To be argued by:
David Billingsley
15 mins. requested

SUPREME COURT OF THE STATE OF NEW YORK

APPELLATE DIVISION: FIRST DEPARTMENT

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

-against-

TERRANCE HALE,

Defendant-Appellant.

BRIEF FOR DEFENDANT-APPELLANT TERRANCE HALE

Ind. No. 1734-2012

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PRELIMINARY STATEMENT

This is an appeal from a judgment rendered on May 4, 2015, by the Supreme Court, New York County. Terrance Hale was convicted after a jury trial of one count of assault in the first degree, N.Y. Penal Law § 120.10(1), one count of aggravated assault upon an officer, N.Y. Penal Law § 120.11, and one count of criminal possession of a weapon in the third degree, N.Y. Penal Law § 265.02(1). Mr. Hale received a sentence of 25 years in prison with 5 years of post-release supervision on both assault counts, and three-and-a-half to seven years in prison on the weapon possession count, all to run concurrently.

Justice Ann Donnelly presided over the trial and sentencing. Timely notice of appeal was filed. No stay of execution has been sought. Mr. Hale is currently serving his term of imprisonment.

QUESTIONS PRESENTED

1. Where expert testimony established that Terrance Hale suffered from paranoid schizophrenia and believed he was acting in self-defense due to his paranoid, psychotic delusion that the police were trying to kill him, were the verdicts convicting him of assault and criminal possession of a weapon against the weight of the evidence?

2. Where Mr. Hale's conduct was the product of his severe paranoid schizophrenia, were his maximum sentences on each count unduly harsh and excessive?

INTRODUCTION

Terrance Hale suffers from a severe and treatment-resistant form of paranoid schizophrenia. Expert testimony from both the defense and prosecution experts established that since the age of 19, Mr. Hale has suffered numerous psychotic episodes leading to months of psychiatric hospitalizations, where he was treated with anti-psychotic medication for paranoia, delusions, and hallucinations.

In 2012, Mr. Hale was convicted of first degree assault, assault upon an officer, and criminal possession of a weapon in the third degree after stabbing a police officer while in the midst of a psychotic episode. These verdicts must be set aside as against the weight of the evidence. Mr. Hale should have been found not guilty by reason of mental disease or defect on each of these counts.

In the days leading up to the incident, medical records and interviews by both prosecution and defense experts with Mr. Hale's family showed that he was becoming increasingly paranoid and psychotic, and believed that someone would try to attack and kill him. Mr. Hale's psychosis became severe enough that on April 17, 2012, his mother called an ambulance. The police arrived first and, in attempting

to convince Mr. Hale to wait for the ambulance to arrive, the officers grabbed Mr. Hale. Believing that he was about to be killed, Mr. Hale then stabbed one of the officers in the head with a knife that he was carrying due to the paranoid belief that he needed it for self-defense.

At trial, the defense expert Dr. Eric Goldsmith painstakingly detailed thousands of pages of medical records showing that Mr. Hale suffered from grandiose and paranoid delusions as a result of his psychotic condition. Dr. Goldsmith also explained that both Mr. Hale's mother and the mother of Mr. Hale's children independently confirmed Mr. Hale's psychotic state and his paranoid delusion that he would soon be killed. His mental illness prevented him from understanding that his delusions were not real. Thus, Dr. Goldsmith found that Mr. Hale believed he was defending himself from a threat to his life when the officers grabbed him, and therefore lacked the substantial capacity to understand that his conduct was wrong. The rebuttal expert called by the prosecution agreed that Mr. Hale had a long history of severe paranoid schizophrenia, and conceded many factors that would contribute to a finding that Mr. Hale did not appreciate that his conduct was wrong.

Mr. Hale's affirmative defense was proven far beyond a preponderance of evidence. Thus, Mr. Hale did not deserve incarceration in a state prison, but rather psychiatric treatment.

Alternatively, Mr. Hale's aggregate sentence of twenty-five years was unduly harsh and excessive because his severe mental illness prevented him from understanding that he needed help. Not only did Mr. Hale's paranoid psychosis make him erroneously believe he needed to protect himself from a threat to his life, but Mr. Hale had a diminished ability to understand that he needed psychiatric treatment, increasing the likelihood Mr. Hale might be hostile toward people trying to hospitalize him. These are features of Mr. Hale's illness, not his character. Thus, Mr. Hale's culpability is reduced, and he did not deserve the maximum sentences that he received.

STATEMENT OF FACTS

A. Police Officers Follow Mr. Hale and Grab Him After Responding to a 911 Call Reporting an Emotionally Disturbed Person, Leading to an Altercation.

Officer Luckson Merisme testified that, at approximately 10:31 AM on April 17, 2012, he and Officer Eder Loor responded to a radio call reporting an "emotionally disturbed person" (EDP), originating from a 911 call at 1945 Third Avenue in Manhattan. T. 29, 32, 37, 152.[1]

The two officers arrived at 1945 Third Avenue at approximately 10:34 AM. T. 36, 46. Veary Hale, Mr. Hale's mother, came out of the building and identified herself to the officers as the 911 caller. T. 37, 152-53. The two officers entered the lobby of the building. T. 38.

Terrance Hale, at this time 26 years old, then came out of the elevator. T. 38; *see* Presentence Investigation Face Sheet (hereinafter, "PSI") at 1 (Mr. Hale's date of birth is February 25, 1986). He asked his mother why the police were there. T. 38. Officer Merisme testified that he did not perceive any immediate threat from Mr. Hale's demeanor. T. 78-79, 81. Officer Loor testified that when Mr. Hale came out, Mr. Hale "just wanted to leave the building." T. 154. Officer Merisme told Mr.

[1] Citations to "T." refer to trial proceedings held on April 14-22, 2015. Citations to "S." refer to sentencing proceedings held on May 4, 2015.

Hale that the police were there to help him. T. 40. He asked Mr. Hale to "just play the game" and go to the hospital. T. 40. Mr. Hale said he did not need any help and walked away from the officers. T. 40, 78. The two officers followed Mr. Hale out of the building going north along Third Avenue. T. 40, 47-48, 184. Officer Loor recalled walking "a couple feet behind" Mr. Hale and Officer Merisme. T. 154.

1. Mr. Hale's Demeanor is Agitated and Irrational as the Police Follow Him and Insist That He Go to the Hospital.

Officer Loor recalled that Mr. Hale then "became a little irate." T. 154. Mr. Hale suddenly stopped walking and loudly asked why the police were there. T. 51. Officer Merisme observed that Mr. Hale's demeanor was "irrational." *Id.* Mr. Hale asked if he was under arrest. T. 52-53. Officer Merisme replied that Mr. Hale was not under arrest but repeated that Mr. Hale needed to go to the hospital. T. 52-53. Officer Merisme was told by radio that an ambulance would arrive at 10:38 AM, only a few minutes later, and asked Mr. Hale to wait. T. 52-53. Mr. Hale attempted to walk away again. T. 53.

Dario Flores, who was working across the street at a store on 107th Street and Third Avenue, testified that he observed the two officers go into 1945 Third Avenue. T. 180-83. The officers then came out

"accompanying" a man whom "they were trying to convince…to go to the hospital but he would oppose [sic]." T. 182. Mr. Flores heard the man tell the officers that he "didn't want to [go to the hospital] and finally he told them not to touch him." T. 182. From across the street, Mr. Flores heard the man repeatedly say to the officers, "If I'm not arrested, don't touch me," in a "strong voice." T. 182, 184-85, 186.

2. Officer Merisme grabs Mr. Hale, leading to a "struggle" in which Officer Loor is stabbed.

Officer Merisme then "put [his] hands on both [of Mr. Hale's] arms just to contain him from leaving the location." T. 85-86; *see also* T. 53. Officer Loor said he saw that Officer Merisme was holding Mr. Hale and Officer Loor also "went to hold his left side." T. 154-55. Mr. Hale and Officer Merisme then pushed each other in a "struggle" while Officer Merisme was trying to hold him. T. 54. Officer Merisme called for assistance via radio, during which time he was not looking at Mr. Hale or Officer Loor. T. 86. Officer Merisme then heard Officer Loor say "ow" and saw Mr. Hale running away. T. 55-56. Officer Merisme began to chase Mr. Hale. T. 55. Officer Merisme turned around after half a block to find Officer Loor bleeding profusely. T. 56-57.

Officer Loor remembered following closely behind Mr. Hale and that Mr. Hale then became "irate." T. 154. Next he remembered that "Merisme was in front of [Mr. Hale] holding him" and that Officer Loor "went to hold [Mr. Hale's] left side." T. 154-55. He then remembered Mr. Hale striking him very hard on the head. T. 155. Officer Loor's next recollections were that he felt something in his head, which he realized was a knife, that he was bleeding, and that someone gave him a towel. T. 155.

Mr. Flores said he saw Mr. Hale "swing his arm" and "the cop just fell and [Mr. Hale] started running." T. 185. Mr. Flores then went over to Officer Loor, saw that he was bleeding, gave him a towel, and observed a silver knife on the ground. T. 185.

3. Mr. Hale is Arrested Without Any Struggle.

The ambulance arrived just as Officer Merisme returned to Officer Loor, and Officer Merisme returned to chasing Mr. Hale. T. 56-57. Officer Merisme saw Mr. Hale standing on the northeast corner of 109th Street and Third Avenue, approximately a block away. T. 57. Officer Merisme directed Officer Julio Mendez, who had been directing traffic nearby, to the corner where Mr. Hale was standing by giving a

description and location over radio. T. 61-62, 143-46. Officer Mendez testified that he "immediately" arrested him without "any type of struggle." T. 146-47.

B. Officer Loor is Taken to the Hospital.

Linda Faustin, an Emergency Medical Technician (EMT), testified that she responded to an EDP call at 1945 Third Avenue that came in at about 10:38 AM. T. 123, 27. Numerous officers were in the area as she arrived in an ambulance. T. 127. Officer Loor approached the ambulance shouting that he had been stabbed, while holding a towel and silver knife against his head. T. 96-97, 128-31. Officer Loor dropped the knife near the ambulance, and Officer Thalia Maudsley assisted him inside. T. 97-98. Inside the ambulance, Officer Loor removed the towel from his head, at which point blood began to pour from the wound. T. 103, 131. Ms. Faustin dressed the wound, and Officer Loor was taken to the hospital, where hospital staff took over. T. 131-32.

A forensic pathologist testified that a CT scan of Officer Loor's head showed a stab wound to the head that penetrated the skull and brain, leading to bleeding in the skull cavity from an artery. T. 208-210, 215. Officer Loor testified that he felt persistent pain in his face. T. 157.

He lost sensation in the left side of his face, and was taking medication at the time of trial to control pain and seizures. T.158-59. Officer Loor also sustained short-term memory loss, difficulty concentrating, and scarring from the surgical procedure to relieve the intracranial pressure. T. 158-59.

