STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

KENT, SC. **SUPERIOR COURT**

(FILED: AUGUST 2, 2017)

STATE OF RHODE ISLAND	**:**	
	:	
v.	**:**	**NO. K1-2016-0457A**
	:	
CHRISTIAN LEPORE	**:**	

DECISION

STERN, J. Christian Lepore (Defendant) has been indicted by the Statewide Grand Jury with (1) the murder of John O'Neil (Mr. O'Neil) in violation of G.L. 1956 § 11-23-1; (2) assault and battery upon Officer Steven Melidossian (Officer Melidossian) in violation of § 11-5-3; (3) assault and battery upon Officer Samuel Maldonado (Officer Maldonado) in violation of § 11-5-3; (4) assault and battery upon Trooper Justin Andreozzi (Trooper Andreozzi) in violation of § 11-5-3; (5) assault and battery upon Trooper Daniel Gazzola (Trooper Gazzola) in violation of § 11-5-3; and (6) willfully beating, kicking, and striking a dog owned by the Rhode Island State Police, to wit, K-9 Riggs (the K-9 or Riggs), in violation of G.L. 1956 § 4-1-30.

Defendant waived his right to a jury trial in accordance with Super. R. Crim. P. 23(a). See G.L. 1956 § 12-17-3. Over the course of four days, the State of Rhode Island (the State), during its case in chief, presented fourteen witnesses, including three lay witnesses, six police officers, four firefighters, and one expert witness in the field of toxicology. Further, approximately sixty-six exhibits were admitted into evidence as full exhibits. Defendant called one witness during his case in chief, Dr. Ronald M. Stewart (Dr. Stewart), an expert witness in the field of forensic psychiatry. The State, during its rebuttal case, called one witness, Dr.

Martin Kelly (Dr. Kelly), an expert witness in the field of forensic psychiatry. Following closing arguments, the Court reserved its decision.

I

The Evidence

This Court is required in accordance with Rule 23(c) of the Rhode Island Superior Court Rules of Criminal Procedure to make specific findings of facts based upon the relevant evidence at trial. Except where specifically indicated in this Decision that certain evidence is not being considered, this Court finds the witnesses that testified during the State's case in chief credible. This Court makes the following findings of fact.

A

Whispering Pines Employees

1

Observations before May 28, 2016

Stephen Lane (Mr. Lane) is a senior cook at the Whispering Pines Conference Center on the University of Rhode Island's (URI) W. Alton Jones Campus (Whispering Pines Conference Center or Whispering Pines) and has been employed at Whispering Pines for the past nineteen years. Four years before the incident, Defendant was hired to work as a cook's helper at the same facility. Mr. Lane acted as Defendant's supervisor. Mr. Lane stated Defendant's hours were 12:00 P.M. to 8:30 P.M. and described Defendant as an "easygoing guy," claiming that the pair got along very well for the most part.

Joseph Diprete (Mr. Diprete) is a cook at the Whispering Pines Conference Center and has been employed there for eight years. Mr. Diprete worked with Defendant for five years and testified that although Defendant "wasn't the hardest worker," he always got along with

Defendant. Mr. Diprete also expressed the sentiment that Defendant was easygoing. Further, Mr. Diprete testified that Defendant had always acted professionally at work, and he was not aware of any problems or arguments that Defendant had with other employees prior to May 28, 2016.

William Murphy (Mr. Murphy) is the Evening and Weekend Manager at the Whispering Pines Conference Center. Mr. Murphy has worked at the campus for ten years and has worked alongside Defendant for approximately six years. Mr. Murphy described Defendant as being about 6'1" and weighing about 350 pounds. Moreover, he described Defendant's work habits as "adequate" and had not observed any confrontations involving Defendant prior to May 28, 2016.

2

Whispering Pines Employees' Observations on May 28, 2016

a

Mr. Lane Asks Defendant to Leave

On May 28, 2016, Mr. Diprete arrived to work at 12:00 P.M., while Mr. Lane, Mr. Murphy, and Defendant arrived at the Whispering Pines Conference Center at 2:00 P.M. Mr. Lane noticed Defendant had bloodshot eyes, appeared unkempt, was slurring his words, and "just wasn't acting right." Mr. Lane requested that Defendant go home. Although Defendant agreed, he continued to work for approximately fifteen minutes before leaving the kitchen. However, Defendant returned to the kitchen shortly afterwards, acting confused and upset. Mr. Lane said "it seemed like he did not want to leave." Defendant was observed talking to himself while pacing around the kitchen "mumbling" about aliens and extra-terrestrial life on Earth. Mr. Lane then asked Defendant to retrieve some bread from another room, and it took Defendant quite a while to complete the task. Mr. Lane stated Defendant repeated the phrase, "they are here, the

government knows about it and they are covering it up." Mr. Lane testified that he had discussed the possibility of alien life at work before with Defendant, but that it usually "involved physics" and not the "gibberish" that Defendant repeated that day.

Mr. Diprete did not initially pay attention to Defendant, as Mr. Diprete was busy preparing for a wedding that the kitchen was catering that day. However, he eventually noticed that Defendant was acting "out of character" and appeared agitated. When Defendant was again asked to go home, Mr. Diprete became aware that something was not quite right with Defendant. Mr. Diprete could also hear Defendant mumbling that "something is coming" over and over to himself, but Defendant did not indicate what.

Around the same time, Mr. Murphy arrived at Whispering Pines and proceeded straight to his office. At approximately 2:30 P.M., Mr. Murphy went down to the main kitchen. Mr. Murphy also noticed that there was something wrong with Defendant, who appeared to be in an "intoxicated state." Defendant's eyes were "glassy," and "he kept making inappropriate movements with his clothing," such as pulling up his shirt. Defendant also was not wearing his hat or apron, which is part of his job requirements. Mr. Murphy explained that this was uncharacteristic of Defendant.

