the contention has such merit now, the State failed to recognize the merit of that ground then. That ground didn't have merit then and it has no more merit now.

Similarly, the State reaches to authority from Massachusetts and Pennsylvania in support of its argument that Dr. Rushing's testimony should have been excluded as irrelevant. Ans. Br. at 10-13. What's more important is Delaware authority interpreting Delaware law and the State fails to address the Delaware authority the Defendant relied on in support of his argument in his opening brief. That authority explains why Dr. Rushing's testimony should have been admitted to explain the Defendant's state of mind on the night of the homicide. *Wonnum v. State,* 942 A.2d 569, 573 (Del. 2007) ("the report contained more than a psychological diagnosis; it also contained an opinion on why [the defendant] would legitimately perceive (or by inference any reasonable person similarly situated) [the decedent] to be a threat. Expert testimony is relevant if it "will assist the trier of fact to understand the evidence or to determine a fact in issue").

The State also argues that an instruction for a justification defense was not appropriate because the Defendant presented no credible evidence of self-

defense. In effect, the State posits that the Defendant, as the survivor, must testify because there were only two witnesses to the events and one is now deceased. Although the State necessarily faults his decision not to testify, Ans. Br. at 16, the State cannot rebut his contention that his testimony in the absence of Dr. Rushing's testimony explaining his mental condition at the time would have been much less effectual.

Respectfully submitted,

/s/ Bernard J. O'Donnell
Bernard J. O'Donnell [#252]
Office of Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

DATED: April 8, 2016