C. Mr. Hale is Taken to the Hospital Following His Arrest.

After taking Officer Loor to the hospital, Ms. Faustin then went to the 23rd police precinct, arriving at 12:25 PM, about two hours after the incident, to transport Mr. Hale to Metropolitan Hospital. T. 133. Mr. Hale was in a holding cell at that time. T. 133.

Ms. Faustin testified that "[A]ll you really do with an EDP, an emotionally disturbed person, is talk to them," in order to do the "best assessment that you can." T. 134. She said that some emotionally disturbed persons "are willing to speak, some are not." *Id.* Mr. Hale "did not speak much," and only nodded and shook his head in response to her questions. T. 134-35. On cross-examination, Ms. Faustin admitted that she did not perform any "mental tests" on Mr. Hale and that she was not trained to do so. T. 138.

D. Dr. Eric Goldsmith Testifies That Mr. Hale Believed He Was Acting in Self-Defense Due to His Paranoid Delusional State of Mind.

To determine Mr. Hale's state of mind at the time of the incident, Dr. Eric Goldsmith, a forensic psychiatrist who testified for the defense, interviewed Mr. Hale on two occasions, in May and September 2013. T. 257-58, 260. He also interviewed Veary Hale, and the mother of Mr. Hale's children, Evangeline Tapia. T. 260. In addition, he reviewed thousands of pages of medical records detailing Mr. Hale's psychiatric treatment both before and after his arrest in April 2012, as well as police reports, and testimony of previous proceedings relating to this case. T. 260-261, 342.

1. Mr. Hale's Records Revealed That at the Time of the Incident, He Had Been Suffering from Severe, Episodic Paranoid Schizophrenia Since His Late Teens.

Dr. Goldsmith explained the typical symptoms of schizophrenia, which include hallucinations and delusions. T. 262. Dr. Goldsmith explained that a delusion is an "a belief that is unreal, it's unshakable in someone's head, but there's no basis in reality." T. 272. These beliefs are often so extreme that the person "lose[s] touch with reality." T. 262. Common delusions among schizophrenic patients are that they have a

"special relationship with God." T. 262, 278. Delusions are often paranoid, in which the person believes that they are being persecuted, that people are spying on them or "after them," or that there are "forces against them." T. 262, 269.

There may also be difficulty in explaining their thoughts because of "disorganized speech" symptoms, in which the person uses language inappropriately. T. 262-63. This may also be due to "impoverished thought," or "thought blocking," both of which prevent the patient from properly explaining what is going on in their mind. T. 290-91. Schizophrenic patients also tend to think illogically and have difficulty with recalling memories. T. 263-64.

Another "very common" symptom of schizophrenia includes anosognosia, or the lack of awareness of a break with reality. T. 264. Hence, schizophrenic patients "believe the delusions are real and that their lives are in danger." T. 264. Dr. Goldsmith testified that this is thought be a part of a "biological problem with individuals with schizophrenia." T. 264.

The onset of schizophrenia usually begins around the age of 20 years, often with the first psychotic episode occurring early in college-

age years. T. 264-65. The course of the symptoms can vary, but in the worst cases the patient's psychotic episodes lead them to be repeatedly hospitalized or jailed. T. 265.

Dr. Goldsmith testified that it was "quite common" for paranoid schizophrenic patients to engage in "minimization" of symptoms. T. 273. This occurs when a patient refuses to admit they are having psychotic symptoms because they know that it will lead to confinement or medications being administered against their will. *Id.* Minimization is a "commonly observed phenomenon" in schizophrenic patients. T. 273. In addition to difficulty communicating thoughts, minimization compounds the difficulty of a schizophrenic patient "explaining what is going on inside their head." T. 273.

2. Mr. Hale Suffered From Numerous Psychotic Episodes Prior To His Arrest, Leading To Many Months of Hospitalization Since 2009.

Dr. Goldsmith testified that Mr. Hale was first admitted to Mount Sinai Hospital in 2009, at the age of 19, seven years before this incident. T. 266-67. He was suffering what was described as "agitation" and complaining of hearing voices. T. 267. At this time, Mr. Hale was

also using marijuana. *Id.* He was hospitalized for a week and prescribed anti-psychotic medications. T. 267.

A few months later in October 2009, he was involuntarily admitted to the hospital again with similar symptoms. T. 268. At that time he was also using alcohol and smoking marijuana. T. 268. Mr. Hale was then diagnosed with chronic paranoid schizophrenia, due to the observation that Mr. Hale had paranoid delusions, and with substance abuse disorder. *Id.*

Mr. Hale was released from the hospital on October 29, 2009, and then re-admitted to Mt. Sinai again four days later as an emergency admission. T. 269. At this time he was "quite paranoid" and "very agitated." T. 270. After 27 days of treatment at Mt. Sinai, including prescriptions for further anti-psychotic medication and mood-stabilizing medication, Mr. Hale was still not stable enough to be released. T. 270. He continued to show paranoia and other symptoms of schizophrenia. T. 270. He was then transferred to Rockland State Psychiatric Center, a facility specializing in long term inpatient psychiatric care. T. 269-70.

During Mr. Hale's time at Rockland State Psychiatric Center, he was "[s]howing all symptoms of schizophrenia," including auditory

hallucinations. T. 271. He was also found to be "guarded and paranoid." T. 271. He also showed a lack of lack of "insight into his illness," again failing to recognize that his hallucinations and delusions were not based in reality. T. 271-272. Mr. Hale was released from Rockland State Psychiatric Center in February 2010 – concluding approximately four months of inpatient treatment. T. 272, 274.

Eight months later in November 2010, Mr. Hale was involuntarily hospitalized by ambulance again. T. 274. He was showing "very similar signs of mental illness," including paranoid delusions, and "acute paranoid agitation." T. 274. These were symptoms that he had shown "over and over again." T. 274. Mr. Hale was "guarded" and "would not talk much about what was going on inside his head, but he was agitated." *Id.* Although Mr. Hale was reluctant to talk, he was "observed as paranoid," and did describe a hallucination where he was "experiencing things crawling on him." T. 274-75. He was discharged in the middle of November 2010. T. 275.

Dr. Goldsmith explained that the series of admissions showed that over the years, Mr. Hale's condition "worsened and he has […] not responded to treatment." T. 275. Between 2009 and 2010, his psychotic

symptoms "deteriorated, worsened, [and became] more intense." T. 275. Dr. Goldsmith also testified that Mr. Hale's records "demonstrate clearly" that Mr. Hale "had not been compliant with treatment recommendations." *Id.* Mr. Hale was not taking his medications regularly, and he continued to use marijuana and alcohol. T. 275. Dr. Goldsmith described alcohol and marijuana as "fuel to the fire in someone with schizophrenia" because they "frequently precipitate acute psychotic breaks." *Id.*

3. At the Time of the Incident, Mr. Hale was Having a Psychotic Episode That Had Begun a Few Days Earlier, Which Included the Delusion That He Would "Die On a Cross Like God."

Dr. Goldsmith first interviewed Mr. Hale on May 8, 2013, approximately one year after the incident. T. 276. Mr. Hale told him that in the days prior to the incident with Officer Loor, he had been having "paranoid thoughts that were going through his mind." T. 276-77. He also had a "feeling …that he was being watched." T. 277; *see also* T. 340. Mr. Hale also expressed "grandiose thoughts about feeling he had a certain special relationship with God" and that he believed the "world's events kind of revolved around him." T. 277, 338. Mr. Hale believed that God was sending him messages through the weather,

although Mr. Hale claimed it was "hard to explain." T. 338-39. Mr. Hale also reported difficulty sleeping. T. 340.

Mr. Hale also told Dr. Goldsmith that, in the days prior to the incident, "he carrie[d] a knife" because he "feared being attacked." T. 277. Mr. Hale told Dr. Goldsmith that he knew that his mother had called 911 because "things were not going well." *Id.* Mr. Hale said that when the officers approached him and grabbed him, he felt paranoid and that he "wasn't safe." T. 277. Mr. Hale told him that "he felt the police were attacking him." T. 312; T. 342.

Dr. Goldsmith then interviewed Evangeline Tapia, the mother of Mr. Hale's two children. T. 280. Dr. Goldsmith said that Evangeline Tapia had been staying with Mr. Hale and their children in his apartment up to two to three days prior to the incident. T. 280. Ms. Tapia reported that during this time Mr. Hale became "increasingly paranoid talking about being a God." T. 280; *see also* T. 333. He repeatedly asked "why everyone hated him." T. 280. He also made statements such as "If you leave the apartment this will be the last time you will likely see me," which Dr. Goldsmith interpreted as a "distorted thought." T. 280-81. Because it was clear to Ms. Tapia "that [Mr. Hale]

was getting ill," she "knew that that was the time to leave the apartment." T. 281. Ms. Tapia then left the apartment with the children. T. 281.

Ms. Tapia maintained telephone contact with Mr. Hale after she left the house. *Id.* On the phone the day before the incident, Mr. Hale said that he "believ[ed] he was going to die on a cross like God." T. 281. Dr. Goldsmith described this statement as evidence of Mr. Hale's psychotic God-related delusions that "some harm would come to him, that he would die in some way." T. 338; *see* T. 281.

Dr. Goldsmith also interviewed Veary Hale, Mr. Hale's mother. Ms. Hale told Dr. Goldsmith that, in the days prior to the incident, Mr. Hale was "pacing, slamming doors, impulsively throwing food out of the fridge," and that "he was not eating or sleeping properly." T. 326. She told Dr. Goldsmith that "every time Mr. Hale would get ill, he would behave in this particular manner, slam doors, punch things, throw food, [and] not sleep." T. 327. Medical records from Metropolitan Hospital on the day of the incident also read that "Per mom patient the last few weeks has been withdrawn, irritable, and pacing at home." T. 331; *see also* People's Exh. 64, Medical Records of Terrance Hale at 24

(Psychiatric Emergency Assessment Department Assessment Form dated April 17, 2012).

In a second interview, Ms. Hale also described Mr. Hale's history of having a "high level of paranoid delusional thinking." T. 327. Having heard Ms. Tapia's description of Mr. Hale's behavior, Dr. Goldsmith asked Ms. Hale in a second interview to "talk about things with respect to [Mr. Hale] talking about God or references [to] God." T. 335. Ms. Hale then "confirmed independently" Mr. Hale's paranoid delusional statements by "report[ing] exactly what Ms. Tapia [had] told [Dr. Goldsmith]." T. 282, 335. Ms. Hale said that Mr. Hale was "talking about God and talking about being a God." T. 282. Ms. Hale also stated that the night before the incident Mr. Hale asked "Why does everyone hate me? Why does everyone hate God?" T. 337. She also heard him make statements about "dying on a cross like God." T. 282; *see also* T. 337. Dr. Goldsmith stated that he did not use the words "die on the cross like God" when speaking to Ms. Hale. T. 225.