After Mr. Lane's failed attempts to get Defendant to leave, Mr. Murphy became involved. Mr. Murphy walked outside into the parking lot area with Defendant and asked him to leave and go home for the day. Mr. Murphy threatened to call the police if Defendant did not comply; Defendant looked "enraged at that point." After the conversation, Defendant followed Mr. Murphy back into the kitchen, and, finally, Mr. Murphy convinced Defendant to leave.

b

The Physical Altercation at Whispering Pines

Approximately fifteen minutes after Defendant left the premises, Mr. Diprete went outside on his lunch break. Mr. Diprete testified that he sat in his air-conditioned car because it was a very hot day. While Mr. Diprete was sitting in his car, he witnessed Defendant return to the parking lot driving his Mazda 6 series. Defendant pulled in and angled in front of Mr. Diprete's car to talk to him. Defendant did not make sense during the conversation, making statements such as "something's coming"; when asked what was coming, Defendant responded, "I can't tell you." Mr. Diprete noticed Defendant was holding a beer during this conversation.

Joe Lippe (Mr. Lippe), a co-worker at Whispering Pines, walked out to the parking lot shortly after the conversation between Mr. Diprete and Defendant ended. Mr. Lippe walked over to his car, got in, and began changing his shirt for the wedding that was taking place later that day. At that point, completely unprovoked, Defendant walked over to Mr. Lippe, pulled Mr. Lippe out of his car, wrestled him to the ground, and placed him in a headlock. Mr. Diprete heard the scuffle, exited his car, and jumped on top of Defendant, trying to pull Defendant's arm away from Mr. Lippe's neck. According to Mr. Diprete, Mr. Lippe appeared "reddish-purple." Defendant eventually let go, got up and said a few words to Mr. Lippe, then left in his Mazda 6 series. According to Mr. Diprete, after the assault, Defendant "almost seemed normal for a second."

Sometime later, Mr. Lippe and Mr. Diprete went into the kitchen and reported that Defendant had assaulted Mr. Lippe. Mr. Murphy immediately called the URI Police. URI Police instructed Mr. Murphy to call the West Greenwich Police Department because they were closer to the scene; however, Mr. Murphy requested that the URI Police dispatch the West

Greenwich Police Department instead. Mr. Murphy testified that when the West Greenwich Police and the State Police arrived at Whispering Pines, he told the State Police that he believed Defendant was on drugs or some form of illegal substance because Defendant's erratic behavior was very uncharacteristic.

B

West Greenwich Police Dispatched to Whispering Pines

On May 28, 2016, Officer Maldonado was dispatched to an altercation at Whispering Pines Conference Center. Officer Maldonado has been a patrol officer for the West Greenwich Police Department for six years. He was an officer in the Warwick Police Department for twenty-one years prior to joining the West Greenwich Police Department, and has twenty-one years of military experience.

On the way to Whispering Pines, Officer Maldonado passed an abandoned vehicle with the doors open at the intersection of Francis Horn Drive and Wheatley Road. Officer Maldonado stopped, observed a six-pack of beer and a cell phone in the car, and then continued driving to Whispering Pines. Officer Maldonado later discovered this abandoned vehicle belonged to Defendant.

At Whispering Pines, Mr. Murphy greeted Officer Maldonado and introduced Officer Maldonado to Mr. Lippe, the victim of the alleged assault. Mr. Lippe told Officer Maldonado that Defendant started hitting him unprovoked. Officer Maldonado was given a description of Defendant, and Officer Maldonado asked Mr. Lippe if he wanted to press charges. Because Mr. Lippe did not want to press charges against Defendant, Officer Maldonado left Whispering Pines.

C

Homicide and the Physical Altercation with Police

1

9-1-1 Call Placed by Mr. O'Neil

At approximately 4:12 P.M. on May 28, 2016, Mr. O'Neil placed a call to 9-1-1. A recording of the 9-1-1 call was played for the Court and lasted approximately ten minutes. During the call, Mr. O'Neil reported an individual on his property acting "very strangely, threatening [Mr. O'Neil]." Mr. O'Neil gave a description of the individual that matched the description of Defendant. Defendant then approached Mr. O'Neil. Defendant could be heard swearing and yelling as Mr. O'Neil screamed "ahh" and "help me." West Greenwich Police dispatched officers to the scene, and the dispatcher asked Mr. O'Neil if he could get away from Defendant; however, Mr. O'Neil did not reply. All that could be heard was heavy breathing and hitting sounds along with Mr. O'Neil's continued cries for help.

2

Officer Maldonado Arrives at 283 John Potter Road

Meanwhile, when Officer Maldonado left Whispering Pines, he returned to the abandoned car at the intersection, but did not find Defendant. Officer Maldonado was then dispatched to 283 John Potter Road for an assault and reported there immediately. Officer Maldonado parked his police vehicle behind a car that was already in the driveway and radioed to dispatch, telling the other responding officer to "step it up." Upon exiting his cruiser, Officer Maldonado could hear "growling" to the left of the garage structure. Officer Maldonado drew his Taser and proceeded around the building, where he saw a large, white male—identified as Defendant—completely naked with a body lying at his feet. Defendant was standing at the head

of the victim with his hands up while he was growling. There was no one else in the area. Officer Maldonado stated that the body had experienced serious trauma and looked deceased. He gave numerous verbal commands to Defendant, but Defendant did not respond.

Officer Maldonado continued to give verbal commands to Defendant, telling him to get down, but Defendant did not comply. Instead, Defendant charged at Officer Maldonado. Officer Maldonado at that time deployed his Taser; however, the Taser had no effect on Defendant. Defendant continued to charge at Officer Maldonado and struck Officer Maldonado in the chest. The two then wrestled to the ground. Defendant grabbed Officer Maldonado by the neck—Officer Maldonado thought Defendant was trying to kill him. Fortunately, Officer Maldonado maneuvered away from Defendant and was able to draw his firearm in order to create distance between Defendant and himself until backup arrived.

Officer Maldonado's testimony is corroborated by the recording of the 9-1-1 call that was played for the Court. Officer Maldonado could be heard through the phone when he arrived at the scene and first made contact with Defendant. The West Greenwich Police dispatcher notes that an officer has arrived on scene, and Officer Maldonado can be heard telling Defendant to relax and get down. Sounds of a Taser being deployed could be heard, as well as Officer Maldonado's yelling for Defendant to get down. Officer Maldonado told the other responding officers to "step it up." The call ended at that time.