Dr. Goldsmith interviewed Mr. Hale again on September 23, 2013, after speaking with Ms. Hale and Ms. Tapia. T. 282. He intended to inquire further about Mr. Hale's state of mind at the time of the

stabbing, and to find out more information about the belief that he was "going to die on a cross like God." T. 282. During this interview, Dr. Goldsmith found that while Mr. Hale denied hearing voices tell him to stab Officer Loor, he did "have delusions involving God and involving dying on a cross like God." T. 283.

4. Mr. Hale's Medical Records Showed That He Was "Paranoid" and "Agitated" in the Hours After the Incident.

On the day of the incident, after Metropolitan Hospital, Mr. Hale was then brought to Bellevue Hospital, where he was held for three days. T. 286-87. At this time, Mr. Hale showed signs of being "quite agitated and quite paranoid." T. 286-87. This was even though Mr. Hale was "internally preoccupied." T. 286. Dr. Goldsmith said that internal preoccupation is "observable evidence that something is going on inside their head that they are not sharing," such as hearing voices, and the patient is "not able to focus on what's going on, not able to have a conversation." T. 291.

The Bellevue staff were not able to get Mr. Hale to state what psychotic symptoms he was suffering because Mr. Hale "wasn't sharing thoughts in his head," and during their interview he "gave only terse responses" with a "narrow range of expression." T. 286-87. They also

observed that he had "diminished insight into the fact that he had a mental illness," and did not believe he had a mental illness. T. 286-87. Nevertheless, Mr. Hale was prescribed antipsychotic medication, which is done when "someone is demonstrating acute psychosis," as Mr. Hale was. T. 289.

Mr. Hale's Bellevue records also showed that at the time of incident, Mr. Hale had been prescribed "heavy anti-psychotic medication" and was receiving counseling and treatment for schizophrenia and substance abuse. T. 288. However, based on the content of the Bellevue records from the days immediately after Mr. Hale's arrest and his interviews with Mr. Hale, Dr. Goldsmith did not believe that Mr. Hale had been taking his medication in the weeks leading up to the incident. T. 288.

After Mr. Hale was released from Bellevue, he was arraigned and taken to Riker's Island. T. 289. The clinical staff at Riker's Island found that he was showing such paranoia that Mr. Hale was sent back to Bellevue only 24 hours after being released. T. 289-90. Upon his readmission to Bellevue, he was found to have typical schizophrenia symptoms of paranoia, impoverished thought and thought blocking, and

he was not "communicating a lot of what was going on inside his head." *Id.* He was prescribed the anti-psychotic medication Prolixin as an "emergency injection" and released back to Riker's Island. T. 291.

5. Mr. Hale's Paranoia "Doesn't Go Away," Leading to Several More Psychiatric Hospitalizations, and He is Given Medication that is "Reserved for the Most Seriously Ill."

Mr. Hale continued to show severe paranoia for months after the incident, leading to several more hospitalizations at Bellevue. Dr. Goldsmith testified that the Bellevue records documented "essentially, his state of mind every day since he's arrested." T. 294. They showed that his paranoia "doesn't go away. It seems to be always present as documented in all of these records." T. 294. Dr. Goldsmith said that he observed a pattern where Mr. Hale's paranoia escalates after he stops taking anti-psychotic medication. T. 295.

Approximately two months after his first post-arrest hospitalization, Mr. Hale was sent back to Bellevue Hospital from Riker's Island in June 2012, after again showing "high levels of paranoia and agitation." T. 292. Again he was "evidencing…poor insight into his illness." *Id.* He expressed a paranoid delusion that the

"correctional officers were out to harm him and that other inmates were attempting to provoke him." T. 292-93.

The admitting psychiatrist at Bellevue also found that Mr. Hale was "minimizing his symptoms" at first, but later began to "open up about certain delusions he was having of a religious preoccupation." T. 292-93. He repeated the delusion he expressed in the few days before Officer Loor's stabbing, that "he believed he was like a God, like Jesus Christ." T. 293. Mr. Hale also believed that "he was to die for his family." T. 293. This delusion was expressed in June 2012, almost a year before Dr. Goldsmith first met Mr. Hale in May 2013. T. 293.

Five days after his third release from Bellevue, Mr. Hale was sent back to Bellevue, for a fourth time in three months. T. 294. He was again "paranoid and agitated." T. 294. This led to a fifth admission to Bellevue from Rikers Island on April 9, 2014. T. 295. Mr. Hale was once again showing "high levels of paranoia." T. 296. On this occasion he expressed delusions that "forces were controlling his mind and body," that "someone was invading his body" and "causing his skin to change a certain color," and that "his thoughts could be broadcast from his head into the outside world." T. 296. Dr. Goldsmith said that these delusions

were "very characteristic of severe psychotic symptoms of schizophrenia." T. 296. Mr. Hale remained at Bellevue for a month and a half because "his illness had worsened" and he required a "much longer period of time to recover with the administration of antipsychotic medication." T. 296-97.

Four days after his fifth release from Bellevue, Mr. Hale was admitted a sixth time, again showing "high levels of paranoia and agitation" and "severe psychotic symptoms." T. 297. The staff at Bellevue then prescribed Mr. Hale the medication Clozaril. *Id.* Dr. Goldsmith testified that while Clozaril is among the most effective in "treatment resistan[t] schizophrenia," it is infrequently prescribed due to its serious side effects. T. 297-98. These include sedation, excessive drooling and aplastic anemia, a condition where the bone marrow is unable to produce blood cells. *Id.* Because this side effect can be deadly, patients on Clozaril must be monitored closely. *Id.* Dr. Goldsmith testified that Clozaril is a "very serious medicine" that is "only reserved for the most seriously ill." T. 298. Clozaril is more frequently prescribed to the "forensic population and the population of patients who end up in […] long term civil state hospitals because their illnesses are that much

worse." T. 298. The fact that Mr. Hale was prescribed Clozaril showed that his schizophrenia was "severe" and "not responding to traditional antipsychotic medication to a full enough extent." T. 298-99.

Despite having "some response" to Clozaril and being released back to Riker's, Mr. Hale was re-admitted to Bellevue for the seventh time a month later. T. 299. Mr. Hale was showing "aggressiveness and…paranoia," and described "hearing voices and hallucinations of birds flying around." T. 299. On this admission he was held for two weeks, "once again evidencing all of these regressed psychotic symptoms." T. 299. Clozaril was discontinued and another medication prescribed because Mr. Hale had not been taking it. T. 299. Dr. Goldsmith also testified that Mr. Hale claimed both to him and to staff at Bellevue that the Riker's Island staff members were not giving him his medication. T. 301.

A few days after release, he was admitted again for an eighth time, this time for another three weeks, with a "very similar presentation," which included "delusional thoughts and hallucinations and clearly evidencing schizophrenia." T. 300-301.

6. Dr. Goldsmith's Opinion is that Mr. Hale Believed at the Time of the Incident that His Life was in Danger Due to His "Highly Deluded Psychotic State of Mind."

Dr. Goldsmith then testified that at the time that Mr. Hale stabbed Police Officer Loor, he was suffering from a psychotic episode. T. 302. Mr. Hale's symptoms at that time included "paranoid delusions, delusions involving a God, religious preoccupation," and Mr. Hale's "thinking was illogical." *Id.* Mr. Hale was in a "highly agitated, paranoid state of mind, and … when the police officers approached him, he was under this paranoid delusional belief that his life was in danger, he was going to die on a cross like God." *Id.* At the time of the incident, Mr. Hale was suffering a "break from reality," which included paranoid and "illogical, disorganized thinking." T. 309.

Because of this, Dr. Goldsmith said, Mr. Hale believed "his life was in danger and he needed to defend himself in some particular way against the police officers" because he believed the police officers "were attacking him." T. 302, 312. Mr. Hale was aware that he was using a dangerous weapon to attack Officer Loor. T. 308. However, Mr. Hale took this action because he "felt a real threat because of his delusions and he acted on this threat." T. 307. Dr. Goldsmith said that Mr. Hale

knew he had done something that would get him arrested. T. 308, 353. But ultimately, Dr. Goldsmith concluded "to a reasonable degree of psychiatric certainty" that Mr. Hale "lacked the substantial capacity to appreciate that what he had done was wrong or against commonly held moral principles," due to "his highly deluded psychotic state of mind." T. 302.

Dr. Goldsmith testified that he found no evidence at all of "malingering" in any of the "thousands and thousands" of pages of medical records he reviewed detailing eight hospitalizations. T. 355. Dr. Goldsmith defined "malingering" as the false presentation of symptoms for a secondary gain, such as hoping to escape criminal responsibility or be sent to a hospital rather than a jail. T. 343. Malingering can be diagnosed by observing the consistency of presentation of symptoms with clinical observation. T. 344-45. Dr. Goldsmith testified that "functional impairments … relating to schizophrenia" such as "confusion," "difficulty in communication," and "disorganization" are "difficult to malinger." T. 344.

Dr. Goldsmith said Mr. Hale's records reflected that in 2014, two years after the incident, Mr. Hale took a standardized test designed to

detect malingering. T. 345. The results reflected that, at the time Mr. Hale took the test, he was giving responses that were "outside the scope of what you would expect to see even in someone with severe schizophrenia." T. 345. Dr. Goldsmith provided this testimony on cross-examination and was not asked by the prosecution to explain its implication. *See* T. 345-46. Dr. Goldsmith also agreed on cross-examination that Mr. Hale had been arrested in connection with hospitalizations or performed violent acts when he did not want to be taken to the hospital. T. 349-351. These violent acts in jail and hospital settings formed the basis of Dr. Goldsmith's agreement with a diagnosis of antisocial personality disorder. T. 312-18. However, Dr. Goldsmith testified that there was no evidence to suggest that Mr. Hale had engaged in a pattern of "deceitfulness and repeated lying," another criterion for antisocial personality disorder. T. 316-17.

Dr. Goldsmith ultimately stated that there was "no reason to have any concerns that he was malingering [his] symptoms" on the day of the incident. T. 355. This was because Mr. Hale's records clearly showed that he suffered numerous episodes of paranoia and agitation since his late teenage years, yet he repeatedly denied symptoms. T. 354-55.

Malingering patients often report more extreme symptoms, whereas truly psychotic patients actually downplay psychotic symptoms, as Mr. Hale did. T. 355. Thus, Mr. Hale's pattern of presentation represented "the opposite of malingering." T. 354.

E. Dr. Ali Khadivi's Testimony.

Dr. Khadivi, a clinical psychologist and psychiatrist, was called as a rebuttal witness by the prosecution. T. 363-64. Dr. Khadivi had interviewed Mr. Hale three times, beginning almost two years after the incident, on February 5, 2014, February 14, 2014, and May 16, 2014. T. 373-74, 394. Dr. Khadivi also interviewed Veary Hale and reviewed records of Mr. Hale's psychiatric treatment and Dr. Goldsmith's assessment of Mr. Hale.[2] T. 368-69, 374. He did not interview Evangeline Tapia, the mother of Mr. Hale's children. T. 377.

Each interview took place at the District Attorney's office. T. 375-76, 421. During Dr. Khadivi's interviews, he identified himself as an expert working on behalf of the prosecution. T. 376. He told Mr. Hale that the interviews were not confidential, and that he would be creating a report that would be sent to the court. T. 376, 421.

[2] Dr. Goldsmith's report was not entered into evidence.

1. Dr. Khadivi Admits That Several Factors That Could Trigger or Exacerbate a Severe Psychotic Episode in a Schizophrenic Patient Were Present in the Days Leading Up to the Incident.

Dr. Khadivi was "impressed" by the "well-documented medical psychiatric record" showing evidence of Mr. Hale's psychotic mental illness and agreed that Mr. Hale was a paranoid schizophrenic. T. 369; T. 370-71. Dr. Khadivi's review of the records confirmed that Mr. Hale had paranoid delusions as a "prominent symptom" as early as 2009. T. 370. In addition, Mr. Hale expressed further delusions in his interviews with Dr. Khadivi, telling him that seeing a letter "D" on a delivery truck meant that "someone was watching him." T. 370-71; T. 428.

Dr. Khadivi also agreed that schizophrenia is "best described as being episodic," meaning that the severity of the symptoms can fluctuate in severity with or without treatment. T. 381-82. Dr. Khadivi said that patients can experience "rapid decompensation," where they "may be okay one week then the next week they may have symptoms." T. 415. Dr. Khadivi also testified that symptoms can change dramatically if there is a "trigger" such as cessation of medication, substance abuse, or instability at home. T. 417, 428.

Dr. Khadivi noted that Mr. Hale had a rapid series of admissions and re-admissions to hospitals to treat his psychosis in the years previous to the incident. T. 379. He testified that Mr. Hale had not been hospitalized for approximately a year prior to the incident but was receiving outpatient treatment and was prescribed medication. T. 378-379.

Dr. Khadivi also agreed with Dr. Goldsmith that the use of alcohol and marijuana and inconsistent use of anti-psychotic medications would "increase" and "exacerbate" psychotic symptoms. T. 412-413; *see* T. 275 (Dr. Goldsmith discussing exacerbating effect of drugs and alcohol on psychotic symptoms). Dr. Khadivi admitted that Mr. Hale told him that he had been drinking the night before the incident. T. 413. He also admitted that Ms. Hale told him that Mr. Hale had not been taking his medication, although she had made some other statements that suggested that he might have been. T. 383.

Dr. Khadivi also testified that a "stressful family situation" may "contribute to increased symptoms." T. 413. He also found that the record was "replete with evidence that Veary Hale [Mr. Hale's mother] was stress to Terrance Hale." T. 414. Dr. Khadivi acknowledged that

records showed that Ms. Hale had reported that there was "tension" between Ms. Hale and Ms. Tapia. T. 414. He also noted that records showed that "at some point [Ms. Hale] actually asked [Mr. Hale], [Ms. Tapia] and the children to leave." T. 414. Mr. Hale himself reported to Dr. Khadivi that Ms. Tapia and Ms. Hale "did not get along," although he claimed that it was "not a major source of stress." T. 414.

Despite Dr. Khadivi's acknowledgement that Mr. Hale was not necessarily taking his prescribed medication, that he had been drinking the night before, that his medication may have been inconsistently taken, and that Mr. Hale was undergoing family stress, all of which could trigger or exacerbate psychotic episodes, Dr. Khadivi suggested that, prior to the incident, Mr. Hale's condition was not deteriorating and that he was "stable." T. 378-79. Dr. Khadivi's conclusion regarding Mr. Hale's condition during this period apparently was based on a note in the treatment records, written 28 days prior to the incident, that indicated that he was stable and showing some insight into his condition. T. 380-81.

Mr. Hale told Dr. Khadivi that in the days leading up to the incident, he started becoming "stressed out" and was having difficulty

sleeping. T. 384. In his February 5, 2014 interview with Mr. Hale, Dr. Khadivi saw evidence that, prior to the incident, Mr. Hale was becoming "suspicious," "irritable" and had "sleep disturbance." T. 397-98. Dr. Khadivi said that Mr. Hale felt at that time that "something may happen" and that "he will become sick." T. 384. Ms. Hale told Dr. Khadivi that she had become increasingly concerned that "Mr. Hale was beginning to show symptoms that can lead to hospitalization." T. 383. She said Mr. Hale was becoming paranoid, and kept looking out the window and asking her to be quiet. T. 384.

Dr. Khadivi also pointed to some inconclusive factors that called into question the severity of Mr. Hale's paranoia near the time of the incident. When Dr. Khadivi asked Mr. Hale in an interview about his paranoia in the days prior to the incident, Mr. Hale claimed he did not have any paranoia or thoughts about God. T. 383-84. Dr. Khadivi also noted that Mr. Hale did not tell Bellevue Hospital about "delusions of God [or] paranoia" by Mr. Hale upon his admission to Bellevue on the day of the incident with Officer Loor. T. 396. He also stated that Ms. Hale did not mention God-related delusions in his interview with her, however he did not state whether Ms. Hale was asked specifically about

this. T. 383. Dr. Khadivi also suggested that four days before the incident, Mr. Hale's paranoia was not severe enough to prevent him from leaving his apartment. T. 385. In support of this, Dr. Khadivi cited a note in Mr. Hale's outpatient treatment records stating that on April 13, 2012, he told a therapist at his outpatient clinic that he wished to "visit [his] family" and at some point visited Ms. Tapia. T. 384. Dr. Khadivi admitted that these facts did not mean that Mr. Hale was not experiencing paranoia. T. 385. He also acknowledged that Mr. Hale was spending most of his time at home. T. 385.

Dr. Khadivi testified that in records from the EMS and Metropolitan Hospital in the hours following Mr. Hale's arrest on April 17, 2012, neither medical staff nor the police heard any statements from him regarding paranoia, delusions, or hallucinations. T. 386. Dr. Khadivi also said that when Mr. Hale was later admitted to Bellevue, his records did not mention "overt psychotic symptoms," and that Mr. Hale did not specifically tell them about any delusions or hallucinations. T. 387.

But Dr. Khadivi acknowledged that Metropolitan Hospital described Mr. Hale on the day of the incident as having a "bizarre

affect," with a "range of emotion or expression of emotions" described as "odd." T. 386. He also admitted that in his interview with Mr. Hale he found evidence that Mr. Hale was "internally preoccupied" (i.e., visibly unable to focus on external events due to mental state) at Bellevue hospital after the incident. T. 386, 397-98.

Dr. Khadivi's testimony on cross-examination also undercut his testimony that Mr. Hale did not report delusions or paranoid thoughts to Bellevue or to his mother. Dr. Khadivi acknowledged that he was aware that on June 19, 2012, almost a year before Dr. Goldsmith first interviewed Mr. Hale, and approximately two months after the incident, Mr. Hale's Bellevue records showed that he had "report[ed] he was like Jesus Christ." T. 420. Dr. Khadivi said that "when I asked him questions about God, he said he never had those thoughts." T. 420. But, whereas he had previously said that Mr. Hale's mother had not mentioned "delusions of God or paranoia," T. 397-98, Dr. Khadivi then admitted that he knew that Mr. Hale in fact had told his mother that he was "like Jesus Christ." T. 420.

Dr. Khadivi also conceded that Mr. Hale had a well-established history of anosognosia.[3] T. 421. According to Dr. Khadivi, Mr. Hale "absolutely" exhibited symptoms of anosognosia "throughout a course of his life." T. 421.

2. Dr. Khadivi's Contradictory and Conclusory Testimony About Why Mr. Hale Sometimes Did Not Report Paranoid Delusions.

In forming his opinion about Mr. Hale's state of mind, Dr. Khadivi relied heavily on Mr. Hale's pattern of inconsistent reports of his symptoms. He claimed that Mr. Hale had been "quite forthcoming" with Dr. Khadivi in his interview, with Mr. Hale describing psychiatric symptoms, such as the fact that at some point he was "hearing voices on Riker's Island," and that he was "not happy with the medication that he's on." T. 389-89. Dr. Khadivi testified that Mr. Hale was "quite open with me, sharing all kinds of symptoms," but when Dr. Khadivi "asked him questions about God, he said he never had those thoughts." T. 420. He said that Mr. Hale repeatedly denied being afraid of the police. T. 390-91. In response to a question about "negative feelings or bad experience[s] with cop[s]," Mr. Hale "did not mention any negative

[3] Defense counsel appears to pronounce this "anogmosia," and the court reporter misspells it in the trial transcript, however, the ensuing discussion makes clear that he is asking Dr. Khadivi about the inability to "appreciate reality." T. 421.

thoughts or thoughts that the cops were there to kill him or harm him in any way." T. 390. Dr. Khadivi characterized Mr. Hale's reports as Mr. Hale saying "he didn't want to be part of anything to do with the police." T. 391. Dr. Khadivi then conceded, however, that a few days after the incident, Mr. Hale told psychiatric staff at Riker's Island that the police had been "harassing him." T. 392. Dr. Khadivi said that in his interview, Mr. Hale even went as far as claiming that he had no psychiatric symptoms at all on the day of the incident, even though his mother had called 911. T. 398.

Based on this, Dr. Khadivi claimed that this showed that Mr. Hale was not minimizing his symptoms (i.e., the common behavior among psychotic patients to downplay or deny symptoms to avoid medication or institutionalization), but rather that Mr. Hale was being "selective" in reporting his symptoms. T. 420. Dr. Khadivi offered no explanation as to why a pattern of being "selective" about psychotic symptoms would be inconsistent with minimization of symptoms. Dr. Khadivi also agreed with defense counsel that Mr. Hale's pattern of providing "different histories to different people" could be due to "memory problems [that] can occur in schizophrenia." T. 418.