3

Officer Melidossian Arrives at the Scene

Officer Melidossian, also a member of the West Greenwich Police Department, has worked for the West Greenwich Police Department for ten years as an officer and was working the 3:00 P.M. to 11:00 P.M. shift on May 28, 2016. Officer Melidossian was originally

dispatched to Whispering Pines for the physical dispute, but after the 9-1-1 call came in from Mr. O'Neil, he was dispatched to 283 John Potter Road. When Officer Melidossian arrived, he observed Officer Maldonado in an altercation with Defendant. Defendant was covered in dirt, sweat, and possibly blood, and was only wearing black socks. Officer Maldonado holstered his firearm when Officer Melidossian arrived.

Officer Melidossian engaged Defendant and began giving him verbal commands. Because Officer Melidossian did not have his Taser that day, he deployed pepper spray towards Defendant. The pepper spray had no effect on Defendant, even when Officer Melidossian sprayed it into Defendant's mouth. Officer Melidossian said that he and Officer Maldonado continued to kick and punch Defendant and attempted to sweep his legs out in order to subdue him.

4

Trooper Andreozzi Arrives at the Scene

The next officer to arrive was Rhode Island State Trooper Andreozzi with K-9 Riggs. Trooper Andreozzi is employed with the Rhode Island State Police K-9 Unit and is assigned to the Hope Valley barracks. Trooper Andreozzi's K-9 was patrol-trained in 2013 and continues training every other Wednesday. Riggs is recertified every three years for both patrol and narcotics.

On May 28, 2016, while on patrol, Trooper Andreozzi heard Officer Maldonado radio "step it up," and, as such, Trooper Andreozzi responded to 283 John Potter Road. When Trooper Andreozzi arrived, he observed a West Greenwich Police cruiser; a large, white male, later identified as Defendant; and Officers Maldonado and Melidossian giving Defendant verbal

commands. Trooper Andreozzi also witnessed that Defendant was covered in sweat, pepper spray, and was not wearing any clothes.

At that time, Officer Maldonado requested that Trooper Andreozzi retrieve his K-9. Trooper Andreozzi took his K-9 out of the vehicle and moved toward Defendant. Trooper Andreozzi also retrieved his Taser out of his pocket and warned Defendant that he would tase him if he did not stop resisting; however, it appeared that Defendant shrugged his shoulders. The K-9 was barking and pulling toward Defendant from twenty to thirty feet away. Defendant, however, did not pay any attention to the K-9. All three officers continued giving Defendant verbal commands, but Defendant did not comply. Officer Melidossian, using Trooper Andreozzi's Taser, deployed a second Taser shot on Defendant, which struck Defendant in his upper body; again with no effect. Trooper Andreozzi warned Defendant that he would release his K-9, but Defendant did not seem to respond or comply. Trooper Andreozzi then gave his K-9 the verbal command to apprehend.

Riggs is trained to bite certain areas in order to obtain pain compliance. Riggs ran at Defendant, and Defendant lifted the K-9 into the air. Defendant then put Riggs in a headlock and punched the K-9. At this point, Trooper Andreozzi was able to pull the K-9 out of Defendant's grip.

5

Trooper Gazzola Arrives at the Scene

The next officer to arrive on scene was Rhode Island State Trooper Gazzola. Trooper Gazzola was assigned to the patrol division at the Hope Valley Barracks in May 2016. On the afternoon of May 28, 2016, Trooper Gazzola received a call to respond to 283 John Potter Road.

Upon arrival, another officer requested that Trooper Gazzola check the shed and surrounding area to see if there were any other possible victims. However, after hearing the sounds of officers yelling, Trooper Gazzola holstered his weapon and rejoined the officers, who were at that time struggling with Defendant.

Meanwhile, Riggs went back for a target bite on the back of Defendant's calf; the bite ripped through the flesh on the back of Defendant's leg, causing significant bleeding. Defendant, however, did not seem to notice, showing no sign of pain after the bite. The K-9 then bit Defendant's other calf and ended up between Defendant's legs. When Defendant leaned down, the K-9 bit his face, causing more bleeding. At this point, Defendant was disoriented enough for the officers to push him down and handcuff him in front of his body.

However, even with four officers on top of him, Defendant got off the ground again. Officers began striking the back of Defendant's knee, and Trooper Gazzola tackled Defendant to the ground. Defendant tried to bite Trooper Gazzola as they continued to struggle on the ground. The officers attempted to restrain Defendant's legs; however, Officer Maldonado's handcuffs did not fit around Defendant's wide ankles. The officers then tried flex-cuffs, which also did not fit. Finally, the officers used jumper cables taken from the back of Trooper Andreozzi's police vehicle to tie Defendant's ankles together. Trooper Gazzola testified that Defendant was mentally unstable and noncompliant throughout the encounter.

6

The Firefighters Arrive at the Scene

At approximately 4:00 P.M., four firefighters were called to 283 John Potter Road: (1) Justin Cerberano (Paramedic Cerberano), a firefighter assigned to Station Two; (2) Nicolas Parente (EMT Parente), who was assigned to Station One; (3) Shannon Law (EMT Law),

assigned to Station Two; and (4) Austin Ledoux (EMT Ledoux), assigned to the West Greenwich Rescue Team. When the firefighters arrived at the scene, Defendant seemed mostly restrained by the four police officers, and it appeared the officers had the scene under control. Several of the firefighters testified that they heard Defendant yelling broken sentences, but could only identify the words "Hitler" and "Rachel." EMT Law stated she heard Defendant say "what the fuck" to the officers.

Once Defendant was under arrest, it took a total of seven to eight officers and firefighters to "log roll" Defendant "supine" onto a wooden backboard and place him into the ambulance. After loading Defendant into the ambulance, Officer Maldonado, Officer Melidossian, and Trooper Andreozzi all stated that they walked through the crime scene to check for other victims. They found no other victims, but all noticed a large, bloody, black drum in close proximity to Mr. O'Neil's body.