Even though Dr. Khadivi claimed that Mr. Hale was possibly malingering, i.e., faking or exaggerating symptoms to avoid criminal responsibility, this suggestion relied on test results Dr. Khadivi himself said were "invalid." T. 395. He testified that he administered a "personality assessment inventory" (PAI), which is a pencil-and-paper test taken by the patient. *Id.* Dr. Khadivi did not explain the content of the PAI or how it could assess minimization. He testified that Mr. Hale "responded to questions in a way that made the test invalid." T. 395. Despite this, he said that "the direction of making the test invalid was towards exaggeration and towards idiosyncratic responding to the items." T. 395. This "invalid" result, Dr. Khadivi claimed, meant that Mr. Hale "did not show any pattern of minimization." *Id.*

Dr. Khadivi also relied on a test which he admitted could not provide evidence of whether Mr. Hale was suffering a psychotic episode on the day of the incident. Dr. Khadivi said that he administered the Structured Interview of Reported Symptoms (SIRS) test, which is designed to detect malingering, during his third interview with Mr. Hale on February 14, 2014. T. 392-94. Dr. Khadivi said that the results showed that "at the time of [the examination], Mr. Hale showed a

pattern consistent with an individual who may be feigning mental illness." T. 394. But Dr. Khadivi admitted that the SIRS test could not tell whether "Mr. Hale was malingering on April 17, 2012 [the date of the incident]." He said that it "does not tell you the time when [Mr. Hale] was malingering," and that the test "cannot go back retrospectively." T. 422.

On cross-examination, Dr. Khadivi also admitted that there was "not a single note in [Mr. Hale's medical records] from any of the doctors that suggest that Mr. Hale was malingering." T. 411. This included "literally, thousands of pages" of medical records. T. 411. Dr. Khadivi testified that malingering might not have been checked for in settings where Mr. Hale was not under arrest. T. 431. Dr. Khadivi said that a "person may be faking when he gets to Bellevue, which is a forensic hospital where the issue of malingering should be considered." T. 431. But Dr. Khadivi also agreed that there was no indication of malingering in any of the numerous admissions to Bellevue following Mr. Hale's arrest. T. 411. Dr. Khadivi also admitted that claiming that "voices told Mr. Hale to stab Officer Loor" – which Mr. Hale denied – would "be an easy way for someone to feign symptoms." T. 428-29.

3. Dr. Khadivi Claims Mr. Hale Knew His Actions Were Wrong Because the Stabbing Was Not the Result of a Delusion and Mr. Hale Ran Away Fearing That the Police Would Shoot Him.

Dr. Khadivi claimed that "he could not find a link between Mr. Hale's experience of symptom[s] and the crime." T. 399. While he said that on the day of the incident, Mr. Hale was "on the verge of becoming sick," he noted that Mr. Hale "knew he stabbed a police officer." T. 399-400. Dr. Khadivi claimed that Mr. Hale's only apparent symptoms were "sleeping disturbance, changes in affect, [and] internal preoccupation." T. 399. Dr. Khadivi said that Mr. Hale was not acting in response to a "false delusion or a false belief" when he stabbed Officer Loor. T. 400.

He said that Mr. Hale "knew that his actions were wrong, legally wrong." T. 402. The only evidence he cited for this conclusion was the fact that Mr. Hale "r[an] from the crime scene" and stated that he did so because he thought the police were going to shoot him. T. 402. Mr. Hale said that the reason they would shoot him was because "he stabbed the officer." T. 402. However, on cross examination, Dr. Khadivi admitted that running away "could be consistent" with "having a paranoid schizophrenic episode." T. 429.

F. Summation.

1. Defense Counsel's Summation.

Defense counsel conceded that Mr. Hale stabbed Officer Loor. T. 437-41. Defense counsel's summation focused solely on the evidence that Mr. Hale was in the midst of a psychotic episode, leading him to believe that he was defending himself from a threat to his life. Defense counsel relied on Dr. Goldsmith's testimony about Mr. Hale's years of repeated hospitalization during psychotic episodes, increasing in severity of symptoms. T. 442-44. In addition, the numerous hospitalizations following Mr. Hale's arrest, including those where he was prescribed the "drug of last resort" Clozaril, showed that he continued to have episodes of severe psychosis. T. 444-45.

Defense counsel also pointed out that both before the incident and afterwards while at Bellevue Hospital, Mr. Hale spoke of the "well documented" paranoid delusions that people hated him and wanted to kill him, that he was like Jesus Christ, and that he would die for his family. T. 444. These delusions were reported long before he met Dr. Goldsmith or Dr. Khadivi. T. 444. Thus, these were "not something that w[ere] fed to him by a doctor to make up an insanity defense." T. 444.

Defense counsel argued that Dr. Khadivi "very begrudgingly" agreed with Dr. Goldsmith that triggering factors for severe psychotic episodes, like inconsistent medication usage, were well-documented and present in the days leading up to the incident. T. 446. Defense counsel highlighted the complete absence of any diagnosis of malingering by a previous doctor in thousands of pages of medical records, and that the test Dr. Khadivi claimed supported this diagnosis could not show malingering occurred on the day of the incident. T. 448. Defense counsel also noted that Dr. Khadivi conceded Mr. Hale's record of consistent anosognosia, rendering him unable to tell that his delusions are not real. T. 449.

Thus, defense counsel argued, Mr. Hale believed that when Officer Loor grabbed him, while Mr. Hale was under the paranoid delusion he would "die on a cross like Jesus," Mr. Hale stabbed Officer Loor in the belief he was defending his life and lacked the capacity to appreciate that what he did was wrong. T. 451-52.

2. Prosecution's Summation.

While the prosecution conceded that Mr. Hale was schizophrenic, it also highlighted his diagnosis of anti-social personality disorder, with

Mr. Hale showing symptoms of aggression and instability. T. 464. The prosecution argued that the experts disagreed on the severity of Mr. Hale's symptoms, pointing out that Mr. Hale was not hospitalized and was relatively stable for approximately a year before the incident. T. 465-66. The prosecution argued that Ms. Tapia was the first person to speak of Mr. Hale's delusions about God, that this had actually been suggested to her by Dr. Goldsmith, and that other statements by Mr. Hale regarding his symptoms were inconsistent with a paranoid delusion. T. 467-69. The prosecution also noted that Mr. Hale repeatedly denied having any delusions in Dr. Khadivi's interviews. T. 469-70.

The prosecution further argued that Mr. Hale's awareness that his actions were wrong was shown by the fact that he ran away from the police and stated that he was afraid they would shoot him. T. 474-75. According to the prosecution, the incident occurred not because of Mr. Hale's schizophrenia, but because of his "bad character" and willingness to violently resist the police. T. 472-73, 476.

G. Verdict and Sentence.

The jury found Mr. Hale not guilty on the charge of attempted murder in the first degree. T. 549. The jury found Mr. Hale guilty on the charges of assault in the first degree, aggravated assault on an officer, and criminal possession of a weapon in the third degree. T. 549-550.

At sentencing, Mr. Hale was adjudicated a violent predicate felon for a 2007 conviction for assault in the second degree. S. 3-4. The prosecution argued that Mr. Hale was irresponsible in using drugs and alcohol, knowing of his mental condition, and that his violent actions were the result of his anti-social personality and irresponsibility, not psychotic episodes. S. 4-10. The prosecution also pointed out that Mr. Hale had several unprovoked assaults in his criminal history and numerous infractions related to fights and assaults while incarcerated and in hospitals, which demonstrated that Mr. Hale "uses violence to get what he wants." S. 7; S. 4-10; *see* PSI at 2-4.

Officer Loor gave a statement describing the extent of his injuries and the impact of the case on his career and his family, asking the court to give Mr. Hale maximum sentences. S. 11-12.

In a sentencing memorandum, the defense counsel recommended a sentence of 15 years on the charge of aggravated assault upon a police officer in the first degree. Sentencing Memorandum at 2. Defense counsel asked the court to "take into account [Mr. Hale's] documented and lengthy history of severe mental illness." *Id.* He also implied that Mr. Hale would be unlikely to receive adequate treatment by noting that "mental health treatment of state prisoners has been the subject of various litigations in the federal courts." *Id.*[4] At sentencing, defense counsel stated that "[w]e would rely on the sentencing memo we previously submitted to the court." S. 11.

The court stated that the incident was "not the product of mental illness," and that it was consistent with a pattern of Mr. Hale becoming violent when "he does not get what he wants." S. 12-13. The court sentenced Mr. Hale to 25 years in prison and five years of post-release

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[4] In support for this, defense counsel referred to *Disability Advocates v. N.Y.S. Office of Mental Health,* a Southern District of New York lawsuit which was settled in 2007 with an agreement requiring the New York State Office of Mental Health and the Department of Correctional Services to make tens of million dollars' worth of improvements in the treatment practices and resources available for seriously mentally-ill patients. *See Disability Advocates [DAI] v. N.Y.S. Office of Mental Health*, Civil Rights Litigation Clearinghouse (Mar. 11, 2019, 1:25 PM), https://www.clearinghouse.net/detail.php?id=5560; *see also* Private Settlement Agreement, *Disability Advocates v. N.Y.S. Office of Mental Health*, No. 02-CV-4002 (Apr. 25, 2007 S.D.N.Y.), available at https://www.clearinghouse.net/chDocs/public/PC-NY-0048-0002.pdf.

supervision on both assault counts, with 3 ½ to 7 years in prison on the criminal possession of a weapon count, all to run concurrently. S. 14.

ARGUMENT

POINT I

THE VERDICTS WERE AGAINST THE WEIGHT OF THE EVIDENCE WHERE EXPERT TESTIMONY ESTABLISHED THAT TERRANCE HALE SUFFERED FROM PARANOID SCHIZOPHRENIA AND BELIEVED HE WAS ACTING IN SELF-DEFENSE DUE TO HIS PARANOID, PSYCHOTIC DELUSION THAT THE POLICE WERE TRYING TO KILL HIM.

Overwhelming, undisputed evidence established that Terrance Hale suffers from severe episodic paranoid schizophrenia. Experts for both the defense and the prosecution testified that thousands of pages of medical records document years of psychiatric hospitalizations, as well as Mr. Hale's persistent paranoid delusions. Testimony regarding Mr. Hale's mental state in the days leading up to and on the day of the incident showed that Mr. Hale's mother called 911 because Mr. Hale was in the midst of a psychotic episode severe enough that he required further hospitalization. It also showed that several triggering or exacerbating factors for psychotic episodes were present. In this psychotic, paranoid state, Mr. Hale believed that someone would soon try to kill him. Believing that he was acting in self-defense when Officer Loor grabbed him after the police followed him while he repeatedly refused their assistance, Mr. Hale lacked the capacity to understand

that his actions were wrong. Thus, the verdicts convicting him of assault in the first degree, assaulting an officer, and criminal possession of a weapon in the third degree were against the weight of the evidence. The jury should have found Mr. Hale not guilty by reason of mental disease or defect on each of these counts.

This Court must review the weight of the evidence to determine whether, "based on all the credible evidence, a different finding would not have been unreasonable." *People v. Bleakley*, 69 N.Y.2d 490, 495 (1987); *see also* N.Y. Crim. Proc. L. § 470.15(5). As the Court of Appeals has explained, "the weight of the evidence examination … requires[] the court to affirmatively review the record; independently assess all of the proof; substitute its own credibility determinations for those made by the jury in an appropriate case; determine whether the verdict was factually correct; and acquit a defendant if the court is not convinced that the jury was justified in finding that guilt was proven beyond a reasonable doubt." *People v. Delamota*, 18 N.Y.3d 107, 116-17 (2011) (internal citations omitted). When "the trier of fact has failed to give the evidence the weight it should be accorded, then the appellate court may set aside the verdict." *Bleakley*, 69 N.Y.2d at 495 (citation omitted).

In any criminal prosecution, it is an affirmative defense that the person, at the time of the proscribed conduct, "lacked the substantial capacity to know or appreciate … that such conduct was wrong" due to a mental disease or defect. N.Y. Penal Law § 40.15(2). At trial, a defendant has the burden of establishing such a defense by the preponderance of the evidence. N.Y. Penal Law § 25.00(2). The extensive and undisputed testimony about Mr. Hale's long history of severe paranoid schizophrenia, combined with his family's reports of his psychotic delusional state at the time of the incident, established this defense well past a preponderance of the evidence.

A. A Person Who Commits a Violent Act Under the Influence of a Psychotic Paranoid Delusion May Be Found Not Guilty by Reason of Mental Disease or Defect Because They Lacked the Ability to Understand the Wrongfulness of Their Actions.

New York courts have set aside verdicts as against the weight of the evidence where the defendant's psychotic paranoia led him to commit a violent act resulting in a homicide conviction. *See*, *e.g., People v. Barnes*, 98 A.D.2d 977, 977 (4th Dep't 1983) (setting aside the verdict for murder as against the weight of the evidence where "two psychiatrists testified that when the crime was committed defendant was suffering from the mental disease of schizophrenia, paranoid type,"

and finding the defendant not guilty by reason of mental disease or defect).

An instructive case is *People v. Spratley*, 159 A.D.3d 725 (2d Dep't 2018), in which the Second Department set aside the verdict as against the weight of the evidence where the defendant was convicted of second degree murder and criminal possession of a weapon in the second degree after shooting a stranger in a grocery store. Like Mr. Hale, Mr. Spratley had a long-documented history of psychiatric hospitalizations and committed a violent act that, due to his paranoid psychosis, he believed was necessary to protect himself from a threat he lacked the capacity to understand was unreal.

In *Spratley*, a defense expert testified that the defendant suffered from a "severe, persistent, and serious mental disease, namely, schizoaffective disorder," which had "a combination of symptoms of both schizophrenia and bipolar disorder." *Id.* at 727. Mr. Spratley's mental illness was documented in extensive medical records of his treatment showing that he had begun suffering psychotic symptoms in his teenage years, including hallucinations and paranoia, leading Mr. Spratley to incur numerous disciplinary infractions while incarcerated due to his

paranoid delusions about the corrections staff trying to poison him. *Id.* This lengthy and documented history of psychosis was a primary basis for the court's decision. *Id.* at 727-28, 731.

A similar case is *People v. Liebman*, 179 A.D.2d 245, 257 (1st Dep't 1992), where this Court set aside the verdict convicting the defendant of second degree murder as against the weight of the evidence after a schizophrenic defendant attacked his wife due to "paranoid and persecutory" obsessive thoughts about her. *Id.* at 247. The defendant had been diagnosed with an acute form of schizophrenia and the record was "replete with undisputed evidence that the defendant, after having had psychiatric difficulties as a child, spent substantial periods of his early adulthood in City and State psychiatric facilities, and that he was subsequently unable to function successfully in any area." *Id.* at 257-58. "[T]he observations of the defendant's treating psychiatrist during the 21 month period preceding the incident, disclosed a profoundly disturbed individual, plagued by obsessive thoughts, nightmares and sleeplessness." *Id.* at 258.

Mr. Hale's history of psychotic mental illness is similar to both *Spratley* and *Liebman* in that he was hospitalized for psychotic episodes

featuring hallucinations and paranoia beginning when he was a teenager. T. 266-67. Between his diagnosis in 2009 and the time of the incident in April 2012, Mr. Hale was psychiatrically hospitalized four times. T. 267-274. The overall course of Mr. Hale's illness, including his hospitalizations after the incident, was so severe that Bellevue doctors eventually prescribed him Clozaril, anti-psychotic medication that presents a serious risk of death, because he simply had not responded well enough to less harmful medications. T. 297-98.

Like the defendant in *Spratley*, paranoid delusions were persistent features of Mr. Hale's illness, and were noted in his records at each of his hospitalizations. Dr. Goldsmith explained how, over the years in which Mr. Hale was repeatedly hospitalized, his paranoia was "always present as documented in all of [his] records." T. 294. Dr. Goldsmith detailed twelve psychiatric hospitalizations over ten years, during each of which Mr. Hale presented as severely paranoid and agitated while having a psychotic episode. T. 267-274, 287, 292-294, 297, 300.

There was no dispute that Mr. Hale suffered from severe and persistent paranoid delusions as a result of his schizophrenia. Dr.

Khadivi, the prosecution expert, agreed with Dr. Goldmsith that Mr. Hale had a "well-documented" history of severe paranoid schizophrenia. He also agreed that paranoid delusions were "a prominent symptom" for Mr. Hale since he was first diagnosed. T. 369-70. Dr. Khadivi noted among Mr. Hale's paranoid delusions was the belief that seeing a letter "D" on a truck meant that someone was watching him. T. 370-71. Dr. Goldsmith pointed out Mr. Hale's belief that God sent him messages through the weather. T. 339. His delusion that "forces were controlling his mind and body" and that his thoughts could be broadcast into the outside world were "characteristic of severe psychotic symptoms." T. 296.

B. Mr. Hale Was in the Midst of a Psychotic Episode at the Time of the Incident and Believed That His Life Was in Danger When He Encountered Officer Loor.

The evidence in both *Spratley* and *Liebman* established that the defendants' paranoid delusions led them to misinterpret innocuous actions by others as threats. Here, Mr. Hale's paranoid state during the incident was well-established by expert testimony regarding reports from family members, thousands of pages of medical records, and interviews conducted with Mr. Hale.

The defendants in *Spratley* and *Liebman,* like Mr. Hale, were showing clear signs of psychosis in the days right before the incident. A few days prior to the shooting, the defendant in *Spratley* spoke about a "secret society of assassins" and left the scene of a car accident believing the other driver had deliberately attacked him. *Spratley*, 159 A.D.3d at 728. The defendant in *Liebman* was described as suffering a "schizophrenic breakdown" in the week-and-a-half before he stabbed his wife. *Liebman* 179 A.D.2d at 248.

Here, there was extensive evidence of Mr. Hale's own psychotic break in the days before he stabbed Officer Loor. Both Dr. Khadivi and Dr. Goldsmith agreed that serious psychotic episodes are likely to be precipitated or exacerbated for patients who do not take their medication consistently, who are subjected to family stress, and who use alcohol or marijuana. T. 275, 295; T. 412-15. It was undisputed that these factors were all present up to a few days before the incident. *See* T. 268 (Mr. Hale had been diagnosed with alcohol and marijuana disorder at the same time as he was diagnosed with schizophrenia); T. 413 (Mr. Hale had been drinking as late as the day before the incident); T. 275 (Mr. Hale was often not compliant with treatment

recommendations); T. 414 (Evangeline Tapia had recently moved out with Mr. Hale's children due to an argument with Mr. Hale's mother).

Following these triggering factors, Mr. Hale's psychotic state of mind was obvious to his family in the days leading up to the incident. Dr. Goldsmith described reports from Mr. Hale's mother that a few days before the incident, Mr. Hale was not sleeping, and he was slamming doors and throwing food from the refrigerator. T. 327. She recognized these as clear signs that Mr. Hale was descending into a psychotic episode again. *Id.* Mr. Hale himself reported to Dr. Khadivi that at that time he was becoming "suspicious" and "irritable." T. 397. Dr. Khadivi also acknowledged that Mr. Hale was suffering a "sleep disturbance." T. 397; *see also* T. 397. Ms. Hale called 911 on the day of the incident because his psychotic condition had become so severe. T. 33-37 (911 call from Ms. Hale about emotionally disturbed person); 277 (Dr. Goldsmith explaining how Mr. Hale's psychotic state led to 911 call).

C. Mr. Hale Reacted Violently to What He Perceived to be a Threat to His Life Because of His Paranoid and Psychotic State.

In the midst of severe paranoid psychosis, the defendants in *Spratley* and *Liebman* both interpreted benign actions as threats. In those cases, the courts recognized that this psychosis led the defendants

to react violently in defense against a perceived threat, which eliminated or reduced their criminal responsibility, and this Court should find the same in Mr. Hale's case.

During their psychotic episodes, both Mr. Hale and the defendant in *Spratley* irrationally believed that some person or group was out to kill them. *See Spratley*, 159 A.D.3d at 727. On the day of the shooting, Mr. Spratley repeatedly complained to his aunt that "someone was after him," and continued to believe he was the target of "assassins." *Id.* at 728-29. Likewise, there was extensive evidence that Mr. Hale was suffering severe paranoid delusions the day of the incident. Mr. Hale reported to Dr. Goldsmith he believed that God was sending him messages through the weather, and told Dr. Khadivi that in this time period he believed "something may happen." T. 339, 384. Mr. Hale told his family that he believed that he either was God, or that he was like God, and repeatedly asked, "Why does everyone hate me?" and "Why does everyone hate God?" T. 280, 333, 337. They also reported that Mr. Hale said he believed he was going to "die on a cross like God." T. 281, 333, 336. He also told doctors at Bellevue that he believed these things, and that he believed he would "die for his family," on June 19, 2012. T.

293. Dr. Goldsmith found in his interviews with Mr. Hale that Mr. Hale thought that this meant that someone would soon attack him and that he would die. T. 277, 281, 338. As a result of their irrational perception of threats, both Mr. Hale and Mr. Spratley began carrying weapons to protect themselves. T. 277; *Spratley*, 159 A.D.3d at 727.

Believing that someone was trying to kill them, both Mr. Hale and the defendant in *Spratley* then reacted violently to actions by others that were not actually hostile. Mr. Spratley thought he saw a woman on the street "put a gun sign on" using her hand, which he interpreted as "endangering [his] life." *Id.* This made it clear to the Court that Mr. Spratley had "paranoid" and "incorrect perceptions" due to his psychosis when he followed the woman into a store and shot her. *Id.* at 729. Similarly, Mr. Hale misunderstood the police officers' attempts to get him to go the hospital as threats to his life and safety. Whereas the defendant in *Spratley* believed he was being targeted by assassins, which prompted him to react violently to a perceived hand gesture, Mr. Hale believed that he would "die on a cross like God," that "everyone hated him" and that someone was going to try to attack and kill him,

which prompted him to react violently when he was grabbed by the police. T. 277, 280-81.