Trooper Andreozzi stated he had never seen anyone act like this in his experience with individuals under the influence of drugs or who have mental illness. Defendant never had any pain compliance during the struggle. Officer Melidossian also testified that he had never seen anyone act in this manner before. Further, Officer Melidossian stated that Defendant never responded to verbal commands from anyone.

7

Defendant Is Transported to Kent County Hospital, Then Rhode Island Hospital

Officer Melidossian and the four firefighters went in the ambulance with Defendant to Kent County Hospital. Paramedic Cerberano assisted in treating Defendant's injuries, which consisted of soft tissue wounds to the face and calves, abrasions, and lacerations to the chest. While on the way to Kent County Hospital, Defendant was described as non-responsive and non-

comprehensive. EMT Parente expressed concern regarding Defendant's calf injuries, as well as the possibility of Defendant suffering a gross hemorrhage. However, Defendant showed no signs of compliance with the EMTs, "maintaining a negative demeanor," which included spitting, yelling, and cursing.

Paramedic Cerberano called Kent County Hospital, and a doctor at the hospital ordered that a sedative, Versed, be administered. Paramedic Cerberano injected the medication into Defendant's arm; however, it did not seem to have any effect on Defendant.

EMT Parente also assisted in treating Defendant and stated that while in the ambulance en route to Kent County Hospital, Defendant never complained of or showed any sign of pain. Furthermore, EMT Parente stated Defendant seemed more manic than anyone else he had previously treated involving drugs or alcohol. EMT Parente testified that Defendant was "in an altered medical state." Further, EMT Parente stated he could not communicate with Defendant, Defendant felt no pain, and Defendant did not notice what was going on around him.

EMT Law testified that Defendant spit on her numerous times and refused to stop spitting on rescue personnel. Eventually, a towel was placed over Defendant's face to prevent him from spitting blood at the EMTs. EMT Ledoux attempted to communicate with Defendant while treating him; however, the only audible phrase EMT Ledoux could identify was "Rachel." EMT Ledoux also noted Defendant's eyes remained dilated, despite the bright lighting of the ambulance's interior.

When the ambulance arrived at Kent County Hospital, Defendant was evaluated and treated; however, the hospital did not admit him due to his condition. Defendant was later transferred and admitted to Rhode Island Hospital. During the transport between Kent County Hospital and Rhode Island Hospital, Defendant continued to act belligerently. Lead Detective

Lieutenant Eric Yelle (Lieutenant Yelle), a detective with the Rhode Island State Police and member of the department for twenty years, stated that Rhode Island State Police guarded Defendant for the remainder of Defendant's time at the hospital.

8

Defendant Is Transported to Rhode Island State Police Headquarters

According to Lieutenant Yelle, once Defendant was moved to Rhode Island State Police Headquarters, Defendant signed a Constitutional Rights form and invoked his right to an attorney before being processed and transported to a holding cell. Lieutenant Yelle testified that Defendant later agreed to speak with him if he was given a Coca Cola and a pack of cigarettes. Lieutenant Yelle said that he drove to a Cumberland Farms to retrieve the requested items.

When Lieutenant Yelle returned, he was informed that Defendant started acting erratically: Defendant had removed his clothes and bandages and was pouring water on himself while pacing in his holding cell. When Lieutenant Yelle asked Defendant what he was doing, Defendant responded with "you tell me what I'm doing," as he continued to pour water on his head and body. Defendant was then handcuffed, shackled, and escorted by the six largest police officers at Headquarters to transport so that Defendant could return to Rhode Island Hospital to receive additional treatment for his wounds.

Lieutenant Yelle later testified that he requested a copy of the cellblock footage to better understand what had happened when he had left the station. The video was played for the Court and portrayed Defendant removing all of his clothing and bandages and continuously pouring water on himself.

D

The Toxicology Report

The State's last witness in its case in chief was Laurie Ogilvie (Ms. Ogilvie), the supervisor of the Rhode Island Department of Health (DOH) Forensic Toxicology Laboratory. Ms. Ogilvie has been employed by the DOH for almost thirty years. Ms. Ogilvie was called to testify with regard to the testing performed by the DOH and the results from such tests. Such testing utilized blood samples from Defendant.

A total of two vials of blood were drawn from Defendant. The DOH extracted three, one-milliliter samples from the two vials to undergo testing. The first sample, extracted from the Rhode Island Hospital vial, was tested using enzyme-linked immunosorbent assay (ELISA), a preliminary amino acid test meant to determine the presence of sixteen assays, or classes of drugs. The sample was found to be presumptively positive for oxycodone, with other drugs such as cannabinoids, cocaine and opiates falling "below the detection limit," meaning that none were present. That sample was sent to NMS Labs, Inc. (NMS Labs), located in Pennsylvania, in order to confirm presence of oxycodone. NMS Labs concluded that oxycodone was not present within the blood. The second blood sample from the Rhode Island Hospital vial was tested for ethanol using ELISA. The results came back negative, and no further testing was performed.

A third sample from the Kent County Hospital vial was subsequently sent to NMS Labs to determine whether "bath salts" were present in Defendant's blood. An NMS Lab employed a high performance liquid chromatography/tandem mass spectrometry test in order to conduct the analysis. These results came back negative.

Ms. Ogilvie also testified that at Rhode Island Hospital, traces of marijuana and oxycodone were detected in Defendant's urine. Ms. Ogilvie testified that the presence of such

drugs was unrelated to the incidents that occurred on May 28, 2016, stating that in order for someone to be impaired by such substances, the substances must be present in that person's blood. Ms. Ogilvie testified that the only drug found within Defendant's blood was the Versed that was administered by the EMTs to serve as a sedative. There were no other drugs or alcohol that impaired Defendant on May 28, 2016.

II

The Acts Committed by Defendant

This Court is satisfied that Defendant committed the acts that took the life of Mr. O'Neil based on this Court's findings of fact, as articulated above, including (1) the 9-1-1 call from Mr. O'Neil reporting a suspect that met Defendant's description; (2) the assault on Mr. O'Neil that could be heard on the 9-1-1 tape; and (3) Officer Maldonado's prompt arrival to the scene—as evidenced by his voice being heard on the 9-1-1 tape—where he witnessed Defendant covered in blood standing over the victim, Mr. O'Neil. See State v. Capalbo, 433 A.2d 242, 245 (R.I. 1981).