On the day of the incident, Mr. Hale's condition had clearly deteriorated to the point where his mother felt the need to call for emergency medical attention. T. 37, 227, 326-27. When the police arrived, Mr. Hale at first attempted to avoid contact with the officers by leaving the building but became increasingly agitated as they continued to follow him. T. 51-53. Mr. Flores described how he could hear Mr. Hale repeatedly telling the officers to leave him alone in a "strong voice" and telling them not to touch him. T. 182, 185. The officers then attempted to restrain him by grabbing him while he was trying to walk away, triggering a "struggle" between Mr. Hale and the officers. T. 54. Mr. Hale was responding to actions by the police that even a non-psychotic person could interpret as physically aggressive, and in his psychotic paranoid state he attempted to defend himself from what he perceived as a threat to his life, and stabbed Officer Loor using a weapon his paranoid delusions had convinced him that he would soon need.

Mr. Hale's paranoid delusion that "everyone hated him," T. 280, leading him to react violently, is also similar to that of the defendant in *Liebman*. Although Mr. Liebman did not carry a weapon in anticipation of having to defend himself, or believe that someone was attacking him physically, Mr. Liebman was severely paranoid and believed that his wife "hated" him. *Liebman*, 179 A.D.2d at 248. This paranoia caused Mr. Liebman to believe that his wife was deliberately trying to rob him of his sanity by refusing to pay for his psychiatric hospitalization, leading him to stab her and try to kill himself as a result of an argument. *Liebman*, 179 A.D.2d at 251, 258. The court found that there was "overwhelming" evidence that Mr. Liebman had acted under an extreme emotional disturbance as seen from his point of view, and reduced his conviction to manslaughter. *Id.* at 258. Likewise, this Court should recognize that it was Mr. Hale's paranoid delusion that "everyone hated him," leading him to believe he would soon be attacked and killed, which then led to his violent reaction to the police grabbing him.

Moreover, both experts agreed that another marked feature of Mr. Hale's psychosis, common to schizophrenics, was "anosognosia" or the

inability to understand one's disconnection from reality. T. 264, 421. Both experts agreed that Mr. Hale lacked insight into his own illness. T. 271, 287, 292, 421. It is because of this inability to understand that he lacked the capacity to recognize that the police were not attempting to harm or kill him when they grabbed him. This is why he should have been found not guilty by reason of mental disease or defect on all counts.[5] *See also Liebman*, 179 A.D.2d at 257-58 (finding that, due to the defendant's rapidly worsening psychiatric symptoms, his extreme emotional disturbance was "a reasonable response to circumstances as they were perceived by the defendant, however irrational his or her perceptions may have been").

D. The Weight of the Evidence Fell Heavily in Favor of the Conclusion that Mr. Hale Did Not Understand the Wrongfulness of His Conduct, Based on the Testimony of Both Experts.

Both Dr. Goldsmith and Dr. Khadivi testified to numerous factors proving that Mr. Hale was severely psychotic on the day of the incident. Dr. Khadivi's claims, that Mr. Hale was not suffering from psychotic

[5] And, like the defendant in *Spratley*, who was acquitted of criminal possession of a weapon because he also carried the weapon believing he needed to defend himself from an unreal threat, Mr. Hale must be found not guilty by reason of mental disease or defect on the weapon count because he carried the knife in the false belief that he would need it in self-defense, due to his psychosis. *See Spratley*, 159 A.D.3d at 727; T. 277.

delusions and did understand that his actions were wrong, were clearly unsupported by undisputed evidence about schizophrenic symptoms and Mr. Hale's behavior.

1. Mr. Hale's Inconsistent Reporting of His Symptoms on the Day of the Incident Was the Result of His Psychosis.

This Court should reject Dr. Khadivi's assertion that Mr. Hale was not suffering from paranoid delusions during the incident. A primary basis of this claim was that Mr. Hale did not report delusions to him in Dr. Khadivi's interviews. *See* T. 389-91 (Dr. Khadivi claiming Mr. Hale did not report paranoid delusions); T. 420 (Dr. Khadivi claiming Mr. Hale was "selective" in reporting symptoms). But Dr. Khadivi agreed to the presence of numerous factors that showed that this lack of reporting was actually due to Mr. Hale's schizophrenia. Both Dr. Goldsmith's and Dr. Khadivi's testimony about Mr. Hale's medical records and his family's reports to them about his mental state at the time of the incident overwhelmingly established Mr. Hale's paranoid and psychotic state at the time of the incident. *See Spratley*, 159 A.D.3d at 730 (inconsistent reports of paranoia at the time of the incident by the defendant did not undermine finding that he lacked capacity to understand his actions were wrong because the medical records showed

that he suffered from paranoid delusions). In fact, there were several explanations to refute Dr. Khadivi's claim that Mr. Hale was "selective" in reporting his symptoms.

First, Dr. Goldsmith testified that psychotic patients often downplay or deny symptoms, hoping to avoid hospitalization or antipsychotic medication. T. 273; T. 380. Dr. Khavidi even testified that minimization is more likely when a patient "lacks insight about their illness," T. 380, and also agreed that Mr. Hale did in fact suffer from anosognosia "throughout a course of his life." T. 421. Mr. Hale was repeatedly noted to lack insight into his illness. T. 271, 287, 292, 421. Mr. Hale had so little capacity to understand his own illness that he told the staff at the hospital on the day of the incident that he did not believe he had a mental illness. T. 286-87. It follows that Mr. Hale would inaccurately or inconsistently report his symptoms. These undisputed facts show that if Mr. Hale did not report his paranoid delusions on the day of the incident, it is most likely because he was

minimizing his symptoms, compounded by the fact that he failed to understand them as symptoms.[6]

If Mr. Hale was not minimizing his symptoms on the day of the incident, there is a remaining explanation, the existence of which was also undisputed: schizophrenia commonly features thought and communication difficulties that prevent a patient from explaining their symptoms. T. 262-64; T. 399. It was undisputed that Mr. Hale sometimes exhibited these symptoms during his psychotic episodes. T. 290-91. Dr. Khadivi also admitted that memory problems can occur in schizophrenia, so that Mr. Hale might not have remembered all the elements of his psychiatric history when asked. T. 418.

Dr. Khadivi's suggestions that Mr. Hale may have been malingering, or attempting to fake or exaggerate his symptoms to escape responsibility, are easily dismissed in view of any of several undisputed facts. First, both Dr. Goldsmith and Dr. Khadivi agreed that in thousands of pages of medical records over 12 years of psychiatric hospitalizations, there was not a single note or indication that Mr. Hale

[6] Dr. Khadivi also admitted that Mr. Hale did eventually report his delusional belief that he was "like Jesus Christ" to Bellevue Hospital by June 2012, two months after the incident, further undermining his claim that Mr. Hale was being "selective" in reporting his symptoms to psychiatric personnel. T. 420.

was found to be malingering. T. 355, 411. Such indications were absent, even though Mr. Hale was often hospitalized following arrests or following incidents in penal settings, where a motivation to malinger would be more likely. *See, e.g.,* T. 411 (Dr. Khadivi discussing a lack of malingering diagnoses after being sent to Bellevue from Rikers Island); *see also Liebman*, 179 A.D.2d at 257-58 (where record was "replete with undisputed evidence" of numerous psychiatric hospitalizations and anti-psychotic medications, conclusion that defendant was faking or exaggerating symptoms to be "manipulative" was not supported by weight of the evidence).

Second, exactly at the times when it would have been most advantageous for him to fake or exaggerate his symptoms, Mr. Hale claimed he did not have any paranoid delusions. He did not report any symptoms to staff at Metropolitan Hospital or Bellevue Hospital on the day of the incident, yet he was clearly observed to have signs of "acute psychosis" such as paranoia, agitation, and "internal preoccupation." T. 286-87, 291, 289, 397-98. Dr. Khadivi himself reported that in his interviews with Mr. Hale, he denied suffering any paranoid delusions at the time of the incident. T. 383-84. These interviews took place in the

District Attorney's office and Dr. Khadivi told Mr. Hale that the purpose of the interviews was to evaluate his mental state at the time of the incident, which would be reported to the court. T. 376, 421. Those facts would have made this a prime opportunity for Mr. Hale to malinger – an opportunity Mr. Hale clearly did not take. By Dr. Goldsmith's testimony, Mr. Hale's behavior in denying symptoms represented "the opposite of malingering." T. 354.

Third, Dr. Khadivi relied on standardized test results which he himself admitted were either invalid, or unable to determine if Mr. Hale was malingering as to his symptoms on the day of the incident. T.393-95, 422 (SIRS test for malingering could not determine whether Mr. Hale was feigning symptoms at any time prior to the test); T. 395 (personality assessment inventory test supposedly indicating malingering was answered with invalid responses). These test results are thus plainly irrelevant. *See Spratley*, 159 A.D.3d at 727 (notes in records suggesting that defendant was "faking" at a times years apart from the incident did not undermine conclusion that his psychosis prevented him from understanding the wrongfulness of his conduct).

2. Mr. Hale Running From the Police was Consistent with an Inability to Appreciate the Wrongfulness of His Conduct.

The other primary basis for Dr. Khadivi's claim that Mr. Hale knew that his conduct was wrong was the fact that Mr. Hale stated that he ran away after stabbing Officer Loor because he was afraid the police might shoot him. T. 402, 474-75. Yet this is clearly consistent with Mr. Hale believing he was acting in self-defense because, in his paranoid psychotic state, he could easily have been afraid that the police would persist in what he believed were their attempts to kill him. Dr. Khadivi even admitted that running away was consistent with having a paranoid schizophrenic episode. T. 429.

Further, New York courts have found that simply trying to get away from police officers does not by itself indicate that a person has committed a crime. *See People v. May*, 81 N.Y.2d 725, 728 (1992) (defendant driving his car away from the police as they approached could not create a reasonable suspicion of criminal activity); *People v. Martinez*, 80 N.Y.2d 444, 448 (1992) (defendant's "flight when the officers approached could not, in and of itself, create a reasonable suspicion of criminal activity.").

Overall, there were clear reasons for Mr. Hale's inconsistent reporting of his symptoms on the day of the incident, there was no credible basis for a conclusion that Mr. Hale was malingering with respect to the incident, and Mr. Hale's behavior in running from the police was consistent with his psychotic delusional state. Thus, Dr. Khadivi's conclusion that Mr. Hale understood the wrongfulness of his actions should be rejected as "contrary to the credible evidence presented." *Spratley*, 159 A.D.3d at 727.