In addition, based on Officer Maldonado's voice being heard on the 9-1-1 tape attempting to give Defendant verbal commands, followed by the struggle that ensued, as well as the highly credible testimony of all four police officers involved at the scene of the crime that corroborate the violent struggle with Defendant, this Court is also satisfied that Defendant did commit assault upon Officer Melidossian, Officer Maldonado, Trooper Andreozzi, and Trooper Gazzola.

Further, based on the same highly credible testimony from the four officers, this Court finds that Defendant also assaulted Riggs by putting the K-9 in a headlock.

The State has satisfied its burden during its case in chief. Accordingly, this Court will next turn to the issue of insanity to determine whether Defendant should be held criminally responsible for these charges.

III

The Law

The insanity defense has a long-rooted history in our case law. Previously, the M'Naghten test, which was established in 1843 after the attempted assassination of the Prime Minister of England, was adopted in this jurisdiction.[1] See State v. Johnson, 121 R.I. 254, 259-60, 399 A.2d 469, 472 (1979). However, the M'Naghten test was heavily scrutinized and eventually became outdated. See id. at 261, 399 A.2d at 473.

[1] The jury acquitted the defendant in M'Naghten; however, after public outcry, the decision was reversed and the test that resulted became known as the M'Naghten test. The M'Naghten test provided that

> "[t]o establish a defense on the ground of insanity it must be clearly proved that, at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know that what he was doing was wrong." Johnson, 121 R.I. at 259-60, 399 A.2d at 472 (quoting M'Naghten's Case, 8 Eng. Rep. 718, 722 (1843)).

Our Supreme Court abandoned the M'Naghten test following improvements in the field of psychology because of two principal concerns: "[f]irst, M'Naghten was predicated upon an outdated psychological concept," and "[s]econd, the M'Naghten standard restricted expert testimony to the issue of a defendant's cognitive ability and deprived the jury of a true and complete picture of a defendant's mental state." See State v. Gardner, 616 A.2d 1124, 1126 (R.I. 1992) (citing Johnson, 121 R.I. at 262, 399 A.2d at 473). The M'Naghten test was based on mental disease causing a defect in cognition and was considered the "exculpating factor in the determination of legal insanity[.]" See Johnson, 121 R.I. at 261, 399 A.2d at 473. However, improvements in science established that "'[i]nsanity affects the whole personality of the defendant, including will and emotions[.]'" See Gardner, 616 A.2d at 1126 (quoting Johnson, 121 R.I. at 261, 399 A.2d at 473). The M'Naghten standard resulted in experts being restricted to comment only on cognitive ability to the exclusion of will and emotion, which failed to render a complete picture for the jury. See id. (citing Johnson, 121 R.I. at 261, 399 A.2d at 473).

As a result, our Supreme Court abandoned M'Naghten in favor of a formulation of the Model Penal Code test promulgated by the American Law Institute (ALI). See Johnson, 121 R.I. at 265-67, 399 A.2d at 475-76. The Model Penal Code test adopted in Johnson states:

> "A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law is so substantially impaired that he cannot justly be held responsible.
>
> "The terms 'mental disease or defect' do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct." Id. at 267, 399 A.2d at 476.

Our Supreme Court in Johnson gave the Model Penal Code formulation preference because it "clearly delegates the issue of criminal responsibility to the jury" and ensures that the jury is left with the ultimate decision. See id. at 267-68, 399 A.2d at 476. Further, the court stated the Model Penal Code formulation emphasized "that the degree of 'substantial' impairment is . . . a legal rather than a medical question" and that "incapacity less than total is sufficient." Id. at 268, 399 A.3d at 477. In essence, the Model Penal Code formulation allows psychiatrists to "provide grist for the legal mill" by providing data as a foundation for the judgment, leaving "society as a whole, represented by judge or jury" ultimately responsible for determining whether a defendant should be held accountable. See State v. Carpio, 43 A.3d 1, 11 (R.I. 2012) (quoting Johnson, 121 R.I. at 266-67, 399 A.2d at 476) (internal quotation marks omitted). Our Supreme Court has recognized that establishing criminal responsibility in an insanity case is a difficult task for the fact-finder and provided instructions to follow,

> "'In determining the issue of responsibility the jury has two important tasks. First, it must measure the extent to which the defendant's mental and emotional processes were impaired at the time of the unlawful conduct. The answer to that inquiry is a difficult and elusive one, but no more so than numerous other facts that a jury must find in a criminal trial. Second, the jury must

> assess that impairment in light of community standards of blameworthiness. The jury's unique qualifications for making that determination justify our unusual deference to the jury's resolution of the issue of responsibility.'" Id. at 11-12 (quoting State v. Collazo, 967 A.2d 1106, 1110 (R.I. 2009)).[2]

Rhode Island's adopted formulation from Johnson recognizes that punishing those who lack the substantial capacity to control their actions does not serve any "'of the three asserted purposes of the criminal law[:] rehabilitation, deterrence and retribution[.]'" Johnson, 121 R.I. at 256, 399 A.2d at 471 (quoting United States v. Freeman, 357 F.2d 606, 615 (2d Cir. 1966)). The law understands and appreciates that those who lack this "substantial capacity" are incapable of being deterred, and that their punishment cannot serve as a deterrent to others. See id. As such, our Supreme Court is satisfied that the adopted standard is sufficient to separate those cases where the lack of substantial capacity can be identified and "treated in a manner that is both humane and beneficial to society at large." Id. at 257, 399 A.2d at 471.

In a criminal trial, the State has the burden to prove all the elements of charged crimes beyond a reasonable doubt; however, it is the defendant, when raising the insanity defense, who has the burden to prove by a preponderance of the evidence "that his insanity or diminished capacity 'prevented him from forming the required intent and malice essential for conviction on

[2] Formulations of the ALI Model Penal Code test that are substantially similar to the test articulated in Johnson are recognized in numerous jurisdictions. See Michelle Migdal Gee, Annotation, Modern Status of Test of Criminal Responsibility—State Cases, 9 A.L.R. 4th 526 §§ 5-8 (originally published in 1981); see also 18 U.S.C. § 17 (codifying formulation of ALI Model Penal Code test for insanity defense). Courts in jurisdictions that have adopted formulations of the Model Penal Code have also reasoned similarly to our Supreme Court in Johnson. For example, in United States v. Frazier, the Eighth Circuit Court of Appeals recognized that every other Circuit Court that had taken up the issue, aside from its own, had adopted the ALI Model Penal Code test. See 458 F.2d 911, 915 (8th Cir. 1972). Similarly, the court in Frazier found the M'Naghten test to be too restrictive and narrow-in-scope with regard to psychiatric evidence because the test was only related to intellectual reasoning. See id. at 915-16. As such, the court in Frazier held that the M'Naghten test was no longer realistic, and adopted the ALI Model Penal Code test. See id. at 918.

the [counts charged].'" Carpio, 43 A.3d at 9 (quoting State v. Barrett, 768 A.2d 929, 947 (R.I. 2001)). Additionally, the defendant not only "must prove that he 'suffered from this defect at the time of the offense,' but also that he suffered from this defect to such a degree that he cannot 'justly be held responsible' for the crime." Collazo, 967 A.2d at 1111 (quoting Gardner, 616 A.2d at 1128-29). However, "'[t]he fact that a defendant engaged in unusual behavior or made bizarre or delusional statements does not compel a finding of insanity, and a defendant may suffer from a mental illness without being legally insane.'" Id. (quoting Barrett, 768 A.2d at 938).

Because Defendant has waived his right to a jury trial in the case at bar, this Court will represent "'society as a whole'" and decide whether Defendant should not be held criminally accountable for his actions. See id. at 1111-12 (quoting Gardner, 616 A.2d at 1127). In so doing, this Court will consider the expert testimony, "as well as the defendant's actions preceding, during, and after the crime." Id. at 1111 (citing Barrett, 768 A.2d at 936-37). Moreover, although the State must prove all the elements of the charged crimes beyond a reasonable doubt, it is Defendant that must prove by a preponderance of the evidence that his insanity rendered him unable to form the required mens rea for the charged crimes. See Carpio, 43 A.3d at 9 (citing Barrett, 768 A.2d at 947).

Accordingly, Defendant must prove to this Court that: (1) he suffered from a mental disease or defect when he committed the offenses alleged; (2) such a mental disability resulted in a substantial impairment of his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law; and (3) there existed a sufficient relationship

between that mental disability and the criminal conduct such that he cannot justly be held responsible for his actions. See Carpio, 43 A.3d at 12 n.10.[3]

IV

Expert Medical Testimony

During this trial, the Court heard testimony from expert witnesses. These witnesses were qualified by the Court as experts in the field of Forensic Psychiatry. An expert is a person whom the Court has concluded has become knowledgeable or proficient in some art, science, profession or calling through experience, learning or education. See R.I. R. Evid. 702. The Court, in a non-jury trial, is not bound by the opinion of an expert. See Collazo, 867 A.2d at 1111-12; State v. Cooke, 479 A.2d 727, 731 (R.I. 1984). Rather, their opinions are considered in the same manner as the testimony of any other witness. See Collazo, 867 A.2d at 1111-12; see also Cooke, 479 A.2d at 731 (reiterating our Supreme Court's approval of a jury instruction encompassing the same concept). It is this Court, in a non-jury trial, that determines the weight it accords to an expert's testimony based upon all of the evidence enlightened, though not controlled by the opinion(s) of the expert witness(es). See Collazo, 967 A.2d at 1110.

Defendant called Dr. Stewart to testify as an expert witness. Dr. Stewart is a psychiatrist located in Providence, Rhode Island who has been in practice for more than forty-four years. For fifteen years, he was employed by the State of Rhode Island in the Forensic Unit at the Eleanor Slater Hospital and was the Director of Psychiatry at the Rhode Island Veterans Home for twenty-two years. During his time with the State, he performed hundreds of competency exams used by courts to determine whether or not a defendant was competent to stand trial. Dr. Stewart also, on twelve to fifteen occasions, testified with respect to criminal responsibility. Dr. Stewart

[3] This instruction was upheld by our Supreme Court in Carpio, 43 A.3d at 12 n.10, and also appears in the model jury instruction.

received his undergraduate degree in biology from Providence College and his medical degree from Seton Hall University. Dr. Stewart is Board certified, has been recognized by the courts, and has testified as an expert witness in prior cases. This Court, without objection, recognized Dr. Stewart as an expert in the area of Forensic Psychiatry.

Dr. Stewart was retained by defense counsel in May 2016 to evaluate Defendant. Prior to meeting with Defendant, Dr. Stewart reviewed (1) the arrest reports; (2) read newspaper articles; and (3) watched television reports about the incident. Dr. Stewart visited the Adult Correctional Institution (ACI) to evaluate Defendant on June 9, 2016, with an associate, Dr. Maureen Harkavy. Dr. Stewart testified that at the time of the interview, Defendant was medicated with ten milligrams of Zyprexa, an anti-psychotic medication that helps regulate the thought process. He described Defendant as calm, pleasant, and cooperative during the interview. Dr. Stewart found Defendant to be competent to stand trial.

After meeting with Defendant, Dr. Stewart later spoke with the Lepore family (consisting of Defendant's father and sister) by telephone. The Lepore family informed Dr. Stewart of the family's medical history. The report issued by Dr. Stewart documents that Defendant's father, Rocco Lepore, suffers from schizophrenia, paranoid type, and that Rocco Lepore has been suicidal in the past. As for the rest of the Lepore family, Dr. Stewart testified that Defendant's "sister, a niece, his uncle and his son also have serious mental health issues." Dr. Stewart was also told that Defendant engaged in certain other behaviors, such as believing that he could see into the future. Dr. Stewart testified that he did not deem it necessary to verify the information provided to him by Defendant and his family prior to issuing his report on June 30, 2016.