* * *

Unfortunately, Mr. Hale's severe mental illness prevented him from understanding that Officer Loor and Officer Merisme were trying to help him, not harm him, leading him to act in what he thought was self-defense. Pursuant to N.Y. Penal Law § 40.15(2), this Court should find that Mr. Hale was not guilty by reason of mental disease or defect on all counts he was convicted of because he could not understand that the police were not attacking him and threatening his life. *Spratley*, 159 A.D.3d at 727. It is tragic that this illness resulted in severe injury to Officer Loor, but in a case like this, criminal responsibility cannot attach to Mr. Hale because he did not have the capacity to realize that

what he did was wrong. Mr. Hale should not be in a state prison but rather receiving the appropriate psychiatric treatment so that his symptoms can be properly managed. This Court should set aside the verdicts as against the weight of the evidence, and issue a mental examination order pursuant to N.Y. Civ. Proc. L. § 330.20. *See Spratley* 159 A.D.3d at 725 (reversing and ordering further proceedings consistent with N.Y. Civ. Proc. L. § 330.20).

POINT II

ALTERNATIVELY, MR. HALE'S MAXIMUM, AGGREGATE SENTENCE OF 25 YEARS WAS UNDULY HARSH AND EXCESSIVE BECAUSE MR. HALE'S CONDUCT WAS THE PRODUCT OF HIS SEVERE PARANOID SCHIZOPHRENIA, REDUCING HIS CULPABILITY.

Terrance Hale's culpability is not the same as that of a mentally healthy person. His severe paranoid schizophrenia led him to interpret the police officers' attempts to get him to the hospital as a threat to his life. Another feature of Mr. Hale's schizophrenia is a lack of insight into his own illness, which prevented him from understanding that he needed medical assistance and increased the likelihood that he might respond in a hostile manner. By claiming that Mr. Hale's actions did not result from his undisputed mental illness to justify giving Mr. Hale maximum sentences on all counts, the trial court essentially punished Mr. Hale for his own mental illness. Thus, his sentences were unduly harsh and excessive and should be reduced.

This Court has "broad, plenary power to modify a sentence that is unduly harsh or severe under the circumstances . . . without deference to the sentencing court." *People v. Delgado*, 80 N.Y.2d 780, 783 (1992). In determining whether a sentence is excessive, this Court must

consider "the nature of the crime, the defendant's circumstances, the need for societal protection, and the prospects for the defendant's rehabilitation." *People v. Fernandez*, 84 A.D.3d 661, 664 (1st Dep't 2011) (internal quotation omitted). The Court should also consider these factors with a view toward imposing the "minimum amount of confinement" necessary. *People v. Notey*, 72 A.D.2d 279, 282-83 (2d Dep't 1980) (internal citation omitted).

New York courts have reduced sentences for violent offenses and homicide offenses where the defendant had a documented history of mental illness. *See People v. Strawbridge*, 299 A.D.2d 584, 594 (3d Dep't 2002) (second degree murder sentence reduced in view of defendant's "documented impaired emotional and mental health and the psychiatric evidence submitted by defense counsel at sentencing" in the interest of justice); *see also People v. Gilliard*, 150 A.D.3d 1147, 1148 (2d Dep't 2017) (reducing sentence for second degree robbery in part because of "long history of mental illness" in the interest of justice); *People v. Thompson*, 132 A.D.3d 1364, 1367 (2d Dep't 2015) (first degree robbery and criminal possession of a weapon sentence reduced in view of defendant's history of mental illness in the interest of justice).

This Court has reduced sentences where the defendant's violent conduct resulted from the defendant's fear for their physical safety. *See People v. Matias*, 161 A.D.2d 292, 292 (1st Dep't 1990) (sentence was excessive where defendant was convicted of manslaughter after shooting the decedent, who "had a known history of threatening behavior directed at defendant and other tenants of [his] building"); *People v. Roldan*, 222 A.D.2d 132, 136-141 (1st Dep't 1996) (sentence was excessive where defendant was a security guard who shot the decedent during a physical altercation, and decedent had been involved in numerous violent confrontations with security personnel in the past). Mr. Hale's paranoid delusions made him irrationally believe that someone would attack and try to kill him, thus leading him to react violently when the police grabbed him as he attempted to get away from them. T. 52-57, 182-86; T. 277; *see* Point I, *supra*.

This Court should also consider that a schizophrenic patient's inability to understand their own mental illness contributes to the likelihood that they will commit violent behavior. After analyzing numerous clinical and sociodemographic factors among hospitalized schizophrenic patients, one study found that "[t]he single variable that

best predicted violence was insight into psychotic symptoms." Celso Arango, Alfredo C. Barba, et al., *Violence in Inpatients with Schizophrenia: A Prospective Study*. Schizophrenia Bulletin, 25(3), 493–503, at 500 (1999); *see also* Marvin S. Swartz, Jeffrey W. Swanson, et. al, *Violence and Severe Mental Illness: The Effects of Substance Abuse and Nonadherence to Medication*. Am. J. Psychiatry 155:2, 226-231 at 230 (1998) (hereinafter, "Violence and Severe Mental Illness") (finding that a lack of insight into illness increases the risk of violence in schizophrenic patients).

Schizophrenic patients who require involuntary hospitalization are significantly more mentally ill and significantly less likely to understand that they need treatment than those patients for whom treatment is voluntary. *See* Joseph P. McEvoy, Paul S. Applebaum, et al., *Why Must Some Schizophrenic Patients Be Involuntarily Committed? The Role of Insight*. Comprehensive Psychiatry, 30(1), 13–17 (1989) (hereinafter, "Insight and Involuntary Commitment"). Even when their condition improves after months in hospitalized settings, they are also significantly more like to need involuntary re-admission to a hospital within a few years. *Id.* But involuntarily hospitalized

patients still may not show any significant increase in insight into their illness. *Id.* at 16-17. The researchers concluded that "inability to see the self as ill seems to be a persistent trait in some schizophrenic patients." *Id.* at 13.

If Mr. Hale reacted violently when the police tried to get him to wait for an ambulance, this was in large part a result of his illness. Expert testimony established that at least two of Mr. Hale's hospitalizations had been involuntary. T. 268, 274. His records noted that he lacked insight into his illness, and he also had a documented history of anosognosia, a lack of awareness of breaking with reality. T. 271-72, 287, 292, 421. While treating him in the days immediately after the incident, staff at Bellevue also observed that Mr. Hale had "diminished insight into the fact that he had a mental illness," T. 289, and on the day of the incident did not believe he had a mental illness. T. 286-87. Thus, in addition to Mr. Hale's paranoia making him believe he needed to act in self-defense, the severity and character of his illness made it especially likely that that he would react violently to the police physically trying to restrain him in an attempt to hospitalize him. Mr. Hale was simply unable to understand that the police were not a hostile

force trying to kill him, and he reacted in the manner consistent with what his delusions made him believe was necessary to protect himself.

Likewise, Mr. Hale's record of fights and assaults while in corrections and medical settings is likely the result of Mr. Hale's paranoia and inability to understand the fact that he is severely ill. *See* PSI at 3-4, S. 7-10 (detailing history of violent conduct in corrections and medical settings); *People v. Spratley*, 159 A.D.3d 725, 727 (2d Dep't 2018) (record of assaults against corrections staff was the result of paranoid delusions as part of defendant's psychosis). Thus, the court's claim that Mr. Hale's conduct was "not the product of [his] mental illness," but rather his history of "violent behavior … when he does not get what he wants," was essentially a statement that Mr. Hale should be punished for his own inability to think logically and appropriately perceive and react to his environment. S. 12-13.

Other contributing factors to violence in schizophrenic patients include "substance abuse problems, [and] medication noncompliance." *See* Violence and Severe Mental Illness at 230. Patients can fall into a vicious cycle where "substance impairment may impede medication adherence[,] while noncompliance [with medication and treatment], in

turn, may lead to self-medicating with alcohol or illicit drugs." *Id.* Thus, severe schizophrenia can be both the cause and the effect of inconsistent medication usage and substance use.

It follows that if Mr. Hale had an inability to consistently understand that he needed treatment because he lacked insight into his illness, he would not be consistent in complying with treatment programs. Mr. Hale was also diagnosed with a substance abuse disorder around the same time he was diagnosed with schizophrenia. T. 268. Thus, Mr. Hale's noncompliance with treatment and medication programs, and his use of alcohol and drugs, "despite being counselled against that" were not merely the result of wanton disregard, as the prosecution suggested, but are complicating factors associated with Mr. Hale's diagnoses. S. 6-7.

In sum, it is manifestly unjust that Mr. Hale was blamed for the result of his own illness. The court should have recognized that Mr. Hale's culpability was strongly reduced because of the limitations that Mr. Hale's schizophrenia imposed on him; it was not Mr. Hale merely using violence as a tool to get what he wants. It was, therefore, unduly harsh and excessive for the court to sentence Mr. Hale to maximum

sentences on all counts. This Court should reduce his sentences to terms closer to the minimum in the interest of justice.

CONCLUSION

For the foregoing reasons, this Court must set aside the verdicts as against the weight of the evidence in favor of verdicts finding Mr. Hale not guilty by reason of mental disease or defect; or, alternatively, this Court should reduce Mr. Hale's sentences to terms closer to the minimum in the interest of justice.

Dated: New York, New York
March 29, 2019

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ADDENDA

Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York, Respondent, — against — Terrance Hale, Defendant-Appellant.	Ind. No. 1734-2012

Statement Pursuant to Rule 5531

1. The indictment number in the court below was 1734-2012.
2. The full names of the original parties were "The People of the State of New York" against "Terrance Hale."
3. This action was commenced in Supreme Court, New York County.
4. This action was commenced by the filing of an indictment.
5. This is an appeal from a judgment rendered on May 4, 2015, by the Supreme Court, New York County. Terrance Hale was convicted after a trial of one count of assault in the first degree, N.Y. Penal Law § 120.10(1), one count of aggravated assault upon an officer, N.Y. Penal Law § 120.11, and one count of criminal possession of a weapon in the third degree, N.Y. Penal Law § 265.02(1). Mr. Hale received 25 years in prison with 5 years of post-release supervision on both assault counts, and three-and-a-half to seven years in prison on the weapon possession count, all to run concurrently. Justice Ann Donnelly presided over the trial and sentencing.
6. Mr. Hale has been granted leave to appeal as a poor person on the original record and typewritten briefs.

Supreme Court of the State of New York
Appellate Division: First Department

The People of the State of New York, Respondent, — against — Terrance Hale, Defendant-Appellant.	Ind. No. 1734-2012

Printing Specification Statement

1. The following statement is made in accordance with First Department Rule 600.10.

2. Mr. Hale's brief was prepared with Microsoft Word 2010 with Garamond typeface 14 point in the body and 12 point in the footnotes.

3. The text of the brief has a word count of 15,047, as calculated by the processing system and is 77 pages.