Dr. Stewart further testified that subsequent to issuing his report, he reviewed certain medical records from Rhode Island Hospital and the ACI. He also had a conversation with Colin

Harrington, M.D. of Rhode Island Hospital. Dr. Stewart testified that he did not update or change his original report based upon the other information that he reviewed, but that he would have amended his report if anything that he reviewed changed his opinion.

Dr. Stewart, at trial, gave his expert opinion regarding Defendant's mental status at the time of the incidents on May 28, 2016. Dr. Stewart's opinion was that Defendant suffered an "acute psychotic episode" most likely due to paranoid schizophrenia. Dr. Stewart described Defendant's mental state as a "dissociative fugue," where severe stress had put Defendant "in a different state of mind." Also, Dr. Stewart's expert opinion was that Defendant's seeing aliens and Defendant's belief in his own capability of "mind-reading" were "tactile somatic hallucinations," which this Court finds credible. In Dr. Stewart's report, the Doctor testifies that Defendant "initially had no more recollection until he was running through the woods . . . ." See Def's. Ex. C. at 4. (This is in regard to the time gap between the assault at Whispering Pines and the murder.) Dr. Stewart also testified that Defendant later told him about seeing "this guy out in the woods [(presumably the now deceased Mr. O'Neil)] and I thought he was going to call the Gestapo on me, I remember fighting with him and kicking him in the head. I walked away. Then the officers shot a [T]aser at me and maced me." See id. As for the lack of response to pain exhibited by Defendant when resisting arrest, Dr. Stewart's expert opinion was that Defendant's brain "regressed to a primitive state," causing him to be non-responsive to pain. Dr. Stewart testified that Defendant is "not criminally responsible" for his actions because Defendant was "agitated, acutely delusional, [and] couldn't differentiate right from wrong." However, Dr. Stewart, as part of an expert opinion based on his observations of Defendant, described Defendant as "a danger to himself and others" due to the "real possibility of lapsing in and out of psychotic states."

Dr. Stewart, while testifying, also gave his opinion as to other issues that this Court finds were not within the scope of his expertise. Dr. Stewart testified that one of the reasons that he reached his diagnosis was that Defendant was not responsible for the murder of Mr. O'Neil because he did not use the most efficient means to kill him, by strangling him. Dr. Stewart testified that he based this opinion on his own purported military background. After acknowledging that Defendant does not have any military background, Dr. Stewart stated, "this was common knowledge and is seen in the movies." This testimony was not within the expertise of a forensic psychiatrist, was not grounded in any factual basis testified to by the witness, and will not be considered by this Court in this case.

Dr. Stewart also testified that if he were a police officer at the scene he would have taken out his gun and shot Defendant. Again, this answer, that was not responsive to the question posed, is not within the area of his expertise. Fortunately, society leaves those decisions to members of law enforcement and not to forensic psychiatrists like Dr. Stewart. This testimony will not be considered in this Court's consideration of this case. If this testimony was meant to call into question the actions of the officers at the scene, in particular, those of Officer Maldonado, it is strongly disputed by all of the officers' highly credible testimony at trial.

The final witness called by the State, in its rebuttal case, was Dr. Kelly. This Court qualified Dr. Kelly as an expert in the field of forensic psychiatry. Dr. Kelly earned his undergraduate degree from Boston College and his medical degree from Tufts School of Medicine. Dr. Kelly served as an intern at St. Elizabeth's Hospital and also as a resident in psychiatry at the Massachusetts Health Care Center for three years.

Dr. Kelly received his Massachusetts Medical License in 1966 and has been practicing since 1969. Dr. Kelly has worked in forensic psychiatry involving competency and criminal

responsibility. Dr. Kelly has testified and has been recognized as an expert in hundreds of cases involving criminal responsibility throughout his forty-year career.

In connection with this case, Dr. Kelly held two extended psychiatric interviews with Defendant between April 18, 2017 and May 25, 2017. His formal report was filed on June 5, 2017. In his report, Dr. Kelly documented Defendant's personal history, the interviews, and his expert opinion and diagnosis. According to Dr. Kelly, Defendant recalls a "difficulty in clearing his thoughts" on the morning of May 28, 2016. This was Defendant's reasoning for placing Mr. Lippe in a headlock that afternoon, driving away, leaving his car in an intersection, and removing his "contaminated" clothing in the middle of the woods. As for the homicide itself, Defendant told Dr. Kelly that "he [could] not describe the incident itself," and, in the second interview, informed Dr. Kelly that he was told by defense counsel that he should "not . . . talk much about the incident or what happened close in time to the incident." Throughout both interviews, Dr. Kelly testified that Defendant was "pleasant and cooperative" and appeared to be of "at least average intelligence with a good capacity for attention, concentration, fund of information, memory functions, and insight in judgment currently." Defendant also told Dr. Kelly that the antipsychotic medication prescribed, Zyprexa, was "helpful." The Court finds that Dr. Kelly's testimony was both compelling and credible.

Dr. Kelly's expert opinion is that Defendant's condition at the time of the murder is consistent with "Psychotic Disorder NOS (Not Otherwise Specified)" and that Dr. Stewart's diagnosis of paranoid schizophrenia was "not unreasonable." In his testimony, Dr. Kelly stated that he questioned ACI staff regarding Defendant and his behavior in order to glean insight as to what the causes may be for Defendant's actions. The ACI staff responded with reports that included paranoid or strange comments from Defendant while he was in custody. Dr. Kelly also

attempted to speak with Defendant's sister, but the sister declined to speak. Dr. Kelly found no history of mental illness or a criminal record for Defendant prior to May 28, 2016.

Dr. Kelly originally considered drug withdrawal symptoms as an explanation for Defendant's behavior, but after reviewing the toxicology report came to the conclusion that a mental disease or defect was the cause. Dr. Kelly testified that throughout the interviews, it was clear that Defendant knew his prior actions were wrong. Dr. Kelly also testified that Defendant is at risk of a relapse episode should he not receive the right treatment and that he is a serious danger to himself and others.

V

Discussion

This Court must examine Defendant's actions preceding, during, and after the crime through the lens provided by the findings of Dr. Stewart and/or Dr. Kelly to determine whether Defendant has proved by a preponderance of the evidence that he suffered from a mental disease or defect when he committed the charged crimes. See Carpio, 43 A.3d at 11. Both experts came to the conclusion that Defendant suffered from a mental disease or defect at the time of the crimes. Dr. Stewart, through limited research, came to the conclusion that at the time of the crimes Defendant suffered from an "acute psychotic episode" most likely due to paranoid schizophrenia. He furthered described Defendant's mental state as a "dissociative fugue," brought on by severe stress that put Defendant "in a different state of mind." Dr. Kelly thought Dr. Stewart's opinion that Defendant suffered from paranoid schizophrenia was "not unreasonable."

Dr. Kelly came to his conclusion after holding two extensive psychiatric interviews with Defendant, reviewing all of the relevant records and videos, questioning the ACI staff regarding

Defendant's behavior, and attempting to speak with Defendant's family. Dr. Kelly came to the conclusion that at the time of the crimes, Defendant suffered from a "Psychotic Disorder NOS (Not Otherwise Specified)." This Court finds it significant that Dr. Kelly found Dr. Stewart's opinion "not unreasonable," and finds Dr. Kelly's results and expert opinions highly credible. As such, this Court finds by a preponderance of the evidence that Defendant was suffering from a mental defect at the time of the incidents.

Next, Defendant must show that the mental disability resulted in a substantial impairment of his capacity to the point where Defendant could not appreciate the wrongfulness of his conduct or was unable to conform his conduct to the requirements of the law. See Carpio, 43 A.3d at 12. In this case, Defendant not only has no criminal history, but also Mr. Lane, Mr. Diprete, and Mr. Murphy all credibly testified that, although Defendant was not the hardest worker, he never had a history of violence, nor any altercations, during his tenure at Whispering Pines. Further, they all stated that he was easy going and generally got along well with everyone at work.

However, on May 28, 2016, Defendant's actions were not right from the time he arrived at Whispering Pines. The employees noticed Defendant was not himself and thought something was wrong. They described his behavior as confused and disoriented, and his eyes as "bloodshot" and "glassy." His actions were described as uncharacteristic because he was making incoherent statements, behaving erratically, pacing, pulling at his shirt, and talking "gibberish" about extra-terrestrial life. Defendant stated "they are here, the government knows about it and they are covering it up" and repeatedly stated "something is coming," but when asked what was coming, he responded with, "I can't tell you." Defendant then, unprovoked, attacked Mr. Lippe

in the parking lot area. He then drove off and abandoned his car and cell phone in the middle of an intersection and then stripped his "contaminated" clothing off in the middle of the woods.

At this point, Mr. O'Neil noticed Defendant and called 9-1-1. Mr. O'Neil reported him as "acting strangely, and threatening him." Defendant, having no criminal history and no history of physical or verbal altercations at work, is heard through the phone on the 9-1-1 call brutally beating and striking Mr. O'Neil to death. Defendant then entered into a violent struggle with four police officers and one K-9. The officers shot him multiple times with Tasers and used two full cans of pepper spray. Defendant was bitten in each calf and in his face; yet, he never complied with police commands and never showed any sign of pain. Defendant continued yelling incoherent, broken sentences, in which the only identifiable words were "Hitler," "Rachel," and "what the fuck." During the entire ambulance ride, Defendant remained noncompliant and nonresponsive as he spit, yelled, and cursed at the medical responders. A sedative, Versed, which was given to Defendant, again had no effect on him. Eventually, Defendant was treated for his injuries sustained in the violent altercation with the officers. However, after being transported to Rhode Island State Police Headquarters and placed in a holding cell, Defendant removed all his bandages and clothing while he continuously poured water on his head and body. When asked by Lieutenant Yelle what he was doing, Defendant responded with "you tell me what I'm doing." Finally, a toxicology report revealed that Defendant did not have any drugs in his blood at the time of these events other than Versed, which was the sedative used on the ambulance ride.

These facts, including that Defendant had no history of acting out prior to the incidents described above, had no criminal history, and was not impaired by any drug during the incidents, as well as the testimony of the experts, demonstrates to this Court by a fair preponderance of the

evidence that Defendant's mental disability resulted in a substantial impairment of his capacity to the point where Defendant could not appreciate the wrongfulness of his conduct or conform his conduct to the requirements of the law. See Johnson, 121 R.I. at 270, 399 A.2d at 478.

Finally, this Court finds that it has been demonstrated by a fair preponderance of the evidence that there existed a sufficient relationship between the mental disability Defendant suffered and the criminal conduct such that he cannot justly be held responsible for his actions based upon the facts articulated previously, including the (1) expert reports; (2) expert testimony; (3) testimony of Whispering Pines employees; and (4) testimony of law enforcement officers. See id. at 270-71, 399 A.2d at 478.

VI

Conclusion

Based on the reasons articulated above, this Court finds that Christian Lepore is not guilty by reason of insanity of all the counts in the indictment. In accordance with G.L. 1956 § 40.1-5.3-4(b), Defendant will be committed to the custody of the director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals for the purpose of observation and examination to determine if Defendant is dangerous. Within twenty days from the date of Defendant's commitment, the director of the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals shall prepare and file with the Court a report in writing in which he or she shall state his or her opinion as to whether by reason of mental disability Defendant's unsupervised presence in the community will create a likelihood of serious harm, together with the medical and other data upon which his or her opinion is based. The same shall be given to the Attorney General and defense counsel in accordance with § 40.1-5.3-4(c)(1).

The State shall submit the appropriate order for commitment.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**State of Rhode Island v. Christian Lepore**
CASE NO:	**K1-2016-0457A**
COURT:	**Kent County Superior Court**
DATE DECISION FILED:	**August 2, 2017**
JUSTICE/MAGISTRATE:	**Stern, J.**
ATTORNEYS:	
For Plaintiff:	**John E. Sullivan, III, Esq.** **John Perrotta, Esq.**
For Defendant:	**Joseph J. Voccola, Esq.** **Robert Watt, Esq.**